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

OMB Information Collection Request
0970 - 0554

Attachment A – Emergency Justification

September 2025

Type of Request: Emergency

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

EMERGENCY JUSTIFICATION

ACF is requesting emergency review and approval by OMB to update two forms approved under the Placement and Transfer of Unaccompanied [Alien] Children into ORR Care Provider Facilities information collection (OMB #0970-0554), as authorized under 5 CFR 1320.13. ACF is requesting approval as soon as possible due to secure beds becoming available on September 15, 2025, and requests 180 days of approval, during which time a full revision request will be submitted under normal procedures under the Paperwork Reduction Act.

The information collection is **essential to the mission of the agency,** the **use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information**, and **public harm is reasonably likely to result if normal clearance procedures are followed**.

Essential to Mission

The forms are necessary and essential to the agency, as they will ensure that the Office of Refugee Resettlement (ORR) is able to comply with the following statutory mandates from the Trafficking Victims Protection Reauthorization Act (TVPRA), 8 U.S.C. § 1232(c)(2)(A), which support the mission of the agency:

- Children must be promptly placed in the least restrictive setting that is in the best interest of the child.
- Children must not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense.
- Placement of a child in a secure facility must be reviewed, at a minimum, on a monthly basis.

The forms are also necessary and essential to the agency being able to comply with mandates from the Homeland Security Act (HSA) of 2002, 6 U.S.C. 279(b), which requires ORR to:

- Ensure that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child.
- Provide children with an explanation for the basis of their placement.
- Ensure that children are placed in a setting in which they are not likely to pose a danger to themselves or others.

Notably, the *Lucas R.* Disabilities Settlement Agreement and Psychotropic Medication Settlement Agreement mandate specific placement procedures and criteria for children with disabilities and children receiving psychotropic medications that are also essential to ORR's mission. *Lucas R. v. Azar*, Case No. 2:18-CV-05741-DMG (W.D. Cal. May 3, 2024). Similarly, ORR is still bound to parts of the *Flores* Settlement Agreement that govern how ORR places and supports children in secure facilities, heightened supervision facilities, and out-of-network facilities. *Flores v. Bondi*, No. 2:85-cv-04544-DMG (C.D. Cal. Aug. 15, 2025). It is essential to ORR's mission that the agency is able to comply with these settlement agreements because they are based on the statutory mandates that govern how ORR must make placements of UAC in its care and custody.

ORR recently published a regulation (45 CFR Part 410, "Foundational Rule") that includes updated criteria that ORR and care provider staff must use when determining whether it is permissible to place UAC in a restrictive setting. The placement criteria are also located in ORR's Intakes Restrictive Placement Checklist and Notice of Placement in a Restrictive Setting forms, the focus of this request.

These two critical documents are the primary instruments ORR utilizes to operationalize its statutory and regulatory mandates that govern the placement of UAC in restrictive settings, as well as to comply with court-ordered settlement agreements that apply to those settings. The forms also ensure that the due process rights of children, also guaranteed by statute and regulation, are followed. As a result, these forms are essential to ORR being able to conduct its mission, which has been mandated by statute, bolstered by regulation, and supported by ongoing settlement agreements.

These proposed changes are also essential for ensuring that ORR continues to properly enact its mandates and comply with all applicable authorities. For example, the updates make the required legal burden of proof that must be met for these placement decisions clear. The previous version of the form makes no mention of the burden of proof at all. Without this clarification, ORR staff who complete these forms will not have the proper guidance for applying the correct burden of proof required by law and policy, preventing the agency from making placements in UAC's best interests and in accordance with its mandates. Additionally, the form updates significantly clarify how each placement's criteria and supporting factors should be considered, weighed, and applied, such as factors around a child's criminal or delinquent background and escape risk. Furthermore, the updates provide clearer notice to the child about their rights and add consideration of a child's disability, a particularly critical factor that was not previously on the form either. All of these changes are required in order for ORR to comply with the agency mandates that are essential to its mission.

