State of California
Office of the Attorney General

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Submitted via Federal eRulemaking Portal

The Honorable Robert F. Kennedy, Jr., Secretary
Angie Salazar, Acting Director
Office of Refugee Resettlement
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Unaccompanied Children Program Foundational Rule; Sponsor Assessment Update to Include Proof of Identity, Background Check, Placement, and Income Verification Standards, 91 Fed. Reg. 38582, Docket ID ACF-2026-0199

Dear Secretary Kennedy and Acting Director Salazar:

We, the Attorneys General of California, Colorado, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and Washington (the States), write in opposition to the Department of Health and Human Services' (HHS) Notice of Proposed Rulemaking, *Unaccompanied Children Program Foundational Rule; Sponsor Assessment Update to Include Proof of Identity, Background Check, Placement, and Income Verification Standards*, 91 Fed. Reg. 38,582 (June 26, 2026) (the Proposed Rule).

Protecting the health and wellbeing of unaccompanied immigrant children is important to the States. Every year, thousands of children are released from immigration custody and reunited with parents, family members, or other adult sponsors who are residents of the States. These children become members of our communities, attend our schools, and grow into adults raising their own families. The States also have a strong interest in preserving children's family ties whenever possible and have enacted their own laws prioritizing family integrity. Additionally, the States have significant concerns about the harmful impacts to unaccompanied children of longer periods in Office of Refugee Resettlement (ORR) custody. Lengthy time spent separated from their families and in immigration custody is particularly harmful for children's physical and mental health and disrupts their development. Any policy changes that present unnecessary barriers to reuniting children with their family members and prolong children's time in immigration custody because of a lack of particular documentation or proof of income run counter to the States' interests in preserving the best interests of these children.

The States are concerned that the Proposed Rule's changes to the documents deemed acceptable as proof of identity for potential sponsors and the new requirement that potential sponsors provide proof of income will raise additional and unnecessary barriers to the timely release of unaccompanied children from ORR custody to suitable sponsors, many of whom are family members of unaccompanied children. The Proposed Rule will reduce the number of otherwise suitable sponsors and prevent the timely release of unaccompanied children in ORR custody to their families and other safe, appropriate placements. This will result in unaccompanied children spending prolonged lengths of time in federal custody. The Proposed Rule thus does not comport with HHS's and ORR's obligations under federal law and regulations to promptly place unaccompanied children in ORR's care in the least restrictive setting that is in the best interest of the child and to release children from its custody without unnecessary delay, with certain limited exceptions.

Additionally, all of the proposals in the Proposed Rule lack sufficient justification and a rational connection to ORR's goal of protecting unaccompanied children. Specifically, the Proposed Rule's elimination of most foreign-issued identity documents from the list of acceptable proof-of-identity documents, except under limited circumstances, will create new sponsor assessment standards that categorically exclude otherwise suitable potential sponsors with only foreign-issued identity documents due to their immigration status, including parents, legal guardians, or relatives of unaccompanied children. In effect, the Proposed Rule will create a de facto immigration status-based condition on sponsorship in lieu of ORR making the individualized sponsor suitability assessments that are necessary to comply with its obligations to promptly place children in the least restrictive setting that is in the best interest of the child and to prioritize the placement of children with parents, legal guardians, and other relatives. ORR's reliance on the lists of acceptable documents for completing Form I-9 is not rational because the I-9 process is a dissimilar process and thus employing a portion of the Form I-9 list to sponsorship assessments is unnecessarily restrictive. Further, the proposed income verification requirements impose a duplicative and unnecessary obstacle that will discourage potential sponsors from coming forward, when the existing regulation already ensures that children will be placed in homes that meet their needs. Unlike the process outlined in the Proposed Rule, state agencies regularly make placement determinations in ways that effectively balance ensuring that youth's needs are met and that artificial barriers to safe, appropriate placements are not erected. The Proposed Rule also provides insufficient information as to how ORR will make and use its assessments of unaccompanied children's tattoos for the public to meaningfully comment on this proposed change.

The States are concerned that the Proposed Rule will result in unaccompanied children spending prolonged lengths of time in federal immigration custody and separated from their families, which interferes with children's right to family associations and will result in long-lasting harm to these children. The States urge HHS to withdraw the Proposed Rule.

I. The Proposed Rule's Changes to the Proof of Identity and Proof of Income Requirements for Potential Sponsors Lack a Sufficient Basis and Will Raise Additional Barriers to the Timely Release of Unaccompanied Children

The States are concerned with the provisions in the Proposed Rule that would amend the Unaccompanied Children Program Foundational Rule[1] (the Foundational Rule) to impose restrictive proof of identity requirements and reestablish the proof of income requirement for potential sponsors of unaccompanied children in ORR custody. Although the States support an appropriate and thorough screening process for sponsors to ensure the wellbeing and safety of unaccompanied children after they are released from ORR custody, the States oppose regulatory actions, such as this Proposed Rule, which create unnecessary, irrational barriers to unaccompanied children's prompt release from ORR custody and reunification with their families.

