

In cases where the Category 3 sponsor's relationship with the UAC cannot be verified, HHS commonly relies on the UAC's family to provide a Letter of Designation for Care of a Minor or a signed Power of Attorney that gives the sponsor permission to take custody of the UAC. In each of the cases described above, for example, in which details about the relationship between the sponsor and the UAC or the UAC's family were scant, HHS relied on such a power of attorney. But such instruments can be misleading. In the Marion cases, for example, the victim's parent provided HHS with the requested Letter of Designation or Power of Attorney—but there was a reason: The human traffickers held the deeds to their homes as collateral for their children's journey to the United States. The sooner their children were released from HHS custody, the sooner they could begin working to repay their debts.

2. HHS Is Unable to Safeguard Children from Sponsors Attempting to Accumulate Multiple Children

An important part of vetting a potential sponsor is determining whether he or she, or someone else at his or her address, has previously attempted to sponsor other UACs—which may indicate that the sponsor is engaged in human smuggling or worse, human trafficking. Such cases warrant, at a minimum, additional scrutiny. HHS's July 2015 policy change now requires a mandatory home study before releasing any UAC to a non-relative or distant relative sponsor who is seeking to sponsor multiple children, or has previously sponsored a UAC and is seeking to sponsor more.¹⁷³

Prior to July 2015, care providers were required to determine whether a sponsor had previously sponsored other UACs by searching for the sponsor's name and address in the UAC Portal. The Portal is a valuable tool, but it has limitations. HHS data analysts told the Subcommittee that the Portal is “constantly changing,” acknowledging that it has shortcomings that HHS is “working to fix.”¹⁷⁴ For example, when entering a name or address, the user must be very specific; an entry for a street name including “Pl.” is not the same thing as “Place.” A minor misspelling (or different spelling) of a name could mean that a search will come back with no results.¹⁷⁵ What is more, the Portal contains very few entries created before January 7, 2014, when it was established. HHS relies on the sponsor to disclose whether he has sponsored or attempted to sponsor a UAC prior to that date.¹⁷⁶

¹⁷³ App. 238.

¹⁷⁴ Interview with Olympia Belay and Virak Kchao, ORR Data Analysts (Oct. 26, 2015).

¹⁷⁵ *Id.*

¹⁷⁶ If the sponsor indicates that he applied for sponsorship prior to January 2014, the care provider is to ask the Office of Security and Strategic Information (OSSI) at HHS to conduct a search of their records for the sponsor's information.

More troubling, care providers currently search the Portal for only *the sponsor's* name and address—not other household occupants or backup sponsors appearing on the Family Reunification Application. That basic safeguard would have alerted ORR to the fact that certain sponsors in the Marion cases were accumulating multiple children—a sign that should have triggered greater scrutiny. Two of the sponsors in the Marion case sponsored two children each at their common address; one of them tried for a third but was turned down by HHS. One sponsor was also listed, under an alias, as a backup sponsor for two other children—this time using a second address. That address, however, was listed as the primary home of the sponsors of *five* other children. And one of those sponsors claimed that the first sponsor lived with him at the second address—at least on one of the two successful applications he filled out. On the other, he claimed to live at a different address.

3. HHS Failed to Require Background Checks on Non-Sponsor Adult Household Members or on Backup Sponsors

Until January 25, 2016, HHS did not require other individuals living in sponsors' homes or individuals listed as backup sponsors to undergo background checks. Instead, the sponsorship application simply asked the sponsor to disclose whether any person in the sponsor's household has ever been charged with or convicted of a crime or investigated for the physical abuse, sexual abuse, neglect or abandonment of a minor. According to the Subcommittee's investigation, however, household occupants rarely underwent background checks to verify a sponsor's claim, which were previously required only if a "special concern is identified" or "there is a documented risk to the safety of the unaccompanied child, the child is especially vulnerable, and/or the case is being referred for a mandatory home study."¹⁷⁷

That policy was unreliable and vulnerable to abuse. HHS has a statutory responsibility to ensure that a sponsor "is capable of providing for the child's physical and mental well-being,"¹⁷⁸ or to determine whether the sponsor "presents a risk of abuse, maltreatment, exploitation, or trafficking to the child based on all available objective evidence."¹⁷⁹ Remarkably, HHS's pre-January 2016 policy, if adopted by a State government receiving federal funds for its child welfare system, would violate the provisions of the Child Abuse Prevention and Treatment Act. That law is administered by HHS and requires criminal background checks for "other adult relatives and non-relatives residing in" a foster- or adoptive parent's household.¹⁸⁰ Reflecting that basic rule in the child-welfare field, care providers

¹⁷⁷ *ORR Policy Guide* § 2.5.1.

