



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, D.C. 20201 | [www.acf.hhs.gov](http://www.acf.hhs.gov)

**DATE:** February 5, 2019

**TO:** Alex M. Azar II, Secretary

**THROUGH:** Eric D. Hargan, Deputy Secretary  
Ann C. Agnew, Executive Secretary

**FROM:** Lynn A. Johnson  
Assistant Secretary  
for Children and Families

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System Notice of Proposed Rule Making – **DECISION**

**ACTION REQUESTED**

I request your approval of the attached notice of proposed rulemaking (NPRM), which proposes to revise the Adoption and Foster Care Analysis Reporting System (AFCARS) regulations.

**SUMMARY**

The Administration for Children and Families (ACF) proposes revisions through a NPRM to streamline the AFCARS data elements that were finalized in the AFCARS final rule published on December 14, 2016 (81 FR 90524). This rule is deregulatory.

This is in response to [Executive Order 13777](#) (issued February 24, 2017) which directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. We received pre-development approval from Deputy Secretary Eric Hargan on April 2, 2018, to promulgate a NPRM to streamline the data elements in AFCARS in order to reduce the burden on title IV-E agencies.

**Noteworthy Elements**

A summary of the revisions to the AFCARS data elements proposed in the NPRM are as follows:

- The out-of-home care data file in the 2016 final rule included approximately 272 items where we require title IV-E agencies to report information. We propose to reduce these items to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 that we propose to modify. We propose a simplification of certain data elements to require that title IV-E agencies report only essential information on participating children.

AFCARS NPRM

Page 2

- We propose to remove the data elements asking information on the sexual orientation of the child, foster parent, adoptive parent, and legal guardian. Unlike other AFCARS data elements on child and foster parent information such as date of birth, race, and education level, the accuracy of sexual orientation responses may depend on age, ethnicity, geography, and available response categories. This could lead to inaccurate national data on a sensitive issue. However, we propose to keep the circumstance at removal asking whether there was family conflict related to the child's sexual orientation, gender identity, or gender expression. We believe that asking for limited information related to this issue will provide an opportunity for analysis.
- We propose to significantly simplify and reduce the Indian Child Welfare Act (ICWA)-related data elements to only information that is essential for identifying the population of children to whom ICWA applies nationally. This proposal was informed by the information sessions held with tribal leaders in May 2018 and public comment. We also consulted with the Department of Interior on the ICWA-related elements and Advanced Notice of Proposed Rulemaking (ANPRM) comments.

### **ANTICIPATED REACTION**

ACF published an ANPRM in the Federal Register on March 15, 2018 ([83 FR 11449](#)). The ANPRM had a 90-day comment period that closed on June 13, 2018. We received 237 comments, which were comprised of 38 states, 38 Indian tribes or consortiums, 62 organizations representing state or tribal interests, national public advocacy groups, professional associations, universities, two members of Congress, and 97 private citizens. All but two states (36) supported streamlining the AFCARS data elements. The states argued through detailed work and cost estimates that the December 2016 final rule has many data elements that can be streamlined while still providing critical information on the out-of-home care population. All Indian tribes and organizations representing tribal interests opposed streamlining the AFCARS data elements, asserting that the current elements provide necessary context for the children in care and inform policy. They wanted to keep all data elements related to ICWA. Conversely, states recommended streamlining the ICWA-related data elements and others, stating that the data elements are redundant, too detailed for a national data set, are better suited for a case review, or the purpose/need for the information at the national level is unclear.

Additionally, during the comment period of the ANPRM, the Children's Bureau (CB) held information sessions with tribal members and representatives on May 15 and 16, 2018, where CB officials presented on the ANPRM and the history of the AFCARS regulation, including the Executive Order precipitating another look at AFCARS. During this time, tribal governments and representatives identified the ICWA-related information they felt was important to retain in AFCARS because it was essential in determining whether ICWA applied for a child or it provided basic information on ICWA's requirements such as placement preferences. This information was taken into consideration when determining revisions to the ICWA-related data elements.

In summary, we believe that the NPRM is a balanced compromise in streamlining the data elements to ones with a specific purpose for title IV-B and title IV-E program monitoring,

AFCARS NPRM

Page 3

Congressional reporting, budgeting, and areas where reporting information to AFCARS would improve the accuracy and reliability of the data. We also believe that this proposal represents a balance for the need for data on the population of children to whom ICWA applies and state concerns for the burden and costs for collecting and reporting the large number of ICWA-related data elements in the 2016 final rule.

**RECOMMENDATION**

I recommend you approve the proposed rule for submission to the Office of Management and Budget for review.

  
Lynn A. Johnson

**DECISION**

Approved  Disapproved  Need More Information

  
Alex M. Azar II

FEB 12 2019  
Date

Attachments  
AFCARS Notice of Proposed Rulemaking

**List of Subjects in 45 CFR Part 1355**

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated:



Lynn A. Johnson,

Assistant Secretary

for Children and Families.

Approved: FEB 12 2019



Alex M. Azar II,

Secretary.





**DEPARTMENT OF HEALTH & HUMAN SERVICES**

---

**ADMINISTRATION FOR CHILDREN AND FAMILIES**  
**Administration on Children, Youth and Families**  
330 C Street, S.W.  
Washington, D.C. 20201

June 27, 2019

Tara M. Sweeney  
Assistant Secretary, Indian Affairs  
United States Department of the Interior  
1849 C Street, N.W.  
MS-4660-MIB  
Washington, DC 20240

Dear Assistant Secretary Sweeney,

Thank you for your inquiry related to extending the AFCARS NPRM comment period. As you are aware, the comment period closed at midnight on June 18th.

The Children's Bureau (CB) recognizes the value and importance of tribal input into the AFCARS rulemaking process. Therefore, the CB provided three opportunities for tribal consultation: an in-person event on June 3rd and conference calls on June 4th and 6th. To prepare for consultation, CB also presented an overview of the NPRM on May 28th for tribal representatives, in addition to the overviews provided to the public on April 30th and May 2nd. CB provided notice of the May 28th overview presentation and conference call consultations by email through CB's tribal email lists and through letters mailed to tribal leaders and representatives on April 29, 2019. CB emailed notice of the in-person consultation to CB's tribal email lists and mailed notice to tribal leaders and representatives on May 7, 2019. This is in addition to the notice of public inspection and publication of the 2019 NPRM that CB emailed to CB's public, state, and tribal email lists on April 17 and 19, 2019, respectively. CB also issued ACYF-CB-IM-19-02 on April 19, 2019 announcing publication of the 2019 NPRM, which CB also emailed to CB's tribal email lists and posted on the CB website. In addition to the three opportunities for consultation, the CB received input on the AFCARS from the Secretary's Tribal Advisory Committee and the Administration for Children and Families' Tribal Advisory Committee.

During the in-person tribal consultation on June 3rd, we were appreciative for the presence of representatives who attended in person and those who joined by phone and also presented testimony. I acknowledge that there were audio difficulties caused by the electronic speakers in the conference room. I apologize for those difficulties and regret that some of the tribal representatives who called into the June 3rd consultation were not able to hear those participating in person due to these technical problems. Fortunately, those in the room were able to hear those who called in and provided testimony.

HHS000005

Page 2 - Assistant Secretary Sweeney

As noted above, we also hosted two telephonic consultations. We were pleased that some tribal representatives were able to connect to multiple events as some of the participants in the two telephonic consultations (June 4 and 6) had also participated in the in-person session.

As shared during the three consultation sessions, the comment period was open for 60 days (April 19-June 18) and CB stated during the consultations that we will only consider written responses submitted by the deadline. CB provided information on how to submit comments in the emails and letters that were sent out and available on the CB website.

We appreciate your inquiry about extending the comment period however this is not possible because only something that impeded the ability to submit official comments, such as a technical glitch in the Regulations.gov system, would constitute a basis for extending the comment period. We also want to note that we have received comments from Indian tribes, tribal consortiums, and organizations representing tribal interests during the comment period and will give these comments due consideration as we continue with the AFCARS rulemaking process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Milner". The signature is written in a cursive style with a large, sweeping initial "J".

Jerry Milner  
Acting Commissioner  
Children's Bureau



## DEPARTMENT OF HEALTH & HUMAN SERVICES

---

**ADMINISTRATION FOR CHILDREN AND FAMILIES**  
**Administration on Children, Youth and Families**  
330 C Street, S.W.  
Washington, D.C. 20201

**TO:** Jerry Milner  
Acting Commissioner, ACYF

**FROM:** Joe Bock  
Acting Deputy Associate Commissioner, ACYF

**DATE:** September 28, 2018

**SUBJECT:** AFCARS – DOI input on data elements

### **ISSUE**

Below we present a summary of input on the AFCARS data elements related to ICWA from the Department of Interior (DOI) with recommendations.