A. Proof of Identity Requirements

The States oppose the provision of the Proposed Rule that would amend Foundational Rule section 410.1202 to limit the types of documents that ORR will accept as proof of a potential sponsor's identity. Specifically, the States oppose the Proposed Rule's exclusion of identity documentation previously accepted under ORR policy, including most documents issued by a foreign government, such as foreign passports and foreign identification cards.[2] As ORR acknowledges, historically, it has accepted a wide variety of documentation as proof of sponsor identity, including many documents issued by foreign governments.[3] The Proposed Rule's new proof of identity requirements will prevent otherwise suitable sponsors, many of whom are parents and relatives of unaccompanied children and who only possess foreign identification documents due to their immigration status, from sponsoring unaccompanied children. The States acknowledge ORR's concerns and its statutory obligation to properly vet sponsors to ensure the safety of unaccompanied children after they are released from ORR custody.[4] However, the States are concerned that the Proposed Rule's exclusion of many previously accepted foreign identity documents imposes what is in effect an immigration status-based condition on sponsor suitability in place of individualized sponsor suitability assessments. Such individualized assessments are necessary to comply with ORR's obligations under federal law to ensure that children are promptly placed in the least restrictive setting in the best interests of the child and to prioritize the placement of unaccompanied children with parents, legal guardians, and relatives.

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[1] 45 C.F.R. pt. 410.
[2] 91 Fed. Reg. 38,582, 38,585, 38,592-38,593.
[3] 91 Fed. Reg. at 38,585.
[4] The States are similarly concerned with the safety and wellbeing of unaccompanied children both while they are in federal immigration custody and after they are released to sponsors. The States have previously engaged on issues impacting the safety of unaccompanied children, including ORR's sponsor suitability requirements. *See, e.g.,* Comment of the Attorneys General of California, et al. to the Department of Health and Human Services' *Unaccompanied Children Program Foundational Rule; Update to Accord with Statutory Requirements*, 90 Fed. Reg. 13,554 (May 23, 2025), https://www.regulations.gov/comment/ACF-2025-0004-0206.

Moreover, ORR has failed to provide an adequate explanation as to how its proposed identity documentation requirements for potential sponsors are necessary to ensure the safety of unaccompanied children in its care and why other, less restrictive options are inadequate to address ORR's stated concerns, particularly where these new requirements may exclude otherwise safe and suitable family members from sponsoring an unaccompanied child.

Under the Proposed Rule, ORR would limit the documents it would accept as proof of a sponsor's identity to accept only documents issued by U.S. federal, state, or local agencies or entities or outlying possessions of the U.S. (passport, driver's license, ID card, military cards, Native American tribal document); foreign passports with a Form I-94 showing proof of legal entry; foreign passports or immigrant visas that show the sponsor is a permanent resident (I-551 stamp or temporary printed notation); Employment Authorization Documents (Form I-766); foreign passports from the three Freely Associated States;[5] and Canadian driver's licenses.[6] In effect, under these new requirements, many individuals without legal immigration status would be excluded from sponsoring an unaccompanied child, even if they are a parent, legal guardian, or close relative of a child. While some states provide state driver's licenses and state identification documentation regardless of immigration status, potential sponsors will be significantly impacted if they live in states where these options are not available. As a result of fewer eligible sponsors, unaccompanied children will spend increased time in ORR custody and separated from their families. Given the potentially harmful impacts of this change and the breadth of the Proposed Rule's restrictions, the States are concerned that the underlying purpose of the proposed change to sponsor proof of identity requirements is to deter individuals without legal immigration status from coming forward as sponsors, even if they are parents, legal guardians, or relatives of an unaccompanied child, rather than to promote the safety and best interests of these children.

The Proposed Rule's overly broad restrictions on the types of documents that will be accepted as proof of a potential sponsor's identity conflict with HHS's and ORR's obligations under federal law and regulations. The William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) requires that HHS promptly place unaccompanied children in its care "in the least restrictive setting that is in the best interest of the child."[7] The Foundational Rule similarly requires ORR to release unaccompanied children from its custody "without unnecessary delay" unless continued detention of the child is required either to secure the child's timely appearance before the Department of Homeland Security (DHS) or the immigration court or to ensure the child's safety or that of others.[8] Children also have a constitutional right to family associations, which includes the right of unaccompanied children in ORR custody to

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[5] Individuals from the three Freely Associated States also have indefinite work authorization under Form I-9 rules, which have been imported into the Proposed Rule. *See* U.S. Citizenship and Immigration Services, Federated States of Micronesia, Republic of the Marshall Islands, and Palau, https://www.uscis.gov/i-9-central/completing-form-i-9/federated-states-of-micronesia-republic-of-the-marshall-islands-and-palau.
[6] 91 Fed. Reg. at 38,592-38,593.
[7] 8 U.S.C. 1232(c)(2)(A).
[8] 45 C.F.R. § 410.1201(a).

maintain relationships with parents and extended family members.[9] The Proposed Rule's categorical exclusion of otherwise suitable sponsors who only possess foreign identity documents directly conflicts with HHS's and ORR's obligations under the TVPRA and the Foundational Rule to promptly release unaccompanied children from custody into the least restrictive placements in the best interests of the child—generally, placement with a parent or another family member. Rather than making individualized sponsor suitability assessments that take into account the best interests of the child and how to facilitate their timely release to safe and suitable family members, ORR, through the Proposed Rule, is creating additional and unnecessary barriers that will make it more difficult, if not impossible, for most parents, legal guardians, or relatives who possess only foreign identity documents to sponsor an unaccompanied child.