¹⁷⁸ 8 U.S.C. § 1232(c)(3)(A).

¹⁷⁹ *Id.* (c)(3)(B).

¹⁸⁰ 42 U.S.C. § 5106a(b)(2)(xxii).

told Subcommittee staff that fingerprint checks and background checks should be conducted for all household occupants and individuals listed as a backup sponsor.¹⁸¹

Even more concerning, however, was the Subcommittee's discovery that prior to the January 25 policy change, individuals listed as a UAC's *backup sponsor* were not required to undergo a background check of any kind. A backup sponsor is the individual named by the sponsor who will supervise the UAC in the event the potential sponsor needs to leave the country or becomes unable to care for the UAC.¹⁸² Thus, the backup sponsor is the individual designated to take custody of the UAC if the sponsor is arrested, becomes ill, passes away, or is deported. Yet until three days ago, backup sponsors were not required to undergo a public records check, an immigration check, a FBI fingerprint check, or a child abuse and neglect check.¹⁸³

Our investigation turned up several cases in which HHS placed UACs in homes without knowing anything about the other adults who also lived there or the UAC's backup sponsor:

- In 2014, a UAC from Guatemala stated during the assessment process that he came to the U.S. to live with a maternal uncle. Then, however, the *partner* of the UAC's uncle, rather than the uncle himself, applied to be the UAC's sponsor. HHS classified the placement as a Category 3 since the UAC and sponsor were not related but did not perform the required FBI background check. The partner told HHS that the UAC's uncle would share in household duties and care of the UAC, and would serve as *backup* sponsor. Nevertheless, no type of background check was run on the UAC's uncle, and HHS approved the placement. In May 2015, the UAC contacted HHS to report that the sponsor had falsely accused him of watching child pornography, and that the sponsor told the UAC that he owed her \$10,000 to keep her from telling the police about it. The UAC's sponsor and boyfriend (presumably the boy's uncle) forced the UAC to work for four months without pay and took away the UAC's identification documents while threatening that he would be arrested for child pornography if he stopped working. In November 2014, the UAC ran away to live with another alleged uncle. OTIP issued an Eligibility Letter to the UAC in June 2015.¹⁸⁴

¹⁸¹ Interview with Care Provider A (Oct. 23, 2015).

¹⁸² *Id.*

¹⁸³ *ORR/DCS Family Reunification Application*, OFFICE OF REFUGEE RESETTLEMENT, Aug. 9, 2012, <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-childrens-services>.

¹⁸⁴ UAC7.

- In a 2015 case involving a UAC from El Salvador, the UAC's sponsor, also his parent, reported to HHS that he lived with three unrelated adult males (ages 28, 38, and 50) in a three-bedroom home. The sponsor listed his sister as the backup sponsor on the application. The sponsor had an immigration arrest with a related immigration hearing date of April 2016, so it was clearly possible that the sponsor could be deported and the UAC would be left in the care of the sponsor's sister or one of his roommates. Nevertheless, a full background check was conducted only on the sponsor; no check was run on the sponsor's three adult roommates or the UAC's backup sponsor. In September 2015, the UAC contacted HHS to report that the sponsor had obtained false documentation for the UAC and forced the UAC to work as a dishwasher and later as a movie theater janitor for little or no pay. After HHS alerted the post-release services care provider, it was determined that the sponsor "took deliberate steps" to hide the trafficking of his son, including staging his apartment when the post-release services care provider visited to look as though the UAC lived in a nice bedroom when he was really being kept in the basement and given little food. Subsequently, OTIP issued an Eligibility Letter to the UAC.¹⁸⁵
- In a 2014 sample case involving a UAC from Guatemala, the UAC's sponsor was an alleged uncle who lived in one apartment with his wife, his two-month old baby, and four additional family friends (ages 28, 35, 35, and 39). Birth certificates could not link the UAC and the sponsor as related, so the sponsor was later reclassified as a Category 3 sponsor. A full background check was run only on the sponsor.¹⁸⁶