### **BACKGROUND**

On September 14, 2018, Joe hosted a call with representatives from DOI. In addition to Joe, Kathy, and Jana on the phone were Elizabeth Appel and Evangeline Campbell from BIA and Samuel Ennis from DOI. The preface of the call was that, during clearance of the ANPRM, DOI requested to be consulted on a new NPRM. The purpose of the call was to consult with them, explain AFCARS, the issues with the 2016 final rule, and solicit their input as to whether there were ICWA-related data elements that should be included in AFCARS besides the areas identified during tribal consultation (which were: reason to know a child is an Indian child, child's tribal membership status and tribal names, whether ICWA applies, notification, tribal membership status of bio/foster/adoptive parents and legal guardians).

During the call, Joe explained the purpose of the meeting, reviewed a PowerPoint explaining AFCARS and the issues with the 2016 final rule, and ended with introducing the idea of a joint case review protocol as a more effective method to assessing ICWA compliance, instead of having detailed information reported to AFCARS. DOI was provided a matrix before the call of the ICWA-related data elements and on 9/26/18, they responded with their suggestions.

### **DISCUSSION**

DOI's initial comments to us reflect their desire to keep the vast majority of the ICWA-related data elements in the 2016 final rule. They offered few areas where some data elements may be combined with others, but largely made revisions to clarify the language of the data elements, rather than reducing. After receiving this input, Joe clarified with them that this exercise was to identify areas to keep in AFCARS that may be missing from those identified during tribal consultation (above). In response, DOI identified a few areas as the "most important" information to keep in AFCARS. Below we list the areas DOI identified as important to keep in

Page 2 – Acting Commissioner Milner

AFCARS, to what extent it's consistent with the current draft of the NPRM, whether we will receive the information via other data elements, and our recommendations on whether to make changes to the NPRM as a result of their input. As FYI, attached to this memo is a table that summarizes DOI's initial recommendations on the rest of the ICWA-related data elements and our related recommendations for the NPRM.

<b>DOI suggestion for ICWA-related elements based on 2016 final rule</b>	<b>NPRM consistent?</b>	<b>Recommendation regarding changes to NPRM</b>
Keep most elements on transfers to tribal court: whether there was a request to transfer to tribal court and whether it was granted	No. Not proposing to collect in NPRM. However, we propose to collect whether a child exits foster care to a transfer to a tribe (IV-E and non IV-E); however not specifics on ICWA requirements (e.g., whether there was a request, denials, good cause)	No change. Too detailed for national data set and unrelated to IV-B/E monitoring. Details related to requests, denials, and good cause are better collected through case review.
Keep most elements on foster/adopt/guardianship placement preferences: whether placement in accordance with the placement preferences, good cause.	No. Not proposing to collect in NPRM. However, we propose to collect tribal membership of foster, adoptive, and guardians, whether placement is relative or kin, and name of jurisdiction where child is living for foster care.	No change. Too detailed for national data set and unrelated to IV-B/E monitoring. Doesn't provide context for agency decisions. Details related to good cause, or tribal-specific preferences are better collected through case review.

## **DECISION**

I agree with your recommendations to not change anything in the draft NPRM per DOI's comments.



9/28/2018

\_\_\_\_\_  
Jerry Milner

\_\_\_\_\_  
Date





ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, D.C. 20201 | [www.acf.hhs.gov](http://www.acf.hhs.gov)

**TO:** The Secretary  
Through: DS \_\_\_\_\_  
COS \_\_\_\_\_  
ES \_\_\_\_\_

**FROM:** Acting Assistant Secretary for Children and Families

**DATE:** February 27, 2018

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System Advance Notice of Proposed Rulemaking – **DECISION**

**ISSUE**

I request your approval of this Advance Notice of Proposed Rulemaking (ANPRM) for publication in the Federal Register. Comments to this ANPRM will allow us to assess how we could reduce burden on title IV-E agencies to report AFCARS data and still adhere to the statutory requirements.

**BACKGROUND**

Section 479 of the Act mandates HHS regulate a national data collection system that provides comprehensive information on adopted and foster children and their parents. We published a final rule to revise AFCARS on December 14, 2016 ([81 FR 90524](#)) and required title IV-E agencies to continue to report AFCARS data in accordance with section 1355.40 and the appendix to part 1355 until September 30, 2019 and provided two fiscal years for title IV-E agencies to comply with sections 1355.41 through 1355.47 of the final rule. The final rule was a culmination of two notice of proposed rulemakings (issued January 11, 2008 ([73 FR 2082](#)) and February 9, 2015 ([80 FR 7132](#))) and a supplementary notice of proposed rulemaking (issued April 7, 2016 ([81 FR 20283](#))). In a separate Federal Register notice, we are delaying the implementation timeframe of the AFCARS revisions until October 1, 2021; thus agencies will know they can delay the modifications to their information systems.

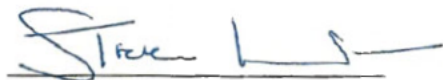
**DISCUSSION**

Through this ANPRM, we are providing a 90-day comment period for the public to give specific feedback to ACF on the AFCARS data elements. We will take comments and cost estimates into consideration to reduce the burden to state and tribal title IV-E agencies and propose revisions to the AFCARS regulation through a Notice of Proposed Rulemaking.

Page 2 – The Secretary

**RECOMMENDATION**

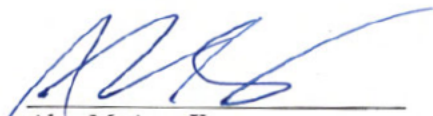
I recommend you approve the ANPRM for publication in the Federal Register.



Steven Wagner

**DECISION**

Approve   A   Disapprove \_\_\_\_\_ Need More Information \_\_\_\_\_



Alex M. Azar II

**MAR - 8 2018**

Date

Attachment(s):  
AFCARS ANPRM



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street S W Suite 4034  
Washington, D.C. 20201 | www.acf.hhs.gov

**TO:** The Secretary  
Through: DS \_\_\_\_\_  
COS \_\_\_\_\_  
ES \_\_\_\_\_

**FROM:** Acting Assistant Secretary  
for Children and Families

**DATE:** July 20, 2018

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System Final Rule Delaying  
Implementation Date – **DECISION**

**ISSUE**

I request your approval of the attached final rule that delays the implementation timeframe for title IV-E agencies to comply with the December 2016 Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule.

**BACKGROUND**

This rule finalizes the notice of proposed rulemaking (NPRM) that was published in the Federal Register on March 15, 2018 (83 FR 11450) that proposed to provide an additional two fiscal years to comply with sections 1355.41 through 1355.47.

In response to the President's request that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, the Administration for Children and Families (ACF) has identified the AFCARS regulation as one where there may be areas for reducing reporting burden. Upon final Secretarial approval, ACF will publish a separate NPRM that proposes to streamline the AFCARS data elements in order to reduce burden on title IV-E agencies to report AFCARS data and still adhere to the statutory requirements.

In order to prevent title IV-E agencies from expending resources on changes to their data systems that may ultimately prove unnecessary, ACF must issue this final notice to delay the implementation timeframe in the December 2016 AFCARS final rule for title IV-E agencies to comply with sections 1355.41 through 1355.47 for an additional fiscal year. In the AFCARS final rule issued on December 14, 2016 (81 FR 90524), ACF provided an implementation timeframe of two fiscal years for title IV-E agencies to comply with sections 1355.41 through 1355.47 (81 FR 90529). Until then, title IV-E agencies must continue to report data related to children in foster care and who have been adopted with title IV-E agency involvement to ACF in accordance with 45 CFR 1355.40 and the appendix to part 1355.

**DISCUSSION**

The March 15, 2018 NPRM's comment period ended on April 16, 2018. In response to the NPRM, we received 43 comments, which were submitted by 12 states, six Indian tribes or

Page 2 – The Secretary

consortia, three organizations representing tribal interests, and 22 other organizations and anonymous entities. In general, all state commenters supported the delay because it will provide time for states to fully analyze system, cost, and training work needed to meet new AFCARS requirements, revise and update systems. Indian tribes, organizations representing tribal interests, and all but one organization opposed the delay because it deprives governments of case-level data on information that is not currently reported to AFCARS that can be used for policymaking and guide budget decisions. In addition to the NPRM, HHS and ACF received feedback and follow up letters from the Secretary’s Tribal Advisory Committee on the desire to see the new regulations implemented per the timeline in the final rule. Per the HHS tribal consultation policy, ACF can make these written communications by Tribal officials available to the Secretary and the Director of the Office of Management and Budget (OMB).

Based on our analysis of the comments, we believe that a balanced compromise is to delay implementation of the 2016 final rule for one year. This means that as of October 1, 2020, state and tribal title IV-E agencies must comply with the revision to AFCARS made by the 2016 final rule (sections 1355.41 through 1355.47). State and tribal title IV-E agencies must continue to report AFCARS data in the same manner they do currently, per section 1355.40 and appendices A through E of part 1355 until September 30, 2020.

Per advice from the Office of General Counsel, ACF must issue a rule delaying the implementation date because the date is incorporated into the regulation and this will provide agencies assurance that they could not later be subject to penalties for failure to comply with the new data requirements currently scheduled to go into effect on Oct. 1, 2019. Because the AFCARS penalties are specifically mandated by the IV-E statute, ACF does not have any discretion to suspend them. If ACF were to issue only informal guidance regarding the date change, then states might conclude that they must continue the work to revise their data systems in case ACF did not ultimately make changes to the current AFCARS rule.