ORR is further required to prioritize parents, legal guardians, and adult relatives, in that order, as potential sponsors when considering the release of a child from ORR custody.[10] As ORR acknowledges, an unaccompanied child who previously could have been released to a sponsor with only a foreign identification document would no longer be released to that sponsor, with a few limited exceptions, until a more reliable and acceptable form of identification is secured by the potential sponsor.[11] However, some potential sponsors, including family members of an unaccompanied child, may be unable to obtain acceptable forms of identification. This means that under the new proof of identity requirements, parents, legal guardians, and adult relatives who lack the approved identification documents could, in effect, be treated with a higher level of scrutiny than a nonrelative sponsor with the approved identity documentation, contrary to ORR's obligations under the Foundational Rule to prioritize the placement of unaccompanied children with parents, legal guardians, and adult relatives.[12] These foreseeable impacts are particularly stark where parents, legal guardians, or other family members are seeking to sponsor a child but do not possess the requisite identity documents due to their immigration status. A lack of legal immigration status and the accompanying identity documentation does not indicate unfitness to care for a child and should not be used on its own to prevent the prompt release of a child to an otherwise safe and suitable parent or other adult relative.[13]

ORR attempts to rationalize its new list of acceptable identity documents by noting that this list is pulled from the Lists of Acceptable Documents used in U.S. Citizenship and Immigration Services' (USCIS) Form I-9 process.[14] But employing a portion of the Form I-9 list for the sponsor screening process is unnecessarily restrictive because this proposed change is based on a faulty comparison to a dissimilar process. The Form I-9 process is designed for

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[9] *Moore v. City of E. Cleveland*, 431 U.S. 494, 503-04 (1977); *Curnow By & Through Curnow v. Ridgecrest Police*, 952 F.2d 321, 325 (9th Cir. 1991); *Lucas R. v. Becerra*, No. 2:18-cv-05741-DMG (PLAx) 2022 WL 2177454, at *14 (C.D. Cal. Mar. 11, 2022).
[10] 45 C.F.R. § 410.1201(a).
[11] See 91 Fed. Reg. at 38,589.
[12] 45 C.F.R. § 410.1201(a).
[13] *See, e.g.,* Cal. Welf. & Inst. Code § 361.3(a), 309(a); Cal. Fam. Code § 3040(b).
[14] 91 Fed. Reg. at 38,585-38,586.

employers to review their employees' documentation and determine if it reasonably appears on its face to be genuine.[15] When reviewing documentation presented for the Form I-9, a representative of an employer, not a government official, must examine the documentation and input specific information from the documentation into fields in the form to avoid penalty from DHS.[16] As a result, the Form I-9 process relies on a finite number of acceptable documents such that all employers, most of whom lack the resources of the federal government, can quickly identify the document, determine whether it appears to be genuine, and enter the required information into the standardized form.

Additionally, the Proposed Rule does not even propose to use the full list of acceptable identity documentation that USCIS has developed for the Form I-9 and thus is even more unnecessarily restrictive. Missing from ORR's list of acceptable identity documents are the following, which USCIS instructs employers to accept as evidence of identity when completing the Form I-9:

- School ID with photograph;[17]
- Voter's registration card;
- Receipts for lost, damaged or stolen documents; and
- Standalone Forms I-94 issued to lawful permanent residents and refugees.[18]

ORR offers no justification for eliminating these additional options other than to say that ORR believes they "would not be sufficient for its purposes."[19] But USCIS has deemed these documents as acceptable for its "standardized, verifiable set of identification documents."[20] ORR has provided no reason to depart from that determination or any rational explanation why it cannot verify foreign identification documents in a timely manner since USCIS is able to do so when adjudicating applications. Instead, ORR has chosen an overly restrictive and harmful option that will unnecessarily eliminate even more potential sponsors who otherwise would be able to establish their identity and suitability as a sponsor. A district court has recently blocked changes similar to those ORR now proposes.[21]

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[15] 8 U.S.C. 1324a(b)(1)(A).
[16] 8 U.S.C. 1324a(e)(5).
[17] The Form I-9 allows minors to show additional types of documentation if they do not have the other documentation in the list, which ORR understandably does not include as unaccompanied children cannot be sponsored by minors. But an adult can have a valid school ID to establish identity and be an appropriate sponsor for an unaccompanied child.
[18] Dep't of Homeland Security, U.S. Citizenship and Immigration Services, Employment Eligibility Verification Form I-9, https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf.
[19] 91 Fed. Reg. at 38,590.
[20] *Id*.
[21] *See* Order, *Angelica S. v. HHS*, No. 1:25-cv-01405 (D.D.C. June 9, 2025), ECF No. 34; Memorandum Opinion (June 9, 2025), ECF No. 35 (ordering preliminary injunction blocking ORR attempts to make similar changes to its sponsor proof of identity and income requirements through subregulatory guidance because these new requirements departed from prior ORR policies without a sufficient explanation). In particular, the court found that ORR failed to show how use of Form I-9 documents is a rational choice. However, despite the preliminary injunction issued by the district court, ORR is attempting again to

In contrast, the ORR process for sponsor assessment does not require such rigidity because ORR has the resources of the federal government to use when verifying foreign identity documentation. ORR has relied on the federal government's expertise in handling foreign identity documents not only for potential sponsors, but for unaccompanied children, for whom ORR must verify the authenticity of their birth certificates, even though they are foreign-issued.[22] If ORR wishes to use a document verification process "used by another government agency with specific expertise relevant to addressing the potential fraud concerns ORR has identified,"[23] it should instead rely on guidance used by USCIS in evaluating foreign documentation presented as part of adjustment of status applications. USCIS employs Reciprocity Tables from the Department of State to determine whether documentation from a particular country and time period is reliable to ensure that it receives acceptable evidence of identity.[24] USCIS and the Department of State treat the Reciprocity Schedule as an official country-specific reference for evaluating whether a foreign civil and identity document is a legitimate credential issued by the purported government to identify the person presenting it.[25] The Reciprocity Schedule's country-specific identification of foreign identity documents, issuing authorities, and authenticating features combined with regular updates reflecting changes in country circumstance similarly make it well suited to meet ORR's stated objective of reliable sponsor identity verification. ORR should, at a minimum, explain why it cannot accept foreign documentation that the Department of State designates as verifiable through the Reciprocity Tables.