On January 25, 2016, HHS implemented a new background check policy. The new policy requires all individuals undergoing a public records check (currently all three sponsor categories) to also undergo a sex offender registry check. Additionally, all adult household members and backup sponsors will be required to undergo a public records check and a sex offender registry check.¹⁸⁷

4. HHS Does Not Adequately Use Home Studies

In interviews with care providers and experts in the field, the Subcommittee has heard repeatedly that home studies are an invaluable tool for assessing the suitability of a foster-care placement for any child.¹⁸⁸ As one care provider

¹⁸⁵ UAC8.

¹⁸⁶ UAC9.

¹⁸⁷ *ORR Policy Guide* § 2.5.1.

¹⁸⁸ Interview with Care Provider B (Oct. 16, 2015); Interview with Care Provider C (Oct. 30, 2015).

explained it, the notion of placing a child with a non-relative without “putting eyes on” the living environment is unheard-of in the child-welfare field.¹⁸⁹ Otherwise, the entire sponsor-assessment process can take place over the phone, without a care provider or anyone from HHS ever meeting a sponsor in person or being able to detect problems in the child’s living environment.

ORR recommends home studies on a very limited basis. In FY2014, the year in which most of the Marion placements were made, HHS placed 53,518 UACs with sponsors yet performed only 1,401 home studies—or 2.5% of cases.¹⁹⁰ Over the past three years, HHS has performed home studies in between 2.5 and 7% of UAC placements.¹⁹¹ None of the sponsors in the Marion cases was the subject of a home study.

The TVPRA makes home studies mandatory when (1) the UAC is identified as a victim of a severe form of trafficking; (2) the UAC is a special-needs child; (3) the UAC has been a victim of serious physical or sexual abuse; or (4) the UAC’s sponsor clearly presents a risk of abuse, maltreatment, exploitation, or trafficking.¹⁹²

As a matter of its policy discretion, HHS requires home studies in additional types of cases. Under a pilot program announced by HHS on July 1, 2015, HHS requires home studies for all UACs 12 years of age or younger who are to be placed with a Category 3 sponsor.¹⁹³ And on July 27, 2015, after the Marion, Ohio case came to light, HHS began requiring a home study if the proposed sponsor is a non-relative who is seeking to sponsor multiple children or has previously sponsored a child and is seeking to sponsor additional children.¹⁹⁴

As discussed below, the new home study policies may not be sufficient to adequately assess placements with non-relative sponsors.

a. New Rules on Home Studies May Not Adequately Address Labor Trafficking

HHS recognized in May 2015 that its July 1 pilot program would leave out an important group of older UACs who are at heightened risk of labor trafficking. As discussed above, the pilot program extends home studies to Category 3 sponsors only where the UAC is 12 years old or younger—in other words, it excludes children

¹⁸⁹ Interview with Care Provider C (Oct. 30, 2015).

¹⁹⁰ App. 223.

¹⁹¹ See *id.*

¹⁹² 8 U.S.C. § 1232(c)(3)(B).

¹⁹³ App. 238.

¹⁹⁴ See *id.* (“ORR also requires a mandatory home study before releasing any child to a non-relative sponsor who is seeking to sponsor multiple children, or previously sponsored a child and is seeking to sponsor additional children.”).

who are likely old enough to work off a debt. In a May 28, 2015 email, Mark Greenberg, the HHS Acting Assistant Secretary for ACF, wrote the following to ORR senior leadership:

I assume the reason for under 13 is that it is a smaller number for a pilot and that we'll have the greatest concern about young children less able to communicate out about their need for help. Right? But, this is probably less likely to pick up the debt labor group. Do you think it would just go too far to extend to all children going to non-relatives?¹⁹⁵

Less than an hour later, the ORR Deputy Director responded: "You are correct about why we chose the younger children and the risk associated with the older children not being included."¹⁹⁶ The Deputy Director later circulated an explanatory document about the pilot noting that HHS is aware of the "risk of exploitation of unaccompanied children by unrelated adults, including the risk that the sponsor may be expecting the child to work to pay existing debt or to cover the child's expenses while living with the sponsor."¹⁹⁷ Nevertheless, HHS decided to implement the pilot program without expanding it to children over the age of 12—what Mr. Greenberg called the "debt labor group."¹⁹⁸

b. HHS's Home Study Policy Does Not Conform to Analogous Federal Requirements or the Universal Practice of State Child Welfare Systems