**RECOMMENDATION**

I recommend you approve the final rule for submission to the OMB for review.



Steven Wagner

**DECISION**

Approve  Disapprove  Need More Information

  
Alex M. Azar II

JUL 25 2018

Date

Attachment:  
AFCARS Final Rule Delaying Implementation Date





ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, D.C. 20201 | [www.acf.hhs.gov](http://www.acf.hhs.gov)

**DATE:** January 29, 2020

**TO:** Alex M. Azar II, Secretary

**THROUGH:** Eric D. Hargan, Deputy Secretary  
Ann C. Agnew, Executive Secretary

**FROM:** Lynn A. Johnson  
Assistant Secretary  
for Children and Families

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule  
– **DECISION**

**ACTION REQUESTED**

I request your approval of the attached final rule revising the AFCARS regulations.

**SUMMARY**

This rule finalizes revisions to the AFCARS regulations proposed on April 19, 2019 ([84 FR 16572](#)), which streamline the data elements that were in the 2016 final rule ([81 FR 90524](#)). The Administration for Children and Families (ACF) issued the April 19, 2019 notice of proposed rulemaking (2019 NPRM) in response to [Executive Order \(E.O.\) 13777](#) that directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. We received pre-development approval from Deputy Secretary Hargan on April 2, 2018 to promulgate a NPRM to streamline the data elements in AFCARS in order to reduce the burden on title IV-E agencies.

Prior to issuing the 2019 NPRM, ACF issued an Advance Notice of Proposed Rulemaking (ANPRM, March 15, 2018, [83 FR 11449](#)) soliciting specific feedback on the 2016 final rule data elements. We conducted an in-depth analysis of the ANPRM comments, held tribal consultation, consulted with HHS experts that use AFCARS data, consulted with representatives of the Department of Interior (DOI) regarding the ICWA-related data elements, and considered the concerns and interests of all stakeholders. We reviewed each data element in the 2016 final rule and evaluated whether it is needed for a specific purpose, such as a title IV-B or IV-E statutory requirement and program monitoring, Congressional reporting, or budgeting, and to specifically identify whether including the data in AFCARS would improve the accuracy and reliability of the data. After careful consideration, we proposed in the 2019 NPRM to streamline the out-of-home care data elements to what we believe is a reasonable amount while also reducing redundancies in the data elements and adhering to the statutory requirements in §479 of the Act

Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule  
Page 2

to avoid unnecessary diversion of agency resources and to ensure that data collected is reliable and consistent.

A summary of the revisions to the AFCARS data elements proposed in the 2019 NPRM is as follows:

- The out-of-home care data file in the 2016 final rule requires approximately 272 items where we require title IV-E agencies to report information. We reduced these items to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify. We simplified certain data elements to require that title IV-E agencies report only essential information on children.
- We removed the data elements asking information on the sexual orientation of the child, foster parent, adoptive parent, and legal guardian. Unlike other AFCARS data elements on child and foster parent information such as date of birth, race, and education level, the accuracy of sexual orientation responses may depend on age, ethnicity, geography, and available response categories. This could lead to inaccurate national data on a sensitive issue. However, we kept the circumstance at removal asking whether there was family conflict related to the child's sexual orientation, gender identity, or gender expression. We believe that asking for limited information related to this issue will provide an opportunity for analysis.
- We significantly simplified and reduced the ICWA-related data elements to only information that is essential for identifying nationally the population of children to whom ICWA applies. This was informed by the information sessions held with tribal members in May 2018, public comment on the ANPRM, and DOI input.

The comment period for the 2019 NPRM was open for 60 days and closed on June 18, 2019. We received 150 comments from: 24 states and local child welfare agencies; 33 Indian tribes, tribal organizations or consortiums; 10 organizations representing tribal interests; 45 national advocacy groups and universities; one member of congress (Sen. Wyden); and 37 anonymous or private citizens. The overwhelming majority of state and local agencies (19 of 24) supported the streamlining in the 2019 NPRM citing that it balances the need for updated information with the burden of having to revise systems to report data and it keeps a focus on federal compliance and continuous quality improvement rather than turning AFCARS data into a research tool by adding measures that do not or cannot accurately capture the realities of child welfare practice. All Indian tribes, tribal organizations or consortiums, organizations representing tribal interests, Sen. Wyden, and most public advocacy organizations opposed the proposal to reduce the ICWA-related data elements primarily because they felt that *all* data elements in the 2016 final rule are needed to assess for ICWA compliance or develop legislation, and that national information is important to address disparities, analyze outcomes, and help in working with children and families.

Our conclusion is that we did not receive sufficient justification or a rational basis for reinstating the removed data elements, thus we did not make substantive changes in finalizing this rule. We received no new information that was convincingly articulated to persuade us to add in data elements from the 2016 final rule that were not proposed in the 2019 NPRM. In finalizing this rule, we maintain that we will collect the most critical information on the out-of-home care

Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule  
Page 3

population from a national perspective while avoiding the unnecessary diversion of resources from title IV-E agencies, consistent with the statute authorizing AFCARS.

Additionally, the action that precipitated another look at AFCARS was E.O. 13777. Adding data elements back into the proposal would not be supported by the majority of state commenters nor aligns with the statutory requirements in §479 of the Act to avoid unnecessary diversion of agency resources and to ensure that data collected is reliable and consistent.

Cost Savings: Based on the state comments to the 2019 NPRM, this final rule may reduce the burden placed on title IV-E agencies from the 2016 final rule by reducing the data required for reporting. By reducing the data that title IV-E agencies must report from the 2016 final rule, agencies and the Department may experience a potential cost savings over the 2016 final rule requirements. We estimate that the final rule will result in an estimated \$40 million in total annual savings. This rule is an E.O. 13777 deregulatory action.

**ANTICIPATED REACTION**

We anticipate continued opposition to streamlining from national advocacy organizations and Indian tribes similar to the comments we received to the 2018 ANPRM and 2019 NPRM. Advocates and the tribes strongly oppose streamlining the ICWA-related data elements. Advocates also strongly oppose the removal of sexual orientation information. Moreover, Sen. Wyden expressed concerns in his 2019 NPRM comments similar to the advocates' regarding streamlining, including raising concerns about the removal of some of the standard data elements.

**RECOMMENDATION**

I recommend you approve the rule for submission to the Office of Management and Budget for review.

  
Lynn A. Johnson

**DECISION**

Approved  Disapproved  Need More Information

  
Alex M. Azar II  
MAR 03 2020  
Date

Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule  
Page 4

Attachment  
TAB A: AFCARS Final Rule





ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, D.C. 20201 | www.acf.hhs.gov

**TO:** Eric D. Hargan  
Deputy Secretary

**FROM:** Steven Wagner  
Acting Assistant Secretary for Children and Families

**DATE:** March 29, 2018

**SUBJECT:** PRE-DEVELOPMENT DECISION MEMORANDUM FOR ADOPTION AND  
FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS)  
NOTICE OF PROPOSED RULEMAKING (NPRM)

I am requesting approval to promulgate a notice of proposed rulemaking (NPRM) to streamline the data elements in AFCARS in order to reduce the burden on title IV-E agencies and to consult with the Department of Interior (DOI) during its development.

PROPOSED SCHEDULE OF DEVELOPMENT

	Start	End	Notes
Pre-Development	3/18	4/18	
Drafting and Clearance	4/18	11/18	
Secretarial Approval	12/18	1/19	
OMB Clearance	2/19	4/19	
OFR Submission	5/19	5/19	

BACKGROUND

The Administration for Children and Families (ACF) published two notices in the Federal Register in March 2018 regarding AFCARS. The first was an Advance Notice of Proposed Rulemaking (ANPRM) soliciting comment and an NPRM regarding implementation of the December 2016 AFCARS final rule. The history of how these notices were developed is provided in Appendix A. We issued the referenced notices not to inform whether to issue a new NPRM to amend the AFCARS but to inform how to streamline the collection to reduce the reporting burden and address issues that we believe leave the regulation open to challenge (see Appendix B for more information on this issue). We have determined that we must move forward with publishing a new NPRM to address these issues and will use comments received in response to the ANPRM to inform that process.

We consider this a deregulatory action, approved by the HHS Regulatory Reform Task Force on September 7, 2017, that is scheduled to publish in the Spring Unified Agenda.

**Cost Savings:** We anticipate that, based on comments, the new NPRM may reduce the burden placed on title IV-E agencies from the December 2016 final rule by reducing the number of data

**PRE-DEVELOPMENT DECISION MEMORANDUM FOR AFCARS NPRM**

Page 2

elements required for reporting. By reducing the data elements that title IV-E agencies must report, agencies and HHS may experience a potential cost savings versus the December 2016 final rule requirements (for example, state costs for system development are eligible for an enhanced method of federal financial participation). Additionally, we expect to realize substantial savings in terms of staff time not diverted from the service of child welfare clients.

