FIELD GUIDANCE – Revised November 9, 2021 (First Issued September 4, 2021)

RE: Field Guidance #19 – Unaccompanied Afghan Minor Processing

GUIDANCE

This revised guidance reflects ORR’s internal agency management of Afghan minors. Afghan children evacuated from Afghanistan are being granted humanitarian parole if they are not admitted as refugees or on special immigrant visas. Per this revised field guidance, Afghan children are not considered “Unaccompanied Afghan Minors” (UAMs) to be transferred to the network of ORR unaccompanied children care providers, unless such referral is determined to be in their best interests. Such interests will include evaluating whether there is no caregiver accompanying the child; or, significant child welfare concerns with a child’s arriving caregiver that necessitate the child’s referral to an ORR unaccompanied children care provider.

Under Division C of the Extending Government Funding and Delivering Emergency Assistance Act, Pub. L. 117-43, section 2502, certain paroled Afghans are eligible for refugee and entrant benefits through the Office of Refugee Resettlement (ORR), including eligibility for the Unaccompanied Refugee Minors (URM) program. All paroled Afghan children are eligible for these benefits, regardless of their placement in ORR care, in the care of an adult caregiver at a safe haven, or in the community. Because these Afghans are eligible for the benefits available to refugees, and because refugee minors typically are not separated from trusted adults and placed in the URM program (unless there is a child welfare reason to do so), ORR interprets Congressional intent as indicating that Afghan minors should be permitted the same refugee and entrant benefits. As a result, Afghan minors may remain with a trusted adult to the same extent a refugee child would so remain.

Due to the limited capacity of the URM provider network (including a lack of shelter care), unaccompanied Afghan minors (UAM) may be cared for through ORR’s Unaccompanied Children’s (UC) network of care providers under the statutory authorities of the URM program and with funding appropriated for URM purposes. Otherwise, such children would have no person to care for them, and would either become wards of state or local governments, or orphans without appropriate care or custody.

In evaluating whether arriving Afghan minors referred to ORR may remain with a trusted adult accompanying caregiver, rather than referred to the network of UC care providers, HHS need not apply exact suitability standards of the TVPRA, including use of home studies. Instead, HHS may
evaluate best interests of the arriving children accompanied by adult non-parental caregivers on a case-by-case basis, in accordance with this Field Guidance.

Once a child is transferred to the UC care provider network, ORR continues to apply the *Flores* minimum standards as they relate to care, services, and release. In such cases, ORR may modify its standard forms and assessments to address the individual needs of the UAM population, their caregivers, and sponsors. ORR may determine a home study is necessary, prior to releasing a UAM to a caregiver when there are child welfare concerns related to the release where the home study is likely to provide additional information on whether the caregiver is able to provide for the child’s health, safety, and well-being.

In the original Field Guidance #19, ORR explained that Afghan minors transported to the United States during the August Evacuation event differ from children typically encountered by DHS and ultimately referred to ORR in a number of significant respects. The children:

- Were affirmatively evacuated by the United States Government (USG) from a war zone, and did not enter the United States at a port of entry or between ports of entry without USG assistance.
- Are paroled into the United States, and the USG has permitted their lawful presence.
- Are processed under humanitarian parole and not immediately placed into removal proceedings and may not ever be placed into removal proceedings.
- May be referred to ORR care and custody by Federal agencies that have not prior to August 2021 referred children to ORR, nor are typically involved in UC transfers.
- May have arrived with an available caregiver, and such caregiver has already been subject to investigation by the Department of Defense and the Department of Homeland Security.

Now that Congress has enacted section 2502, ORR has concluded that a number of Afghan minors need no longer be considered UAMs to be cared for through the UC network. Such minors may be evaluated on a case-by-case basis to determine if they are UAMs who should be referred or transferred to the UC network of care providers.

**INSTRUCTIONS**

The ORR Director directs ORR/FFS to follow these standards for arriving Afghan minors to determine if they should be released with arriving Afghan adult caregivers, rather than referred to the UC network of care providers as UAMs:

**Minors arriving with an adult caregiver**

(1) Given the unique posture of Afghan minors accompanied by non-parent/legal guardian caregivers and Congressional direction that they receive the same benefits as refugee children,
ORR is adopting an interpretation that Afghan minors may, in the best interest of the child, be released to such adult caregivers if:

(a) The identity of the adult caregiver and the Afghan minor are established and confirmed. Identities are established by:
   i. Standard ORR policy, including interviews with the child’s parents or other relatives where possible. See ORR Policy Guide, §2.2.4;
   ii. Attestations or documentation provided by non-ORR federal government officials, such as federal officials who care for children at transit points outside the continental United States; or,
   iii. Other attestation to the satisfaction of ORR that may be used to establish identity.

(b) ORR determines a prior bona fide relationship exists, including to the satisfaction of ORR that the adult caregiver is entrusted with providing supervision of the child.
   i. If there is a biological relationship between the child and the caregiver. ORR may use DNA testing, to the extent feasible, to determine such relationship; or,
   ii. ORR may use attestations, interviews (with the Afghan minor, the caregiver, the child’s parents, other relatives, or others) or other evidence to establish a bona fide relationship.
   iii. The adult caregiver is able and willing to provide for the child’s physical and mental well-being.