ORR states that the changes to the sponsor proof of identity requirements are necessary even if they increase the detention of children because the agency has experienced difficulties authenticating foreign documents in a timely manner and to prevent fraud and exploitation in the sponsor application process.[26] As part of its justification for the proposed restrictions on the use of foreign identity documents, ORR points to the gaps in ORR's sponsor vetting process identified in the 2024 HHS Inspector General report, as well as a 2022 report from the Minority

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establish similar sponsor identity and income requirements based on the same failed reasoning and inadequate justification for this change and without properly considering the harmful impacts on unaccompanied children who would otherwise be released to a suitable sponsor.

[22] *See* Office of Refugee Resettlement, *ORR Unaccompanied Alien Children Bureau Policy Guide: Section 2* (July 23, 2026), https://acf.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-2 (requiring federal staff to "exhaust all available avenues to verify the authenticity of birth certificates" for unaccompanied children provided by the potential sponsor or the child's family.)

[23] 91 Fed. Reg. at 38,590.

[24] "Reciprocity Tables" and "Reciprocity Schedules" are used interchangeably to refer to the Department of State's country-specific civil document reference.

[25] *See* U.S. Citizenship and Immigration Services, Policy Manual, Vol. 7, Pt A, Ch. 4(A)(3) (noting that "Officers should check the Department of State's Country Reciprocity Schedule to determine availability of birth certificates as well as acceptable secondary evidence of birth for specific countries."), https://www.uscis.gov/book/export/html/68600; U.S. Dep't of State, Civil Documents FAQs (identifying the Department's Reciprocity Table for determining the appropriate civil documents to use for immigration purposes), https://travel.state.gov/content/travel/en/us-visas/immigrate/civil-documents-faq.html.

[26] 91 Fed. Reg. at 38,585.

Staff of the Senate Committee on Homeland Security and Governmental Affairs highlighting deficiencies in ORR's sponsor vetting process.[27] However, these reports did not specifically recommend the limitations ORR now proposes on foreign identity documentation. Instead, they recommended that ORR improve its internal sponsor vetting processes, ensure that ORR personnel are properly following existing ORR sponsor vetting procedures, and provide better guidance to case managers.[28] These reports indicate that improvements in ORR's existing internal processes and oversight provide a mechanism for addressing ORR's concerns as to the safety of unaccompanied children without necessitating a categorical ban on the use of foreign identity documents as proof of identity, except under limited circumstances.

Moreover, in contrast to the Proposed Rule's categorical restrictions on a range of foreign proof of identity documents, some States permit relatives of a child to provide certain foreign documents accompanied by additional screening safeguards when making placement decisions for children in their care, in order to ensure that children are placed with relatives whenever possible if that placement is in the child's best interests.[29] Some State laws also provide that immigration status should not be a barrier to the placement of children with a suitable caregiver.[30] Given that some state child welfare agencies are able to accept and verify foreign identity documentation as part of the child-safety screening process, to ensure children are placed with a suitable family member, ORR has failed to adequately explain why it cannot likewise verify foreign identity documents in a timely manner, particularly when the potential sponsors are parents or family members of an unaccompanied child and where such documentation

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[27] 91 Fed Reg. at 38,584; *see also* Dep't of Health and Human Servs., Office of Inspector General, *Gaps in Sponsor Screening and Followup Raise Safety Concerns for Unaccompanied Children*, OEI-07-21-00250 (Feb. 2024), https://oig.hhs.gov/oei/reports/OEI-07-21-00250.pdf; Minority Staff of S. Comm. on Homeland Security and Governmental Affairs, 117th Cong., *Federal Care of Unaccompanied Children: Minors Remain Vulnerable to Trafficking and Abuse* (Dec. 2022), https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/Federal%20Care%20of%20Unaccompanied%20Alien%20Children%20Report%20(FINAL).pdf.

[28] For example, in order to improve the sponsor screening process, the HHS Inspector General recommended that ORR implement additional safeguards to ensure all safety checks are conducted and documented within each child's case file prior to children's release, enable ORR's case management system to identify when a child's file is missing a required safety check, develop a reference guide for all case managers to fully evaluate sponsor IDs, implement additional oversight mechanisms to ensure that mandatory home studies are conducted to thoroughly vet sponsors, provide guidance for case managers on when to consider recommending discretionary home studies, ensure that sponsors' records in ORR's case management system accurately capture sponsorship history and contain complete information on the suitability of sponsors, and develop and implement an effective monitoring mechanism to identify children who do not receive timely follow-up calls after their release to sponsors.

[29] *See* Cal. Welf. & Inst. Code § 361.4(d) (When making an emergency placement of a child with a relative and nonrelative extended family member of a child, "[a]n identification card from a foreign consulate or foreign passport shall be considered a valid form of identification for conducting a [fingerprint-based] criminal records check").

[30] *See* Cal. Welf. & Inst. Code § 361.3(a), 309(a); Cal. Fam. Code § 3040(b).

appears within the Department of State's Reciprocity Tables.[31] It is irrational for ORR to exclude the use of most foreign-issued identity documents just because it cannot verify *some* foreign identity documents in a timely manner. Instead, ORR could continue to accept foreign-issued identity documentation and request secondary documentation only if the Department of State designates certain documentation as unverifiable.