**ISSUES**

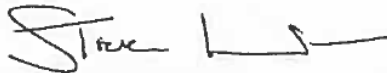
We anticipate opposition from advocacy organizations and Indian tribes similar to the comments we received on the current AFCARS information collection renewal published late last year, while the ANPRM and NPRM were in clearance. Advocates and the tribes strongly supported the inclusion of many of the new data elements such as sexual orientation and gender identity of children in care and foster and adoptive parents, information on health assessments, educational status, and data elements relating to the Indian Child Welfare Act (ICWA). In addition, leaders of the *Every Child Deserves a Family Campaign*<sup>1</sup> issued a press release condemning the two-year delay. While many of these elements are not appropriate for a national data collection, advocates see them as critical to understanding children's experience in foster care. Moreover, Sen. Wyden (D-OR) and Rep. Davis (D-IL) have expressed concerns similar to the advocates' regarding the delay, including raising concerns about the delay in reporting on data elements that are statutorily mandated to be included in the collection, specifically information on victims of trafficking. We are addressing the Senator's concerns by collecting the data through other means while we assess and amend the regulation in response to Executive Order 13777.

In drafting the NPRM, we intend to balance the advocates' desires with the need to minimize burden and focus on improving quality of services and achieving outcomes for children and families. We intend to examine the December 2016 final rule element by element, asking two questions: (1) "Why are we collecting this information?" and, (2) "How are we going to use this information?" We intend to include in a new NPRM only those data elements for which we have good answers to these questions.

Consultation with Outside Departments and Groups: We also intend to consult with tribes and the Department of Interior (DOI) to inform the drafting process to ensure that tribes and our colleagues at DOI understand what types of data can be reported to AFCARS and will be informative at a national level; and to align their desired data collection with HHS' criteria for justifying inclusion in AFCARS.

**RECOMMENDATION**

I recommend you approve this request to develop a regulation and consult with the Department of Interior during that process.



\_\_\_\_\_  
Steven Wagner  
Acting Assistant Secretary for Children and Families

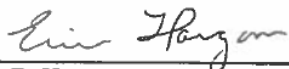
<sup>1</sup> The Every Child Deserves a Family Campaign is comprised of over 250 members including child welfare, faith, business, and civil rights organizations, and advocates for supportive care, stability, and a permanent, loving family for all foster youth and for ending discrimination against LGBTQ foster youth and potential parents. Family Equality Council, PFLAG National, and Voice for Adoption lead the campaign's National Policy Coalition.

**PRE-DEVELOPMENT DECISION MEMORANDUM FOR AFCARS NPRM**

Page 3

**DECISION TO MOVE FORWARD**

Approved  Disapproved  Need More Information



Eric D. Hargan  
Deputy Secretary

4/2/2018

Date

**Attachments:**

Appendix A – Additional Background

Appendix B – More information on streamlining the collection to reduce the reporting burden and address issues that we believe leave the regulation open to challenge

## Appendix A: Historical Background of the AFCARS Regulation

The Advance Notice of Proposed Rulemaking (ANPRM) soliciting comment and a NPRM regarding implementation of the December 2016 AFCARS final rule:

- AFCARS is authorized by section 479 of the Social Security Act, which mandates that the Department of Health and Human Service (HHS) regulate a data collection system for national adoption and foster care data. Requirements are set forth in regulations at 45 CFR 1355.40 and the appendices to part 1355. AFCARS data include information on characteristics of children entering and exiting foster care and children adopted with the involvement of the title IV-E agency. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995.
- On December 14, 2016, the Children's Bureau published a Final Rule promulgating revised AFCARS requirements ([81 FR 90524](#)). The rule was a culmination of proposed rules published in 2008, 2015, and April 2016. The final rule increased the number of data points title IV-E agencies must report and, among other changes, included for the first time data points related to the Indian Child Welfare Act of 1978 (ICWA). As published in the final rule, the new AFCARS requirements were scheduled to begin with the submission of data for FY 2020 (period covering October 1, 2019 to March 31, 2020 and the period April 1 to September 30, 2020) with the first semi-annual data submission due by May 15, 2020. Until that time, title IV-E agencies must continue to report data under the original AFCARS requirements at 45 CFR 1355.40 and the appendices to part 1355.
- On February 24, 2017, the President issued [Executive Order 13777](#) on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. It directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification.
- The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

Based on this determination, ACF published two notices in the Federal Register in March 2018:

(1) *NPRM on implementation delay* ([83 FR 11450](#))

- The NPRM was published in the Federal Register on March 15, 2018 and comments are due on April 16, 2018.
- The NPRM proposes to:
  - delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-.47) by two years until October 1, 2021 and;
  - extend the reporting of AFCARS data in accordance with the current AFCARS regulation (45 CFR 1355.40 and the appendices to 45 CFR 1355) until September 30, 2021.

(2) *Advance Notice of Proposed Rulemaking* ([83 FR 11449](#))

- The ANPRM was published in the Federal Register on March 15, 2018 and comments are due on June 13, 2018.

- Through the ANPRM, we request public suggestions on streamlining the AFCARS data elements and removing any undue burden per the AFCARS final rule issued in December 2016 (81 FR 90524). The ANPRM requests commenters:
  - Identify the data elements, non-ICWA-related and ICWA-related, that are overly burdensome for title IV-E agencies and to provide an explanation with cost and burden estimates for recordkeeping and reporting;
  - Provide recommendations on data elements to retain with a justification for using the data at the national level;
  - Provide recommendations on data elements to remove with an explanation as to why the data are not reliable or necessary at the national level; and
  - Provide suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data.



**Appendix B: Additional Information Concerning the December 2016 Final Rule**

The December 2016 AFCARS final rule imposes 272 data elements; over half (153) of those are new, including 65 of which were promulgated to specifically assess state compliance with ICWA. In commenting on the proposed rules that informed the December 2016 final rule, states clearly articulated that a number of the proposed data elements were not appropriate for a national data set as they were too qualitative in nature or did not lend themselves to interpretation at the national level. Moreover, the ICWA data elements were promulgated in such a manner that we consider them vulnerable to challenge for the following reasons:

- The data elements track closely to the Department of Interior (DOI) regulations for complying with the ICWA, not HHS requirements. Thus, the regulation reads as though HHS is acting as DOI's agent.
- The DOI regulations upon which the ICWA-related data elements are based are directed at child and family courts, thus requiring state child welfare agencies to serve as agents of the courts by reporting on court activities.
- AFCARS carries penalties for non-compliant data, from which the ICWA elements are not exempt, thus state child welfare agencies may be penalized HHS funds for failing to report or accurately report DOI data – yet HHS is not in a position to adjudicate DOI regulations by determining the accuracy of these data elements.



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, D.C. 20201 | www.acf.hhs.gov

**TO:** The Secretary  
Through: DS \_\_\_\_\_  
COS \_\_\_\_\_  
ES \_\_\_\_\_

**FROM:** Acting Assistant Secretary for Children and Families

**DATE:**

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System NPRM Delaying Implementation Date – **DECISION**

**ISSUE**

I request your approval of the attached notice of proposed rulemaking (NPRM) that delays the implementation timeframe for title IV-E agencies to comply with provisions of the Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule.

**BACKGROUND**

In response to the President's request that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, the Administration for Children and Families (ACF) has identified the AFCARS regulation as one where there may be areas for reducing reporting burden. ACF is publishing a separate Advance Notice of Proposed Rulemaking (ANPRM) to seek suggestions for streamlining the AFCARS data elements and reducing burden on title IV-E agencies to report AFCARS data and still adhere to the statutory requirements.

In order to prevent title IV-E agencies from expending resources on changes to their data systems that may ultimately prove unnecessary, ACF must issue a notice to delay the implementation timeframe in the AFCARS final rule for title IV-E agencies to comply with sections 1355.41 through 1355.47 for an additional two fiscal years. In the AFCARS final rule issued on December 14, 2016 ([81 FR 90524](#)), ACF provided an implementation timeframe of two fiscal years for title IV-E agencies to comply with sections 1355.41 through 1355.47 (81 FR 90529). Until then, title IV-E agencies must continue to report data related to children in foster care and who have been adopted with title IV-E agency involvement to ACF in accordance with 45 CFR 1355.40 and the appendix to part 1355.

**DISCUSSION**

Through this notice, ACF is notifying title IV-E agencies that we are delaying the implementation timeframe for title IV-E agencies to comply with sections 1355.41 through 1355.47 until September 30, 2021, which includes making revisions to their systems to comply with these sections. Per advice from the Office of General Counsel, ACF must issue a rule delaying the implementation date because the date is incorporated into the regulation and this

Page 2 – The Secretary

will provide agencies assurance that they could not later be subject to penalties for failure to comply with the new data requirements currently scheduled to go into effect on Oct. 1, 2019. Because the AFCARS penalties are specifically mandated by the IV-E statute, ACF does not have any discretion to suspend them. If ACF were to issue only informal guidance regarding the date change, then states might feel that they had to continue the work on their data systems in case ACF did not ultimately make changes to the current AFCARS rule.

**RECOMMENDATION**

I recommend you approve the NPRM for publication in the Federal Register.