Home studies are standard practice in child-welfare cases. The Model Family Foster Home Licensing Standards require every single foster care applicant to undergo a home study that includes at least one scheduled on-site visit and at least one scheduled in-home interview of each household member to assess the safety of the home.¹⁹⁹ Every state requires some form of home study prior to approving the placement of a child in a prospective foster home.²⁰⁰ And every State is a party to

¹⁹⁵ App. 212.

¹⁹⁶ App. 211.

¹⁹⁷ App. 251.

¹⁹⁸ App. 212.

¹⁹⁹ Those standards were developed by developed by the American Bar Association Center on Children and the Law, the Annie E. Casey Foundation, Generations United, and the National Association for Regulatory Administration. *Model Family Foster Home Licensing Standards*, NARA 3, <http://www.grandfamilies.org/Portals/0/Model%20Licensing%20Standards%20FINAL.pdf>.

²⁰⁰ *Home Study Requirements for Prospective Foster Parents*, CHILDREN'S BUREAU, Mar. 2014, <https://www.childwelfare.gov/pubPDFs/homestudyreqs.pdf>.

the Interstate Compact on the Placement of Children, which requires a home study before a child can be placed in a home outside his or her home state.²⁰¹

When asked why its home study policy does not comport with foster-care standards, an ORR senior official explained the Office's view that the UAC placement process is more like a parent's decision to place a child with a family friend than like foster care.²⁰² The Subcommittee's investigation, however, found that assumption unreliable—particularly because HHS does not require extensive verification of the nature of a Category 3 sponsor's relationship with the child. We can identify very little difference between placement of a child in foster care by a state and placement with a Category 3 sponsor with whom the child does not have a verified close family relationship.

In an interview with the Subcommittee, ORR's Policy Director justified HHS's failure to extend home studies to all Category 3 sponsors by stating that HHS is bound by the *Flores v. Reno* settlement agreement, which requires HHS to "promptly attempt to reunite the minor with his or her family" or place the child with a sponsor who is "capable and willing to care for the minor's well-being."²⁰³ That explanation begs the question: The issue is whether a home study is required to assure the sponsor *meets* that standard of care. The Deputy Director of ORR echoed that sentiment, explaining that the downside to performing a home study for a Category 3 sponsor is that it takes 30 days.²⁰⁴ Another ORR staffer told the Subcommittee that "home studies are invasive."²⁰⁵ Home studies, do, however, require manpower and resources and can delay release of a UAC from a shelter.

By contrast, professional care providers told the Subcommittee that home studies are essential.²⁰⁶ Without one, most of the time the entire sponsor assessment process takes place electronically or telephonically without any face-to-face contact with the sponsor. Without a home study, HHS may only become aware of problems in the home when it is too late. Some problems with a placement, moreover, are difficult to detect without visiting the sponsor's home. Some of the case files the Subcommittee reviewed showed that sponsors and UACs provided intentionally misleading information to the care provider in order to ensure the placement moved forward. In those cases, HHS discovered there was a problem

²⁰¹ *Interjurisdictional Placement of Children in the Child Welfare System: Final Report*, CHILDREN'S BUREAU 1 – 3, Sept. 2006,

<http://www.aphsa.org/content/dam/AAICPC/PDF%20DOC/Home%20page/IJReport.pdf>.

²⁰² Interview with Bobbie Gregg, Deputy Director of Children's Servs., Office of Refugee Resettlement (Oct. 1, 2015).

²⁰³ *Flores Agreement* §¶ 14.

²⁰⁴ Interview with Bobbie Gregg, Deputy Director of Children's Servs., Office of Refugee Resettlement (Oct. 1, 2015).

²⁰⁵ Interview with Toby Biswas, Supervisory Program Specialist, Division of Policy, Office of Refugee Resettlement (Dec. 8, 2015).

²⁰⁶ Interview with Care Provider B (Oct. 16, 2015); Interview with Care Provider C (Oct. 30, 2015).