In addition, ORR has failed to demonstrate that it has considered less burdensome alternatives for verifying sponsor identity that would not unnecessarily exclude otherwise suitable sponsors, including parents and family members, and that would not increase the length of time that unaccompanied children spend in immigration detention. "[W]hen an agency rescinds a prior policy its reasoned analysis must consider the 'alternative[s]' that are 'within the ambit of the existing [policy].'"[32] Despite this requirement, ORR has failed to explain why other clear alternatives, such as addressing identified sponsor vetting process gaps or permitting the use of foreign identity documents that the Department of State has identified as verifiable, are inadequate to address its concerns. Instead, ORR has decided to drastically change its longstanding policy of accepting a wide variety of identity documents from potential sponsors, including foreign-issued identity documentation, without sufficient explanation as to why it can no longer verify the validity of a broad range of foreign identity documentation in a timely manner or fix the deficiencies in its implementation of its sponsor vetting process in a less harmful way.

B. Proof of Income Requirements

The States likewise oppose the re-establishment of the requirement in the Proposed Rule that potential sponsors submit proof of income to demonstrate that they have the financial means to support the unaccompanied child—a requirement that has not been used since prior to 2014.[33] It is important that ORR be able to evaluate a potential sponsor's ability to care for a child as well as to identify instances in which a child could suffer exploitation. However, the Proposed Rule shifts to an overbroad requirement that reduces ORR's ability to engage in individualized suitability assessments of potential sponsors who may lack qualifying documentation of income,

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[31] While the Proposed Rule states that any deviations from the list of approved identity documentation in the Proposed Rule may be made on a case-by-case basis if supported by clear justification, the Proposed Rule does not provide information on how any deviations from the standards in proposed Section 410.1202(b)(1) will be assessed during the appeals process and approved, particularly given ORR's purported difficulties with verifying foreign identity documents. 91 Fed. Reg. at 38,593. ORR tries to brush aside the impact of the changes to the sponsor identity requirements by explaining that potential sponsors who are parents, legal guardians, and close relatives will have the opportunity to appeal denials of release. *See* 91 Fed. Reg. at 38,589. However, the unnecessary denial of children's release to parents, legal guardians, and other close relatives, simply because they only have foreign identity documents, and their need to appeal a denial to gain approval for the release of the child will further unnecessarily increase the time children spend in immigration custody.

[32] *Dep't of Homeland Sec. v. Regents of Univ. of Cal.*, 591 U.S. 1, 30 (2020) (quoting *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 51 (1983)).

[33] 91 Fed. Reg. at 38,586-38,587.

without clearly establishing how uniformly applying these more rigid requirements to all sponsor applicants will improve safety of unaccompanied children.

The Foundational Rule does not require proof of income from potential sponsors but allows for consideration of "verification of the employment, income, or *other* information provided by the potential sponsor as evidence of the ability to support" the unaccompanied child.[34] Under the existing rule, this information is included along with other information that ORR may evaluate more holistically to assess the living conditions and standard of care the child would experience in the home of a proposed sponsor.[35] Proof of income has not specifically been required since 2014 because an individual's lack of a specific amount of income by itself does not indicate unfitness to care for a child and is not a sufficient reason to deny the request of a parent, legal guardian, or close relative to sponsor an unaccompanied child.[36]

Now, the proposed income verification requirement would allow ORR to require, rather than permit, potential sponsors to show proof of income, creating an additional barrier that will disincentivize parents, legal guardians, or other family members who are in the United States without work authorization, or who otherwise lack access to income documentation, from applying to sponsor an unaccompanied child. While the Proposed Rule does not enumerate a specific list of acceptable forms of proof of income as it does for proof of identity, ORR states that it may also issue sub-regulatory guidance to specifically enumerate acceptable types of proof of income.[37] For now, ORR notes that it would review documents such as a previous year's tax return if the potential sponsor was present in the Unites States during the prior tax year, copies of paystubs for at least the past 60 continuous days, or an original letter from the potential sponsor's employer verifying their employment and salary information and signed within the past 60 days.[38] ORR is also considering reviewing types of assets, like savings, although the proposed regulation requires proof of income specifically.[39]

Given the likely chilling effect of the new proof of income requirement on otherwise suitable sponsors, ORR has not provided sufficient justification for this change. ORR claims that it is necessary to reestablish the proof of income requirement because sponsors who lack stable income or financial resources may be vulnerable to labor exploitation or trafficking, impacting their ability to properly care for the unaccompanied child or provide them with a safe living environment.[40] Additionally, ORR claims that the income requirement is necessary to identify

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[34] 45 C.F.R. § 410.1202(c) (emphasis added).
[35] *Id.*
[36] *See, e.g.*, *Unaccompanied Children Foundational Rule*, 89 Fed. Reg. 34,384, 34,446 (April 30, 2024) (addressing public comments requesting that ORR clarify that financial situation alone does not disqualify a sponsor and stating that "ORR will not deny an otherwise qualified sponsor solely on the basis of low income or employment status").
[37] 91 Fed. Reg. at 38,587.
[38] *Id.* at 38,586-38,587.
[39] *Id.* at 38,587.
[40] *Id.* at 38,586.

whether there are inconsistencies or indicators of fraud relevant to sponsor suitability.[41] However, the Proposed Rule does not make clear why these aims would require limiting ORR's discretion to accept applications not meeting these stricter requirements in cases where placement safety can be otherwise established. When originally crafting the Foundational Rule, ORR considered public comments expressing concerns about unemployment being potentially related to a risk of trafficking.[42] Some cases do not present trafficking risk, and the rule established at that time allows for ORR to administer those cases in a manner that limits obstacles to a child's prompt placement with a suitable sponsor. When there is reason to have concern about risk of trafficking or when ORR "determines that a home study is likely to provide additional information which could assist in determining that the potential sponsor is able to care for the health, safety, and wellbeing of the unaccompanied child," ORR may require additional processes including a home study.[43] The Proposed Rule does not explain why reducing trafficking risk requires tightening documentation requirements both in cases with indicia of trafficking or other risk to the child and in cases where the risk is low or absent.