\_\_\_\_\_  
Steven Wagner

**DECISION**

Approve \_\_\_\_\_ Disapprove \_\_\_\_\_ Need More Information \_\_\_\_\_

\_\_\_\_\_  
Alex M. Azar II

\_\_\_\_\_  
Date

Attachment:  
AFCARS NPRM Delaying Implementation Date Federal Register Notice

**From:** [ACF CB Policy \(ACF\)](#)  
**To:** [Bertucci, Jana \(ACF\)](#); [Palmer, Allison \(ACF\)](#); [Grayson, Jennifer \(ACF\)](#); [Lamble, Christine \(ACF\)](#); [Loevner, Elizabeth \(ACF\)](#); [Horshaw, Cindi \(ACF\)](#); [Lynch-Sparks, Kaye \(ACF\) \(CTR\)](#)  
**Subject:** FW: AFCARS  
**Date:** Wednesday, March 7, 2018 12:53:57 PM

---

---

**From:** McHugh, Kathleen (ACF)  
**Sent:** Wednesday, March 7, 2018 3:53:54 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** ACF CB Policy (ACF)  
**Subject:** FW: AFCARS

---

**From:** Milner, Jerry (ACF)  
**Sent:** Wednesday, March 07, 2018 3:53 PM  
**To:** Logan, Scott (ACF) <[scott.logan@acf.hhs.gov](mailto:scott.logan@acf.hhs.gov)>; McHugh, Kathleen (ACF) <[kathleen.mchugh@acf.hhs.gov](mailto:kathleen.mchugh@acf.hhs.gov)>; Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>  
**Subject:** Re: AFCARS

Thanks. Did not know that. Good news.

---

**On:** 07 March 2018 15:51, "Logan, Scott (ACF)" <[scott.logan@acf.hhs.gov](mailto:scott.logan@acf.hhs.gov)> wrote:  
FYI, if you haven't already heard, the Secretary signed the rules and they are projected to display in the Federal Register on March 14.

Scott Logan  
Director  
Division of Legislative and Regulatory Affairs  
Office of Legislative Affairs and Budget  
Administration for Children and Families  
U.S. Department of Health and Human Services  
330 C ST, SW Suite 5020D  
Washington, D.C. 20201  
202.401.4529

<h1 style="font-size: 48px; margin: 0;">ACF</h1> <p style="font-size: 24px; margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	<b>1. Log No:</b> ACYF-CB-IM-18-01	<b>2. Issuance Date:</b> March 16, 2018
	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Title IV-E of the Social Security Act, Adoption and Foster Care Analysis and Reporting System (AFCARS), Indian Child Welfare Act of 1978 (ICWA)	

## INFORMATION MEMORANDUM

**TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System (AFCARS) Advance Notice of Proposed Rulemaking (ANPRM) and Notice of Proposed Rulemaking (NPRM) to revise the implementation dates in 45 CFR section 1355.40

**LEGAL AND RELATED:** Title IV-E of the Social Security Act; 45 CFR 1355

**PURPOSE:** The purpose of this Information Memorandum (IM) is to inform title IV-E agencies of the ANPRM (published on March 15, 2018 and [83 FR 11449](#)) and the NPRM regarding implementation of the December 2016 AFCARS final rule (published on March 15, 2018 and [83 FR 11450](#)).

**INFORMATION:** The Children's Bureau published two notices in the Federal Register in March 2018 regarding AFCARS: an ANPRM soliciting comment and a NPRM regarding implementation of the December 2016 AFCARS final rule.

*Background:*

- AFCARS is authorized by section 479 of the Social Security Act, which mandates that the Department of Health and Human Services (HHS) regulate a data collection system for national adoption and foster care data. Requirements are set forth in regulations at 45 CFR 1355.40 and the appendices to part 1355. AFCARS data include information on characteristics of children entering and exiting foster care and children adopted with the involvement of the title IV-E agency. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995.
- On December 14, 2016, the Children's Bureau published a final rule promulgating revised AFCARS requirements ([81 FR 90524](#)). The rule was a culmination of proposed rules published in 2008, 2015, and April 2016. The final rule increased the number of data points title IV-E agencies must report and, among other changes, included for the first time data points related to the Indian Child Welfare Act of 1978 (ICWA). As published in December



2016, the new AFCARS requirements were scheduled to begin with the submission of data for FY 2020 (period covering October 1, 2019 to March 31, 2020 and the period April 1 to September 30, 2020) with the first semi-annual data submission due by May 15, 2020. Until that time, title IV-E agencies must continue to report data under the original AFCARS requirements at 45 CFR 1355.40 and the appendices to part 1355.

- On February 24, 2017, the President issued [Executive Order 13777](#) on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. It directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification.
- The U.S. Department of Health and Human Service's Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

Based on this determination, the Children's Bureau issued two notices in the Federal Register. These notices are described below.

*NPRM on implementation delay:*

- The NPRM was published in the Federal Register on March 15, 2018 and comments are due on April 16, 2018.
- It does two things:
  - Proposes to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-.47) by two years until October 1, 2021 and;
  - Proposes to extend the reporting of AFCARS data in accordance with the current AFCARS regulation (45 CFR 1355.40 and the appendices to 45 CFR 1355) until September 30, 2021.

*ANPRM:*

- The ANPRM was published in the Federal Register on March 15, 2018 and comments are due on June 13, 2018.
- An ANPRM is a solicitation of comments that an agency may choose to issue before issuing a NPRM. This ANPRM does not propose a regulatory change; it only solicits comments.
- Through it, we seek public suggestions on streamlining the AFCARS data elements and removing any undue burden imposed by the AFCARS final rule issued in December 2016 ([81 FR 90524](#)).

*Purpose and goal of the ANPRM*

- We encourage state and tribal title IV-E agencies that did not comment on the previously issued proposed rulemakings in 2015 and 2016 to do so now. We provide a 90-day period for comments to the ANPRM to encourage all title IV-E agencies to provide thorough comments.
- The ANPRM lists questions asking commenters to:
  - Identify the data elements, non-ICWA-related and ICWA-related, that are overly burdensome for title IV-E agencies and to provide an explanation with cost and burden estimates for recordkeeping and reporting;
  - Provide recommendations on data elements to retain with a justification for using the data at the national level;
  - Provide recommendations on data elements to remove with an explanation as to why the data are not reliable or necessary at the national level; and

- Provide suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data.

*Process for the public to submit comments.*

- Comments to the ANPRM must be received by June 13, 2018.
- Comments to the NPRM on implementation delay must be received by April 16, 2018.
- You may submit comments, identified by docket number 2018-05038 and/or RIN number 0970-AC47 (NPRM) or docket number 2018-05042 and/or RIN number 0970-AC72 (ANPRM), by one of the following methods:
  - Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments. We recommend this method.
  - Email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include appropriate docket number and/or RIN number in subject line of the message.
  - Mail: Mail written comments to: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please allow sufficient time for mailed comments to be received before the close of the comment period.

/s/

---

Jerry Milner  
Acting Commissioner  
Administration on Children, Youth and Families

Attachments:

[AFCARS ANPRM](#)  
[AFCARS NPRM on implementation delay](#)

12/21/2020

Regulations.gov - Proposed Rule Document

Regulations.gov will start redirecting users to the Beta at <https://beta.regulations.gov> on Tuesdays and Thursdays for 24 hours starting at 8am ET. Please note that all comments that are submitted through the Beta, both during the redirect and regular operations are provided to agencies.



## Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

This Proposed Rule document was issued by the **Administration of Children and Families (ACF)**

For related information, [Open Docket Folder](#)

Comment Period Closed  
Jun 13 2018, at 11:59 PM ET

### Action

Advance notice of proposed rulemaking.

### Summary

ACF is seeking public suggestions, in particular from state and tribal title IV-E agencies and Indian tribes and tribal consortiums and other stakeholders, for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and removing any undue burden related to reporting AFCARS.

### Dates

Comments on this advance notice of proposed rulemaking must be received by June 13, 2018.

### Addresses

You may submit comments, identified by [docket number and/or RIN number], by one of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include [docket number and/or RIN number] in subject line of the message.
- **Mail:** Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please be aware that mail sent in response to this ANPRM may take an additional 3 to 4 days to process due to security screening of mail.

**Instructions:** When commenting, please identify the topic, data element, or issue to which your comment pertains. All submissions received must include the agency name and docket number or Regulatory Information Number for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

ID: ACF-2018-0003-0001

View original printed format:

### Document Information

**Date Posted:**  
Mar 15, 2018

**RIN:**  
0970-AC72

**CFR:**  
45 CFR Part 1355

**Federal Register Number:**  
2018-05042

[Show More Details](#)

### Comments

**257**  
Comments Received\*

See attached

[View Comment](#)

See attached

[View Comment](#)

*Alabama Comment Alabama appreciates the opportunity to comment on the Proposed Rule Changes to Adoption and Foster Care Analysis and Reporting Systems...*

12/21/2020

Regulations.gov - Proposed Rule Document

## For Further Information Contact

Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401-5789.

## Supplementary Information

This advance notice of proposed rulemaking (ANPRM) has two sections: *Background* that describes the authority on which the ANPRM is based and establishes the rationale for its issuance, and *Questions for Comment* wherein we solicit comment on the AFCARS regulations.