Potential Public Harm

It is vital that ORR have accurate forms available for staff who make placement decisions. If these forms are not updated with the proper instructions and guidance, ORR and care provider staff will not have the accurate and effective tools it needs to meet its essential mission and functions as established in the TVPRA, HSA, and Foundational Rule and as reinforced in active settlement agreements. Specifically, it will be exceedingly difficult for ORR to properly assess whether a restrictive setting is appropriate for a child; to properly document those decisions for its administrative record with accurate information; to ensure that children understand the placement decision; and to ensure that children understand their rights and available recourse associated with that placement decision. Because ORR anticipates having secure facility placements available in just a matter of days (as discussed below), not having updated forms imperils ORR's ability to meet its essential mission and functions to ensure that placements are safe and in children's best interest.

Consultation

ORR has taken steps to consult with stakeholders in order to minimize the burden of the collection of information and has consulted internally to ensure revisions minimize burden to the extent possible.

- The Intakes Restrictive Placement Checklist may be completed by contractor staff within ORR's Division of Placements. Staff were consulted to ensure the updated criteria are understandable and will facilitate compliance with statutory, regulatory, and settlement agreement requirements. Instructions were added based on staff feedback, and the form was reorganized to help staff better understand how they are expected to make placement determinations. New fields were kept to a minimum, and only fields necessary to ensure proper documentation of placement determinations were added.
- The Notice of Placement in a Restrictive Setting is completed by grantee/contractor staff, who then explain the information in the completed form to the child in the child's preferred language. It is not practicable to consult staff outside ORR on minimizing burden at this time due to the

urgent nature of the form revisions. However, only a few new fields were added and the increase in burden is minimal. In addition, most of the new field are required under the *Lucas R.* Disabilities Settlement Agreement and ORR is required to add them to the form.

Timing and Time Period

ORR did not previously prioritize these revisions for two reasons. First, ORR knew that, in addition to updating the placement criteria, there would also be a need to update the Notice of Placement in a Restrictive Setting with forthcoming requirements under *Lucas R.* litigation. ORR planned to make the criteria and *Lucas R.* updates concurrently and, therefore, did not immediately pursue changes to the form. Second, there was a need to prioritize work on two new information collections to ensure they were approved for use by a court-ordered deadline under *Lucas R.* litigation. Conversely, at the time, there were no external deadlines for updating placement criteria in ORR forms.

In addition, ORR did not have any secure facility beds available at that time. ORR's secure facility care providers voluntarily relinquished their grants over time and ORR has not had secure beds available since January 2023. ORR initially pursued a continuum of care contract, under which the contractor would have provided beds at multiple levels of care (e.g., shelter, foster care), including secure facility beds. Given that the continuum of care contract has never borne fruit and **changes in administration priorities** – the current administration believes secure beds are critical for protecting the health and safety of all children in ORR care – ORR shifted to pursuing secure beds through a contract solely for that specific level of care, which has led to the availability of beds sooner than expected. ORR now anticipates having secure facility beds available by September 15, 2025.

Due to secure beds becoming available sooner than expected, it has become especially crucial that ORR be able to update these forms as soon as possible to ensure ORR can continue to safely serve children in its care and custody. As such, **ACF is requesting approval as soon as possible due to secure beds becoming available on September 15, 2025, and requests 180 days of approval**, during which time a full revision request will be submitted under normal procedures under the Paperwork Reduction Act.

BACKGROUND

The Placement and Transfer of Unaccompanied [Alien] Children into ORR Care Provider Facilities information collection contains 20 instruments that allow ORR to place unaccompanied alien children referred to ORR by federal agencies into care provider facilities and to transfer children within the ORR care provider network. The collection was last approved by OMB on June 12, 2023, and the current expiration date is June 30, 2026.