Further, ORR fails to properly weigh the chilling effects on potential sponsors and fails to consider the best interest of the child. The new proof of income requirement will have a chilling effect on suitable sponsors who lack work authorization but can otherwise provide for the child's needs and will deter them from offering themselves as candidates. It will also result in fewer sponsors being approved if they are not able to provide acceptable proof of income. As a result of fewer available sponsors, unaccompanied children will spend increased time in immigration detention.

Additionally, even when potential sponsors are not deterred by the additional requirements, the proposed proof of income requirement does not specify how ORR will evaluate a sponsor's income when deciding whether a particular individual would be a suitable sponsor or what weight proof of income will be given when deciding between multiple available sponsors. The rule thereby risks prioritizing potential sponsors who have certain types of documentable income over potential sponsors who may be a better placement for the child due to strength of relationship or other factors that more reliably ensure the safety, security, and ability to thrive of these vulnerable youth. The inability to present acceptable proof of income to the federal government does not indicate unfitness to care for a child and should not be used on its own to prevent the prompt release of a child to an otherwise safe and suitable parent or other adult relative.

Moreover, ORR has failed to demonstrate that it has considered less harmful alternatives for determining whether a potential sponsor can provide for an unaccompanied child's needs, including methods used by state and local agencies. State and local agencies have experience and established procedures for evaluating whether a potential caregiver can support a child's needs

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[41] *Id.*
[42] 89 Fed. Reg. at 34,446.
[43] 45 C.F.R. § 410.1204(c).

without minimum income requirements for potential caregivers, experience that ORR shares.[44] These agencies appropriately apply a more holistic approach to such determinations, as in the existing Foundational Rule. For example, California law does not include a minimum income requirement for a family member or non-relative extended family member to receive a child into their home, but provides that when evaluating the appropriateness of a placement the relevant agencies can consider "[t]he ability of the relative to . . . [p]rovide a home and the necessities of life for the child."[45] Requirements to demonstrate financial stability can also be waived on a case-by-case basis in California, whereas the requirements in the Proposed Rule do not include similar flexibility to act in the best interests of the child when the documentation requirements cannot be met.[46] Holistic assessment of a potential sponsor's ability to support the child can also include review of funding and other resources available from federal, local, or state agencies for sponsors to provide for the care of unaccompanied children.[47] ORR could likewise undertake a similar review of funding available for the care of unaccompanied children.

The added requirement of proof of income is unnecessarily duplicative with existing federal, state, and local laws, regulations, and practices, which already ensure that a child will be placed in an environment with sufficient resources to provide for the child. As noted above, the Foundational Rule currently allows for consideration of "verification of the employment, income, or other information provided by the potential sponsor as evidence of the ability to support" the sponsored child, which is a more appropriate approach to assessment because it does not rely solely on income.[48] The new requirement proposed in the Proposed Rule is therefore an inappropriate additional barrier to the timely release of unaccompanied children to suitable sponsors, and the States recommend that ORR make no changes to these provisions.

II. The Proposed Rule's Provision Regarding the Consideration of Unaccompanied Children's Tattoos Provides Insufficient Notice for the Public to Comment

The States also object to the Proposed Rule's addition of paragraph (h) to existing Section 410.1103 of the Foundational Rule to explicitly authorize ORR to examine unaccompanied children in its custody for visible gang-related and/or other tattoos, markings, and/or brandings in connection with ORR's assessment of the unaccompanied child's potential dangerousness to self or others because this proposal is far too general and vague to allow the public to meaningfully comment, thereby violating the Administrative Procedure Act's (APA) notice requirement.[49] Under the APA, the agency has an "obligation to make its views known to

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[44] *See, e.g.,* Los Angeles County Dep't of Children and Family Servs., Relative Caregiver Resources, https://dcfs.lacounty.gov/caregivers/relative-caregivers/.
[45] Cal. Welf. & Inst. Code § 361.3(a)(7)(C).
[46] Cal. Welf. & Inst. Code § 16519.5(c)(1)(D).
[47] *See, e.g.*, Cal. Dep't of Social Servs., Kinship Care, https://cdss.ca.gov/inforesources/foster-care/kinship-care; *see also* Cal. Dep't of Social Servs., Youth Legal Services, https://cdss.ca.gov/inforesources/immigration/unaccompanied-undocumented-minors.
[48] 45 C.F.R. § 410.1202(c).
[49] *See* 91 Fed. Reg. at 38,592.

the public in a concrete and focused form."[50] The APA requires that an agency publish "either the terms or substance of the proposed rule or a description of the subjects and issues involved."[51] "The object, in short, is one of fair notice."[52] To afford the public a meaningful opportunity to understand the scope of proposed action and to comment and have public concerns inform agency decision-making, the agency must "describe the range of alternatives being considered with reasonable specificity."[53] "[G]eneral notice that a new standard will be adopted affords the parties scant opportunity for comment."[54] Indeed, "unfairness results unless persons are sufficiently alerted to likely alternatives so that they know whether their interests are at stake."[55] Agencies violate the notice and comment requirement when, as here, interested parties are left to "divine the agency's unspoken thoughts" about how the agency plans to proceed.[56]