### I. Background

Section 479 of the Social Security Act (the Act) requires HHS to regulate a data collection system for national adoption and foster care data that provides comprehensive national information on the following:


- Demographic characteristics of adopted and foster children and their biological and adoptive or foster parents;
- Status and characteristics of the foster care population;
- Number and characteristics of children entering and exiting foster care, children adopted or for whom adoptions have been terminated, and children placed in foster care outside of the state which has placement and care responsibility for them;
- Extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance; and
- Number of foster children identified as sex trafficking victims before entering and while in foster care.

Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

We published a final rule to revise the AFCARS regulations on December 14, 2016 (81 FR 90524) and required title IV-E agencies to continue to report AFCARS data in accordance with § 1355.40 and the appendix to part 1355 until September 30, 2019 and provided two fiscal years for title IV-E agencies to comply with §§ 1355.41 through 1355.47 of the final rule. In a notice of proposed rulemaking published elsewhere in this issue of the Federal Register, we propose to delay the compliance dates in regulations and the effective date of revisions to the AFCARS regulations made in the final rule from October 1, 2019, to October 1, 2021.

The final rule was a culmination of two notices of proposed rulemaking (issued January 11, 2008 (73 FR 2082) and February 9, 2015 (80 FR 7132)) and a supplemental notice of proposed rulemaking (issued April 7, 2016 (81 FR 20283)). The final rule updated the AFCARS regulations to include child welfare legislative changes that occurred since 1993, included data elements related to the Indian Child Welfare Act of 1978 (ICWA), and implemented fiscal penalties for noncompliant AFCARS data.

On February 24, 2017, the President issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, we have identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. We are

[View Comment](#) 

### Docket Information

This document is contained in [ACF-2018-0003](#)

#### Related Dockets:

- [ACF-2015-0001](#)
- [ACF-2018-0004](#)

#### Related RINs:

None

#### Related Documents:

- [Adoption and Foster Care Analysis and Reporting System](#)
- [Adoption and Foster Care Analysis and Reporting System](#)

#### Related Comments:

[View all](#)

\* This count refers to the total comment/submissions received on this *document*, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

Document text and images  
courtesy of the  
Federal Register

12/21/2020

Regulations.gov - Proposed Rule Document

specifically soliciting comments on the data elements and their associated burden through this ANPRM.

Public comments to this ANPRM will allow us to assess whether and how we can potentially reduce burden on title IV-E agencies to report AFCARS data while still adhering to the requirements of section 479 of the Act and collecting useful data that will inform efforts to improve the child welfare system. We encourage state and tribal title IV-E agencies that did not previously comment to do so now. Some state title IV-E agencies provided in their previous comments specific information on compliance cost and burden estimates; however, we received too few estimates to reference for calculating the cost and burden associated with this final rule. We encourage agencies to be as specific as possible when commenting on this ANPRM. We will take comments and estimates into consideration in revising the regulation.

For a full picture of the AFCARS regulation, we invite commenters to review the AFCARS regulation and accompanying information that CB issued on our website, which can be found here: <https://www.acf.hhs.gov/cb/laws-policies/whats-new>

## II. Questions for Comment

1. Identify the data elements, non-ICWA-related, that are overly burdensome for state and tribal title IV-E agencies and explain why. Please be specific in identifying the data elements and provide a rationale for why collecting and reporting this information is overly burdensome. If possible, provide specific cost and burden estimates related to the following areas:

a. Recordkeeping hours spent annually:

i. Searching data sources, gathering information, and entering the information into the electronic case management system,

ii. Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing procedures to comply with AFCARS requirements, and

iii. Training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals).

b. Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information to ACF.

2. Previously, we received comments regarding burden and the system changes needed to report the ICWA-related data elements of the 2016 SNPRM. We would like to receive more detailed comments on the specific limitations we should be aware of that states will encounter in reporting the ICWA-related data elements in the final rule. Please be specific in identifying the data elements and provide a rationale for why this information is overly burdensome. If possible, provide specific cost and burden estimates related to the following areas:

a. The number of children in foster care who are considered Indian children as defined in ICWA.

b. Recordkeeping hours spent annually:

i. Searching data sources, gathering information, and entering the information into the electronic case management system,



12/21/2020

Regulations.gov - Proposed Rule Document

- ii. Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements, and
  - iii. Training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals).
- c. Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information to ACF.
3. Previously, we received comments that particular data elements did not lend themselves to national statistics and were best assessed with qualitative methods such as case review. Please provide specific recommendations on which data elements in the regulation to retain that are important to understanding and assessing the foster care population at the national level. Also, provide a rationale for your suggestion that may include its relevance to monitor compliance with the title IV-B and IV-E programs or another strong justification for using the data at the national level.
4. Previously we received comments noting concerns with variability in some of the data elements across states and within jurisdictions. Please provide specific suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data. Also, provide a rationale for each suggestion and how the simplification would still yield pertinent data.
5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with the child welfare system or are not needed for monitoring the title IV-B and IV-E programs. Please be specific in identifying the data elements and provide a rationale for why this information would not be reliable or is not necessary.

Dated: February 27, 2018.  
Steven Wagner,  
Acting Assistant Secretary for Children and Families.  
Approved: March 8, 2018.  
Alex M. Azar II,  
Secretary.

[FR Doc. 2018-05042 Filed 3-13-18; 8:45 am]  
BILLING CODE 4184-25-P

12/21/2020

Regulations.gov - Proposed Rule Document

Regulations.gov will start redirecting users to the Beta at <https://beta.regulations.gov> on Tuesdays and Thursdays for 24 hours starting at 8am ET. Please note that all comments that are submitted through the Beta, both during the redirect and regular operations are provided to agencies.



## Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

This Proposed Rule document was issued by the **Administration of Children and Families (ACF)**

For related information, [Open Docket Folder](#)

Comment Period Closed  
Apr 16 2018, at 11:59 PM ET

### Action

Notice of Proposed Rulemaking; delay of compliance and effective dates.

### Summary

The Children's Bureau proposes to delay the compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule for title IV-E agencies to comply with agency rules for an additional two fiscal years. We propose to delay the compliance and effective dates at the same time we seek public comment through an Advance Notice of Proposed Rulemaking (ANPRM), published elsewhere in this issue of the Federal Register, on suggestions to streamline the AFCARS data elements and remove any undue burden related to reporting AFCARS.

### Dates

In order to be considered, we must receive written comments on this NPRM on or before April 16, 2018.

### Addresses

You may submit comments, identified by [docket number and/or RIN number], by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Email:** [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include [docket number and/or RIN number] in subject line of the message.
- **Mail:** Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please be aware that mail sent in response to this NPRM may take an additional 3 to 4 days to process due to security screening of mail.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking.

ID: ACF-2018-0004-0001

View original printed format:

### Document Information

**Date Posted:**  
Mar 15, 2018

**RIN:**  
0970-AC76

**CFR:**  
45 CFR Part 1355

**Federal Register Number:**  
2018-05038

[Show More Details](#)

### Comments

47

Comments Received\*

[See Attached](#)

[View Comment](#)

*The State of Virginia is in agreement with the Childrens Bureau proposal to delay implementation of the Adoption and Foster Care Analysis and Reporting System...*

[View Comment](#)

12/21/2020

Regulations.gov - Proposed Rule Document

All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

## For Further Information Contact

Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401-5789.

## Supplementary Information

In the AFCARS final rule issued on December 14, 2016 (81 FR 90524), ACF provided an implementation timeframe of two fiscal years for title IV-E agencies to comply with 45 CFR 1355.41 through 1355.47 (81 FR 90529). On February 24, 2017, the President issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, the HHS Task Force identified the AFCARS regulation as one where there may be areas for reducing reporting burden.

Therefore, we are engaging in two regulatory actions to adhere to our obligations under the EO. Through this NPRM, ACF proposes to revise § 1355.40 to provide an additional two fiscal years to comply with §§ 1355.41 through 1355.47. ACF also proposes to delay the effective dates of instructions 3 and 5 in the rule published December 14, 2016 (81 FR 90524), from October 1, 2019, to October 1, 2021. If this rule is finalized, the implementation timeframe would be delayed for title IV-E agencies to make revisions to their systems to comply with §§ 1355.41 through 1355.47. This NPRM is open for a 30-day comment period. Per Executive Order 12866, the typical comment period is 60 days. However, the reasons for the shorter comment period for this NPRM is that any delay in issuing a final rulemaking might lead to title IV-E agencies diverting resources to unnecessary changes to their systems to comply with the December 2016 AFCARS final rule. Furthermore, this rule does not establish additional regulatory obligations or impose any additional burden on regulated entities. ACF believes that a 30-day comment period on this non-substantive rulemaking is a sufficient amount of time for the public to comment and ACF does not believe that a 30-day comment period will hamper public comment. ACF is publishing an ANPRM elsewhere in this issue of the Federal Register to seek suggestions on streamlining the data elements and potentially reducing burden to title IV-E agencies to report AFCARS data.