ORR is proposing changes related to current administration priorities, to align the placement criteria in forms with the criteria found in 45 CFR 410.1105 and UAC Policy Guide Sections 1.2.4 and 1.4.6 and to meet requirements in the *Lucas R.* Disabilities Settlement Agreement and Psychotropic Medication Settlement Agreement (Case No. 2:18-CV-05741 DMG PLA). Specifically, the following two forms:

- **Notice of Placement in a Restrictive Setting (Form P-4) –** Updates associated with the criteria found in 45 CFR 410.1105 and UAC Policy Guide Sections 1.2.4 and 1.4.6 and requirements in the *Lucas R.* Disabilities Settlement Agreement (Case No. 2:18-CV-05741 DMG PLA) and *Flores* litigation (Case No. CV85-4544-RJK (C.D. Cal. 1996)).

- **Unaccompanied [Alien] Child Referral (aka Intakes Placement Checklist) (Form P-7) –** Updates associated with the criteria found in 45 CFR 410.1105 and UAC Policy Guide Sections 1.2.4 and 1.4.6

OVERVIEW OF REQUESTED CHANGES

The proposed revisions for each form are outlined in the tables below. Several of the proposed changes are nonsubstantive in nature. The changes for which this emergency request applies directly are highlighted in gold.

Notice of Placement in a Restrictive Setting (Form P-4)

This form is completed by grantee/contractor staff, who then explain the information in the completed form to the child in the child's preferred language. It is not practicable to consult staff outside ORR on minimizing burden at this time due to the urgent nature of the form revisions. However, only a few new fields were added and the increase in burden is minimal. In addition, most of the new field are required under the *Lucas R.* Disabilities Settlement Agreement and ORR is required to add them to the form.

Proposed Change	Details	Context
Update terminology to align with ORR regulations and to comply with guidance from the current Administration	• Change "staff secure" to "heightened supervision facility" • Change "gender" to "sex" • Change "country of Birth" to "Country of Origin" • Change "unaccompanied child" to "child" or "unaccompanied alien child"	To align with ORR's Foundational Rule (45 CFR 410.1001) and to comply with Executive Order 14168 *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, as well as other guidance from the current Administration
Reorganize where some information/fields appear in the form	• Move information regarding the child's right to challenge their placement to the top of the form • Move fields related to placement into their own "Placement Information" section	For clarification
Add a "Disability Considerations" subsection in "Section B: Placement Information"	Questions for the new subsection are: • Does the child have a disability or disabilities? • If yes, what is the disability or disabilities? • If yes, when was the child referred for an evaluation based on their presenting symptoms? • If yes, what accommodations or services are currently being offered to meet the child's	To meet requirements found in the *Lucas R.* Disabilities Settlement Agreement. First two questions are asked in Psychotropic Medication Informed Consent (Form MMH-1), which underwent public comment and is approved under OMB# 0970-0641. They are also needed in this form to ensure children with an identified

	disability-related needs? • If yes, describe the services or care that will be provided at the restrictive placement, why they are necessary, and why they cannot be provided in a more integrated and less restrictive setting with additional services, supports, and/or accommodations.	disability are placed in least restrictive setting as required under the Settlement. Third question is a follow-up question to ensure children have been appropriately evaluated so their needs may be considered when making placement determinations. Fourth question is documented in the Individualized Section 504 Service Plan (Form S-25), approved under OMB# 0970-0643. User will summarize what is in the child's 504 Service Plan in this field. Final question is a follow-up question to ensure children with an identified disability are placed in least restrictive setting as required under the Settlement.
Remove "Section B: ORR's Determination Related to Safety"	Section contains the following checkbox options: • Child presents a danger to self or community • Child poses a risk of escape	To align with ORR's Foundational Rule (45 CFR 410.1105) and UAC Policy Guide Sections 1.2.4 and 1.4.6.
Update "Section C: Reasons for Restrictive Placement"	• Update the criteria for each type of restrictive placement (heightened supervision facility, secure facility, and residential treatment center) • Add a new subsection for "Out-of-Network Hospital"	First set of changes are to align the criteria with ORR' Foundational Rule (45 CFR 410.1105) and UAC Policy Guide Sections 1.2.4 and 1.4.6. Second change is to comply with *Flores* litigation (Case No. CV85-4544-RJK (C.D. Cal. 1996)).
Add "Translation" subsection to "Section E: Acknowledgement and Certification"	Information requested in subsection includes: • Language form was translated into • Who translated the form • The translators ID# (if applicable)	To help ORR monitor for compliance with its regulations, which requires that all documents be translated into the child's native or preferred language for step ups and step downs from restrictive