Here, interested parties can only divine how ORR will make determinations regarding a child's dangerousness based on these tattoo examinations. This lack of clarity in the Proposed Rule could lead to arbitrary and capricious determinations of dangerousness for some children as there are no articulated standards for ORR personnel to determine whether a tattoo is an indication that the child poses a danger to self or others. It is not clear how ORR will make determinations on what imagery is related to international gangs or other criminal associations, a concern that is exacerbated by public reporting of DHS making incorrect determinations regarding noncitizen tattoos that have led to deportations.[57] Nor is it clear whether or how ORR will ascertain whether a youth may have a tattoo as a result of previous coercion, abuse, exploitation, or trafficking. Given the lack of clarity on how ORR will determine if a child is "dangerous" based on a tattoo, the States are concerned that this proposed provision will be used as justification for denying the release of certain children and prolonging their detention in overly restrictive facilities. This concern is heightened by the ongoing disruptions to ORR's funding of legal representation for unaccompanied children,[58] which may impair their ability to obtain continuous representation and meaningfully exercise their right to appeal these

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[50] *Prometheus Radio Project v. FCC*, 652 F.3d 431, 449, 453 (3d Cir. 2011) (quoting *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 36 (D.C. Cir. 1977)).
[51] 5 U.S.C. § 553(b)(3); *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 169 (2d Cir. 2013) (quoting *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007)).
[52] *Long Island Care at Home, Ltd.*, 551 U.S. at 174.
[53] *Prometheus Radio Project*, 652 F.3d at 450 (internal quotation marks omitted).
[54] *Horsehead Res. Dev. Co. v. Browner*, 16 F.3d 1246, 1268 (D.C. Cir. 1994).
[55] *Nat'l Black Media Coal. v. FCC*, 791 F.2d 1016, 1023 (alteration and internal quotation marks omitted).
[56] *CSX Transp., Inc. v. Surface Transp. Bd.*, 584 F.3d 1076, 1080 (D.C. Cir. 2009) (alteration and internal quotation marks omitted).
[57] Nazish Dholakia, *People Are Being Deported Because of Their Tattoos*, VERA (May 6, 2025), https://www.vera.org/news/people-are-being-deported-because-of-their-tattoos.
[58] *See* Order Granting Plaintiffs' Motion to Enforce Preliminary Injunction, *Cmty. Legal Servs. in E. Palo Alto v. United States Dep't of Health & Hum. Servs.*, No. 25-CV-02847-AMO (N.D. Cal. Aug. 6, 2026) (directing ORR to issue and release funds appropriated for direct legal representation services to unaccompanied minors but withheld since December 2025 and to file a report detailing compliance in light of uncertainty of contractual arrangements to provide legal services following expiration of the prior providers' contract).

determinations of dangerousness based on purported gang-related tattoos or markings.[59] The States thus object to the Proposed Rule on this basis.

III. The Prolonged Detention of Unaccompanied Children and Separation from Their Families Will Result in Harms to These Children

As noted above, the Proposed Rule's changes to the sponsor proof of identity and proof of income requirements will raise additional and unnecessary barriers to sponsoring an unaccompanied child and will reduce the number of otherwise suitable sponsors, who may not be able to provide acceptable identity documentation from the enumerated list or meet the new income requirements. The new proof of income requirements may also cause a chilling effect on potential sponsors by discouraging them from coming forward to sponsor children out of fear of providing information about their employment because of their immigration status. By unnecessarily preventing the release of unaccompanied children to otherwise suitable and safe sponsors, the new proposed proof of identity and income requirements will result in the prolonged detention of children and their continued separation from their families.

ORR has acknowledged that a consequence of the updated requirements will be children spending a significantly increased time in ORR custody, and that this consequence is already occurring.[60] In fact, ORR had to acknowledge this impact because it already implemented these requirements through subregulatory guidance in March 2025. Although these requirements were enjoined by a district court, the length of detention for unaccompanied children has substantially increased since their implementation.[61] In addition, ORR issued an interim final rule on March 25, 2025, that removed provisions in the Foundational Rule precluding ORR from disqualifying potential sponsors based on their immigration status or from sharing the immigration status of potential sponsors with any law enforcement or immigration related entity.[62]

As a result of these changes, the average length of care of unaccompanied children has substantially increased since March 2025—with the average length of detention for unaccompanied children increasing from **49** days in February 2025 to **189** days as of December 2025.[63] This is nearly a fourfold increase in the length of time children are spending in federal immigration custody separated from parents and other family members. The increased periods of detention and separation from their families will have harmful impacts on

[59] *See* 45 C.F.R. § 410.1205(f) (right to appeal denial of release based solely on dangerousness determination); *see also* 45 C.F.R. § 410.1309(b)(2)(i) (authorizing ORR to fund counsel for appeals of dangerousness determinations).
[60] 91 Fed. Reg. at 38,589.
[61] *See* Order, *Angelica S. v. HHS*, No. 1:25-cv-01405 (D.D.C. June 9, 2025), ECF No. 34; Memorandum Opinion (June 9, 2025), ECF No. 35; *see also* 91 Fed. Reg. at 38,589.
[62] *Unaccompanied Children Program Foundational Rule; Update To Accord With Statutory Requirements*, 90 Fed. Reg. 13,554 (March 25, 2025).
[63] 91 Fed. Reg. at 38,589.

unaccompanied children's physical and mental health and wellbeing and will disrupt their development during critical periods of their childhood.