## Section-by-Section Discussion

### Section 1355.40 Foster Care and Adoption Data Collection

We propose to revise the compliance date in the regulation to provide an additional two fiscal years to comply with §§ 1355.41 through 1355.47. State and tribal title IV-E agencies must continue to report AFCARS data in the same manner they do currently, per § 1355.40 and appendices A through E of part 1355 until September 30, 2021. We propose that as of October 1, 2021, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

In assessing the AFCARS regulation in response to E.O. 13777, we identified the following issues:

- In the December 2016 final rule, there are 272 individual data points, of which 153 data points are new items added to AFCARS. Of the 153 data points, 65 are new items related to the Indian Child Welfare Act (ICWA).

See attached letter for comments from the California Department of Social Services.

[View Comment](#) 

## Docket Information

This document is contained in [ACF-2018-0004](#)

### Related Dockets:

- [ACF-2015-0001](#)
- [ACF-2018-0003](#)

### Related RINs:

None

### Related Documents:

- [Adoption and Foster Care Analysis and Reporting System](#)
- [Adoption and Foster Care Analysis and Reporting System...](#)

### Related Comments:

[View all](#)

\* This count refers to the total comment/submissions received on this *document*, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

Document text and images courtesy of the Federal Register

12/21/2020

Regulations.gov - Proposed Rule Document

- State commenters expressed concerns with data points that could not be easily reported to AFCARS because they are qualitative data points of which nuances about the circumstances of the child cannot be reported to AFCARS a quantitative data system, they are of a sensitive nature, or could not be aggregated easily at the national level for national statistics. These points included child, adoptive parent, guardian, and foster parent sexual orientation, health assessments, educational information, adoption and guardianship subsidy amounts, and information on legal guardians.
- The scope and complexity of data elements related to ICWA was also a concern. We note that most of the ICWA-related data elements in the December 2016 AFCARS final rule are not tied to statutory reporting requirements in title IV-E or IV-B. Rather, they were finalized to be consistent with the Department of Interior's (DOI) final rule on ICWA (published on June 14, 2016, 81 FR 38778) which is directed to state courts. Furthermore, the majority of the ICWA-related data elements related to activities undertaken by the court are not routinely collected in child welfare electronic databases. The court findings and other activity taking place before the court represent a shift away from a child welfare agency reporting on its own activity to reporting on the activity of an independent third party. This raises questions of efficiency, reliability and consistency, which section 479(c)(1) and 479(c)(2) of the Social Security Act require for the AFCARS data collection.
- We also anticipate states having many questions about how to report the ICWA-related data elements. HHS has no expertise in ICWA compliance, statute, and regulations and is not the cognizant authority over it, yet the December 2016 final rule places HHS in the position of interpreting various ICWA requirements when providing technical assistance to state title IV-E agencies on how to report on those data elements. How states report the data ultimately impacts practice, potentially introducing inconsistency with DOJ and DOI's interpretation of ICWA.
- Costs for system changes, training to consistently collect and report ICWA-related data and time to gather/enter data (sometimes manually) into the case management system.

The Supplemental Notice of Proposed Rulemaking that added the ICWA compliance data elements to the AFCARS was only open for comment for 30 days. This was an insufficient amount of time for states to fairly analyze unfamiliar data elements, accurately calculate burden associated with these elements, and move any comments through their chain of command for submission to HHS for consideration. The ANPRM, on the other hand, will be open for comment for 90 days. It asks title IV-E agencies and the public to comment on the data elements of the December 2016 final rule.

Therefore, in order to get additional feedback on these and other issues we are issuing a proposed rule to delay implementation of the December 2016 AFCARS final rule. As States must go to the expense to revise their data collection systems in response to the December 2016 final rule, we do not want states to incur these costs unnecessarily as we further assess burden under the rule. This is an opportunity for commenters to provide HHS with specific feedback on the data elements and how HHS can revise AFCARS to balance updating requirements, the need for better data, and the burden on title IV-E agencies. Through the aforementioned ANPRM commenters will have the opportunity to tie ICWA related data elements to HHS functions/provisions thus adequately justifying their inclusion in the AFCARS collection.

### Regulatory Impact Analysis

Executive Orders 12866, 13563, and 13771

<https://www.regulations.gov/document?D=ACF-2018-0004-0001>

3/5

HHS000035

12/21/2020

Regulations.gov - Proposed Rule Document

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with the Office of Management and Budget (OMB) and determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. ACF determined that the costs to title IV-E agencies as a result of this rule will not be significant as defined in Executive Order 12866 (have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Because the rule is not economically significant as defined in E.O. 12866, no cost-benefit analysis needs to be included in this NPRM. This proposed rule, if finalized as proposed, would be considered an E.O. 13771 deregulatory action.

### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to state and tribal title IV-E agencies.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$146 million. This proposed rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$146 million or more.

### Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 8.

### Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106-58) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This proposed rule will not have an impact on family well-being as defined in the law.

### Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. PRA rules require that ACF estimate the total burden created by this proposed rule regardless of what information is available. ACF provides burden and cost estimates using the best available information. Information collection for AFCARS is currently authorized under OMB number 0970-0422. This notice of proposed rulemaking does not make changes to the AFCARS requirements for title IV-E agencies; it delays the effective date and provides title IV-E agencies with additional time to comply with sections



12/21/2020

Regulations.gov - Proposed Rule Document

1355.41 through 1355.47. Thus, the annual burden hours for recordkeeping and reporting does not change from those currently authorized under OMB number 0970-0422. Therefore, we are not seeking comments on any information collection requirements through this NPRM.

## List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Computer technology, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: February 27, 2018.  
Steven Wagner,  
Acting Assistant Secretary for Children and Families.

Approved: March 8, 2018.  
Alex M. Azar II,  
Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR part 1355 as follows:

## Part 1355 General

1. The authority citation for part 1355 continues to read as follows:

### Authority

42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

2. Amend § 1355.40 by revising paragraph (a) to read as follows:

§  
1355.40 Foster care and adoption data collection.

(a) *Scope.* State and tribal title IV-E agencies must follow the requirements of this section and appendices A through E of this part until September 30, 2021. As of October 1, 2021, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

\* \* \* \* \*

[FR Doc. 2018-05038 Filed 3-13-18; 8:45 am]  
BILLING CODE 4184-25-P

<h1 style="margin: 0;">ACF</h1> <p style="margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	<b>1. Log No:</b> ACYF-CB-IM-18-03	<b>2. Issuance Date:</b> August 21, 2018
	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Title IV-E of the Social Security Act, Adoption and Foster Care Analysis and Reporting System (AFCARS)	

**INFORMATION MEMORANDUM**

**TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule to revise the implementation dates in 45 CFR section 1355.40 and Intent to issue a Notice of Proposed Rulemaking (NPRM) on revised AFCARS data points

**LEGAL AND RELATED:** Title IV-E of the Social Security Act; 45 CFR 1355

**PURPOSE:** The purpose of this Information Memorandum (IM) is to inform title IV-E agencies of the Children’s Bureau’s intent to publish a NPRM to revise the AFCARS data points. This IM also informs title IV-E agencies of the final rule regarding implementation of the December 2016 AFCARS final rule and briefly summarizes public comments received in response to the Advanced Notice of Proposed Rulemaking (ANPRM), published in the *Federal Register* on March 15, 2018 ([83 FR 11449](#)).

**BACKGROUND:**

- On December 14, 2016, the Children’s Bureau published a final rule promulgating revised AFCARS requirements ([81 FR 90524](#)) with an implementation date of October 1, 2019. Until that time, title IV-E agencies must continue to report data under the original AFCARS requirements at 45 CFR 1355.40 and the appendices to part 1355.
- The U.S. Department of Health and Human Service’s Regulatory Reform Task Force (created per [Executive Order 13777](#) issued February 24, 2017) identified the AFCARS 2016 final rule as one in which the reporting burden may impose costs that exceed benefits.
- Based on this determination, the Children’s Bureau issued in the *Federal Register* on March 15, 2018 two notices:
  - NPRM ([83 FR 11450](#)) that proposed to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-.47) by two years until October 1, 2021.
  - ANPRM ([83 FR 11449](#)) soliciting specific feedback on the AFCARS data points, costs to implement, and burden hours to complete the work required to comply with the

AFCARS requirements in the 2016 final rule and listed questions specifically asking for a response.

**INFORMATION:**

Notice of Intent to Issue a NPRM to Revise the AFCARS Data Points: The *Unified Agenda of Federal Regulatory and Deregulatory Actions* is a semiannual compilation of information about regulations under development by federal agencies, published in the spring and fall. The [spring 2018 Unified Agenda](#) lists a NPRM on AFCARS with an anticipated publication date of May 2019. This IM, along with the Unified Agenda, serves as a notice that the Children's Bureau will move forward with a new NPRM to revise the AFCARS data points.