		placements (45 CFR 410.1306(c)(4)).

Unaccompanied [Alien] Child Referral (aka Intakes Placement Checklist) (Form P-7)

ORR has two versions of Form P-7 approved under this information collection. The first version, titled Unaccompanied [Alien] Child Referral, was created for the UAC Path system, which was never implemented. The second version, titled Intakes Placement Checklist, is a PDF version that is currently in use. ORR is only proposing revisions to the PDF version of this form.

This form is completed by contractor staff within ORR's Division of Placements. Staff were consulted to ensure the updated criteria are understood. Instructions were added based on staff feedback and the form was reorganized to help staff better understand how they are expected to make placement determinations. New fields were kept to a minimum and only fields necessary to ensure proper documentation of placement determinations were added.

Proposed Change	Details	Context
Change form title	Change from "Intakes Placement Checklist" to "Intakes Restrictive Placement Checklist"	To better align the form's title with its purpose
Update terminology to align with ORR regulations and to comply with guidance from the current Administration	• Change "staff secure" to "heightened supervision facility" • Change "gender" to "sex" • Change "unaccompanied child" to "child" or "unaccompanied alien child"	To align with ORR's Foundational Rule (45 CFR 410.1001) and to comply with Executive Order 14168 *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, as well as other guidance from the current Administration
Reorganize "Section B: Heightened Supervision Facility Criteria" and "Section C: Secure Facility Criteria"	Each section will include: • A brief definition of the type of facility • A reminder that placement decisions must be made based on clear and convincing evidence along with the definition for clear and convincing evidence • A subsection for each criterion that includes: o The criterion, as written in ORR regulations and policy o A list of supporting factors that may be used to help determine whether the child	For clarity

	meets the criterion o A final determination on whether the criterion is met	
Update criteria and supporting factors in Sections B and C	Criteria and supporting factors will be updated to mirror language used in the Foundational Rule, and any language that contradicts or does not align with the Rule will be removed	To align the criteria with ORR' Foundational Rule (45 CFR 410.1105) and UAC Policy Guide Sections 1.2.4 and 1.4.6.
Add follow-up questions in Sections B and C	Users are asked to: • List the evidence used to determine whether the child meets the criteria for placement • Confirm whether there is clear and convincing evidence that the child meets the criteria for placement	First question is asked so that there is a record of what information/documents were relied upon to make the placement determination. Second question is asked to remove any ambiguity regarding whether each criterion was met.
Update "Section D: Placement Determination"	• Add subheadings to separate fields related to the "Intakes Specialist Recommended Level of Care" from the "Placements Supervisor Level of Care Determination" • Replace the "Recommended Placement" radio buttons with a "Recommended Level of Care" dropdown field • Update field labels to reflect that the responsibility for making a final level of care determination has moved from the Federal Field Specialist (FFS) to the Placements Supervisor • Reword "Reason for Override" to "Explain reason for placement in a different level of care than the initial recommended level of care" • Replace the "Final Placement Determination" radio buttons with a "Level of Care" dropdown field • Reword "Designated Placement" to "Care Provider	For clarity. Last item is a follow-up question added to ensure ORR's decision making is appropriately documented.

	Name” • Add field for “Reason for Recommended Level of Care”	