Because the Proposed Rule will result in unaccompanied children spending longer periods of time in ORR custody, rather than with safe and appropriate sponsors, who are, in many cases, family members, it is also inconsistent with state laws that aim to support families who reside in our States. The States have a strong interest in preserving children's family ties whenever possible and have enacted their own laws prioritizing family integrity. The States have also dedicated efforts and resources to administering systems to protect these rights. For example, in juvenile court matters in California, it is the stated interest of the Legislature "to preserve and strengthen a child's family ties whenever possible," removing a child from lawful custodians "only when necessary for his or her welfare or for the safety and protection of the public."[64] State laws include preferences for placements with other family members while dependency cases are pending, and California law explicitly requires that preference be given to placement with family members "regardless of the relative's immigration status."[65]

Some of the States have previously expressed concerns over other changes to the Foundational Rule that will prevent the prompt and safe release of unaccompanied children to suitable sponsors, including family members, and prolong their time in immigration custody.[66] The States reiterate these same concerns about the harms to unaccompanied children that will result from their prolonged detention under the Proposed Rule. A robust body of research shows that prolonged time in immigration custody is particularly harmful for children's physical and mental health and disrupts their development. Many unaccompanied children in federal immigration custody have experienced intense trauma from events before and after their arrival in the United States, and many are asylum seekers who have fled extreme violence, gang activity, persecution, poverty, or abusive situations in their home countries. Their journey to the United States often exposes these children to further trauma, which is compounded by the impact of prolonged separation from parents or caregivers.[67] These experiences place them at risk for psychological distress, including depression, anxiety, and posttraumatic stress. Prolonged stays in immigration custody can exacerbate this trauma. ORR facilities housing unaccompanied children have reported that longer lengths of stay in ORR custody resulted in deteriorating

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[64] Cal. Welf. & Inst. Code § 16000(a).

[65] Cal. Welf. & Inst. Code § 361.3(a); *see also* Haw. Rev. Stat. § 587A-9 (b)(2) (requiring placement preference be given to an approved relative when children are place in temporary foster care).

[66] *See* Comment of the Attorneys General of California, et al. to the Department of Health and Human Services' *Unaccompanied Children Program Foundational Rule; Update to Accord with Statutory Requirements*, 90 Fed. Reg. 13,554 (May 23, 2025), https://www.regulations.gov/comment/ACF-2025-0004-0206.

[67] *See* Amanda NeMoyer et al., *Psychological Practice with Unaccompanied Immigrant Minors: Clinical and Legal Considerations*, Transl. Issues Psychol. Sci. 5(1): 4-16 (March 2019), https://pmc.ncbi.nlm.nih.gov/articles/PMC6415685/pdf/nihms-1011765.pdf ; *see also* U.S. Dep't of Health and Human Services, Office of Inspector General, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431 (Sept. 2019), https://oig.hhs.gov/documents/evaluation/3153/OEI-09-18-00431-Complete%20Report.pdf.

mental health for some children, and that children with longer stays experienced more stress, anxiety, hopelessness, and behavioral issues, along with more instances of self-harm and suicidal ideation.[68] Youth held in ORR facilities can also experience education disruption that interferes with the normal course of social and cognitive development, and which is particularly harmful for children with learning or other disabilities that cannot be adequately addressed in a custodial setting.[69]

The States have a significant interest in minimizing the length of time unaccompanied children spend in federal custody, as many of these children will eventually be released to sponsors in the states. Since 2023, approximately 39 percent of all unaccompanied children who have been released from ORR custody have come to our States.[70] The harms caused to unaccompanied children from prolonged time in federal immigration custody will impact these children's ability to thrive in their communities upon release, leading them to require mental health care, other medical care, or intensive educational interventions at greater rates. Additional state funded resources will be needed to respond to the consequences of any harms to these children caused by the Proposed Rule. The States therefore have a significant interest in ensuring that these children do not suffer additional and unnecessary harm that would result from the Proposed Rule's changes to the proof of identity and proof of income requirements for potential sponsors.

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The States oppose the Proposed Rule's additional requirements for sponsor suitability assessments related to proof of identity and proof of income. These proposed changes conflict with ORR's obligations under federal law, and ORR has provided insufficient reasons for their adoption. The impacts of these changes will be significant, resulting in unaccompanied children spending extended periods of childhood in overly restrictive facilities and, if released, being placed with sponsors based on access to documentation and income verification rather than family ties and the child's best interests. As numerous State laws attest, supporting healthy and connected families is among the States' highest interests. Additionally, the States oppose the Proposed Rule's vague proposal to allow ORR to examine unaccompanied children for gang-related tattoos, as the proposal provides insufficient notice of how ORR will conduct such examinations and what the impact of these examinations will be. The States urge HHS to withdraw the Proposed Rule, *Unaccompanied Children Program Foundational Rule; Sponsor Assessment Update to Include Proof of Identity, Background Check, Placement, and Income Verification Standards*, 91 Fed. Reg. 38,582 (June 26, 2026).

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[68] *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, *supra* note 67, at 12-13.
[69] Melissa Adamson et al., *Educational Advocacy for Unaccompanied Immigrant Youth in California*, Nat'l Ctr. For Youth Law (2024), https://youthlaw.org/wp-content/uploads/toolkit-educational-advocacy-for-unaccompanied-immigrant-youth-in-california.pdf.
[70] Office of Refugee Resettlement, Unaccompanied Alien Children Released to Sponsors by State (August 4, 2026), https://acf.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state.

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