(c) ORR receives proof of parole status or lawful immigration status of the adult caregiver. ORR obtains the results of background investigations conducted by USG authorities, including DHS, or other entities to which ORR is satisfied that the caregiver has not engaged in conduct described in ORR Policy Guide §2.7.4 which represent a child welfare risk to the child. Further, ORR may assume that Afghan evacuee caregivers and potential sponsors cleared for travel to the United States by USG partners have no significant recorded criminal history that would render them ineligible to provide sponsorship. ORR may obtain verification of this information from Federal partners.

1 Use of DNA is only used for purposes of establishing biological relationships for purposes of sponsorship and is not submitted to law enforcement personnel or run against law enforcement databases. Submission of DNA by the caregiver is voluntary. Competent UAM aged 14 or over must voluntarily consent to DNA submissions. ORR will presume consent for children under the age of 14 for purposes of DNA submissions to establish relationship. If the child has an attorney of record, ORR will provide advanced notice to such attorney that a DNA test will be conducted. ORR will ensure that DNA results are destroyed within 15 business days following confirmation of the results by ORR or ORR contractors or grantees. Following confirmation of results, ORR will share results with the potential sponsor and may share results with the child after making a determination that sharing the results is in the child’s best interest. References to results of DNA tests are maintained in the ORR database but are considered confidential information and may only be disclosed as required by law.

2 Please note that ORR does not make release decisions based on immigration status or lack of status. This guidance is intended to assist ORR in making unification decisions unique to the U.S. Afghanistan humanitarian evacuation effort.
(d) The case does not present immediate red flags, including trafficking concerns or that the child has special needs that the adult caregiver is unable or unwilling to provide. ORR uses assessment criteria according to ORR policy. See ORR Policy Guide, §2.4.1.

(e) Applicable procedures are implemented, including required assessments of the Afghan minor and the caregiver (which must be completed in separate locations), and a release request has been completed.

Any outstanding concerns related to the safety of the release, including those that are unmitigated identified risks that do not result in a denial, are documented in the release request.

(2) Any child not released to the adult caregiver is determined to be a UAM and transferred to ORR physical care following ORR’s standard placement policies, procedures, and applicable field guidance.

**Afghan minors without an appropriate caregiver**

(1) In situations where an Afghan minor arrives without an adult caregiver, and/or no appropriate caregiver is expected to arrive in the United States within a reasonable time, the child is referred to ORR custody and placed into an ORR funded facility following standard ORR policies and procedures. ORR may use its discretion to place UAM in facilities with other UAM. In such cases the child is processed following all standard placement and service policies, procedures, and applicable ORR field guidance.

(2) ORR follows standard release policies, procedures and field guidance for individuals who are Category 3 sponsors and had no previous relationship or caregiving relationship to the child. However, ORR may release such UAM using modified procedures to related adults or caregivers living at a safe haven or elsewhere in the United States.

(a) ORR requires, where necessary, that care providers make use of family tracing organizations, including resources of NGOs such as the International Committee of the Red Cross: https://www.familylinks.icrc.org/en/Pages/AboutUs/About-us.aspx

(b) ORR follows procedures to establish the identity of the child and family member/caregiver, relationship, and background check information according to the instructions in the sub-section above (“Afghan minors without an appropriate caregiver” (1)). See also, ORR Policy Guide, §2.2.4.

(c) Because refugee children’s caregivers would not be mandated by the TVPRA to be subject to a home study, any decision to perform a home study prior to release is discretionary. ORR considers trafficking concerns, red flags, and other standards following ORR Policy Guide, §2.4.2 when making a decision on whether to perform a home study. All UAM released to a caregiver or other sponsor are eligible for post-release services.

(d) ORR may release UAM to an adult caregiver or close family member at a safe haven, elsewhere in the United States, and internationally. International unifications are case
specific and involve collaboration with U.S. Federal partners, NGOs, and foreign governments.

(3) UAM may be transferred to transitional foster care or other appropriate placement following standard ORR policies and procedures. See ORR Policy Guide, §1.2. Additionally, UAM may be transferred to LTFC following ORR Policy Guide, §1.2.6, without the need for identification for legal relief by a legal service provider (LSP) as relief may be presumed given the circumstances of the UAM. Additionally, UC care providers, in consultation with their ORR/FFS, may also submit URM applications for children without identified reunification options to enter traditional URM funded placements. For purposes of any transfer, ORR prioritizes placement with families who are linguistically and culturally appropriate.

**UAM identified at a safe haven**

Afghan minors who could be UAM may be identified at a safe haven by ORR or other federal agencies. After notification, ORR determines whether referral to the physical care of an ORR care provider is in the child’s best interest. ORR takes into consideration any immediate or emergent child welfare concerns related to abuse, abandonment or neglect, in addition to other best interest considerations. ORR may also take into account whether there are separate housing/showering facilities for Afghan minors and unrelated adults when considering the child’s best interest. Alternatively, ORR may determine that remaining in an adult caregiver’s custody is in the child’s best interest. If the child remains in the caregiver’s custody, the child is not in ORR custody but is still eligible for refugee benefits in accordance with section 2502. UAM transferred to an ORR care provider are released in accordance to the provisions of this field guidance and applicable procedures.

**UAM released to a safe haven**

In addition to ORR’s UAM release processing under this guidance, ORR may also evaluate the conditions and proposed living arrangements for a UAM who is referred to the care provider network prior to release to a sponsor living at a safe haven. ORR may use a modified home study for such circumstances. Additionally, ORR must have assurances that UAM have housing/showering facilities that are separate from non-related adults. If such assurances cannot be made, ORR requires elevation to an ORR FFS Supervisor for a release decision.