Brief summary of ANPRM comments: In response to the ANPRM, we received 237 comments, which comprised of 38 states, 38 Indian tribes or consortiums, 64 organizations representing state or tribal interests, national public advocacy groups, professional associations, universities, and 97 private citizens. All but two states (36) supported making revisions to streamline the AFCARS regulation, which was based on each state's detailed self-assessment (provided via comments) of the cost and burden/work hours needed at various levels to complete the work required to comply with the AFCARS 2016 final rule. States shared similar concerns for implementing the requirements of the 2016 final rule such as the additional work needed to comply would pull valuable resources away from the field, decrease the amount of time caseworkers have to work with families, and that many new data points would be more accurately gathered and evaluated through a case review or other monitoring efforts. Most other advocacy and trade organizations, Indian tribes and organizations representing tribal interests, universities, private individuals, and other groups primarily focused their comments on which data points from the 2016 final rule to remove or retain. The majority of these commenters opposed streamlining for reasons such as, underscoring the importance of certain casework activities, showing national trends, and without any uniform, national data regarding certain aspects of the collection, policymakers do not understand the scope of issues to inform policy changes.

A more thorough analysis of the ANPRM comments will be included in the NPRM proposing to revise the AFCARS data points.

Implementation of the December 2016 Final Rule: The comment period for the NPRM on implementation delay ended on April 16, 2018. In response to the NPRM, we received 43 comments, which comprised of 12 states, six Indian tribes or consortiums, three organizations representing tribal interests, and 22 organizations and anonymous entities.

The Children's Bureau published in the Federal Register on August 21, 2018 a final rule to delay implementation of the December 2016 AFCARS final rule until October 1, 2020 ([83 FR 42225](#)).

/s/

---

Jerry Milner  
Acting Commissioner  
Administration on Children, Youth and Families

Attachments:

[AFCARS final rule on implementation delay](#)

**Disclaimer:** Information Memoranda (IMs) provide information or recommendations to states, tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

## LEGAL STATUS

This site displays a prototype of a "Web 2.0" version of the daily Federal Register. It is not an official legal edition of the Federal Register, and does not replace the official print version or the official electronic version on GPO's govinfo.gov.

The documents posted on this site are XML renditions of published Federal Register documents. Each document posted on the site includes a link to the corresponding official PDF file on govinfo.gov. This prototype edition of the daily Federal Register on FederalRegister.gov will remain an unofficial informational resource until the Administrative Committee of the Federal Register (ACFR) issues a regulation granting it official legal status. For complete information about, and access to, our official publications and services, go to [About the Federal Register](#) on NARA's archives.gov.

The OFR/GPO partnership is committed to presenting accurate and reliable regulatory information on FederalRegister.gov with the objective of establishing the XML-based Federal Register as an ACFR-sanctioned publication in the future. While every effort has been made to ensure that the material on FederalRegister.gov is accurately displayed, consistent with the official SGML-based PDF version on govinfo.gov, those relying on it for legal research should verify their results against an official edition of the Federal Register. Until the ACFR grants it official status, the XML rendition of the daily Federal Register on FederalRegister.gov does not provide legal notice to the public or judicial notice to the courts.

LEGAL STATUS

## Adoption and Foster Care Analysis and Reporting System

A Rule by the [Children and Families Administration](#) on 08/21/2018

**DOCUMENT DETAILS****Printed version:**

PDF (<https://www.govinfo.gov/content/pkg/FR-2018-08-21/pdf/2018-17947.pdf>)

**Publication Date:**

08/21/2018 (/documents/2018/08/21)

**Agencies:**

Administration for Children and Families (<https://www.federalregister.gov/agencies/children-and-families-administration>)

**Dates:**

This rule is effective on August 21, 2018. As of August 21, 2018, the effective date for amendatory instructions 3 and 5, published December 14, 2016 at 81 FR 90524 (/citation/81-FR-90524), is delayed to October 1, 2020.

**Effective Date:**

08/21/2018

**Document Type:**

Rule

**Document Citation:**

83 FR 42225

**Page:**

42225-42227 (3 pages)

**CFR:**

45 CFR 1355

**RIN:**

0970-AC76

**Document Number:**

2018-17947

Feedback <sup>LS</sup>

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

**DOCUMENT STATISTICS****Page views:**

1,752

as of 12/21/2020 at 12:15 pm EST

---

**DOCUMENT STATISTICS**

---

**ENHANCED CONTENT****Docket Number:**ACF-2018-0004 (<https://beta.regulations.gov/docket/ACF-2018-0004>)**Docket Name:**

AFCARS Implementation Delay

**Docket RIN**

0970-AC76

---

**ENHANCED CONTENT**

---

**PUBLISHED DOCUMENT****AGENCY:**

Children's Bureau (CB); Administration on Children, Youth and Families (ACYF); Administration for Children and Families (ACF); Department of Health and Human Services (HHS).

**ACTION:**

Final rule; delay of compliance and effective dates.

**SUMMARY:**

The Children's Bureau will delay the compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule for title IV-E agencies to comply with agency rules for an additional one fiscal year. We are delaying the effective date due to our advanced notice of proposed rulemaking (ANPRM), published on March 15, 2018, seeking public comment on suggestions for streamlining the AFCARS data elements and removing any undue burden related to reporting AFCARS data.

**DATES:**

This rule is effective on August 21, 2018. As of August 21, 2018, the effective date for amendatory instructions 3 and 5, published December 14, 2016 at 81 FR 90524 (/citation/81-FR-90524), is delayed to October 1, 2020.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401-5789, [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov) (<mailto:CBComments@acf.hhs.gov>).

**SUPPLEMENTARY INFORMATION:**



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

In the AFCARS final rule issued on December 14, 2016 (81 FR 90524 (/citation/81-FR-90524)), ACF provided an implementation timeframe of two fiscal years for title IV-E agencies to comply with §§ 1355.41 through 1355.47 (81 FR 90529 (/citation/81-FR-90529)). On February 24, 2017, the President issued Executive Order 13777 (/executive-order/13777) entitled “Enforcing the Regulatory Reform Agenda”. In response to the President's direction that federal agencies establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification, the HHS Task Force identified the AFCARS regulation as one where there may be areas for reducing reporting burden.

On March 15, 2018, ACF published a notice of proposed rulemaking (NPRM) proposing to revise the effective date in the regulation to provide an additional two fiscal years to comply with §§ 1355.41 through 1355.47 (83 FR 11450 (/citation/83-FR-11450)). The comment period ended on April 16, 2018. In response to the NPRM, we received 43 comments from 12 states, six Indian tribes or consortia, three organizations representing tribal interests, and 22 other organizations and anonymous entities. The analysis of the comments may be found in the section-by-section discussion of this final rule.

Based on our analysis of the comments, in this final rule ACF revised § 1355.40 to provide an additional fiscal year to comply with §§ 1355.41 through 1355.47. This also serves as a notice to title IV-E agencies that we are delaying the implementation timeframe for title IV-E agencies to make revisions to their systems to comply with §§ 1355.41 through 1355.47.

ACF finds good cause for these amendments to become effective on the date of publication of this action. The APA allows an effective date less than 30 days after publication as “provided by the agency for good cause found and published with the rule” (5 U.S.C. 553 ([\(https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=553&type=usc&link-type=html\)](https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=553&type=usc&link-type=html))(d)(3)). A delayed effective date is unnecessary in this case because, as stated above, any delay might lead to □ title IV-E agencies diverting resources to unnecessary changes to their data systems. Furthermore, this rule does not establish additional regulatory obligations or impose any additional burden on regulated entities. As a result, affected parties do not need time to prepare before the rule takes effect. Therefore, ACF finds good cause for these amendments to become effective on the date of publication of this action.

□ Start Printed  
Page 42226

## Section-by-Section Discussion

### Section 1355.40 Foster Care and Adoption Data Collection

We revised the effective dates in the regulation to provide an additional fiscal year to comply with §§ 1355.41 through 1355.47. State and tribal title IV-E agencies must continue to report AFCARS data in the same manner they do currently, per § 1355.40 and appendices A through E of part 1355 until September 30, 2020. As of October 1, 2020, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

### Comment Analysis

In general, all state commenters supported the delay and all of the Indian tribes, organizations representing tribal interests, and all but one organization opposed delaying implementation of the AFCARS 2016 final rule. Commenters in support of the delay stated that the delay will provide time for states to fully analyze system, cost, and training work needed to meet new AFCARS requirements, revise and update systems (which may include instituting a Comprehensive Child Welfare Information System) to move to a CCWIS, and allows ACF time to provide needed technical assistance and guidance on the new AFCARS requirements. Commenters in opposition of a delay of the 2016 final rule stated that a delay deprives federal, state, and tribal governments

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

of critical case-level data on information that is not currently reported to AFCARS that can be used to build an evidence base for federal, state, and tribal policymaking and guide budget decisions for achieving positive outcomes. They also stated that interested parties were already provided ample notice and opportunities to comment and the 2016 final rule thoroughly responded to comments.

We understand both the support and opposition for a delay expressed by commenters. We understand that information reported to AFCARS is important and the 2016 final rule is the first update to the AFCARS regulations since 1993. We must balance the need for updated data with the needs of our grantees, the title IV-E agencies, that must revise their systems to meet new AFCARS requirements and will ultimately be held accountable via compliance and penalties to report the data (see 45 CFR 1355.46 (/select-citation/2018/08/21/45-CFR-1355.46) and 1355.47). Therefore, we believe that a balanced compromise is to delay implementation of the 2016 final rule for one year. This means that as of October 1, 2020, state and tribal title IV-E agencies must comply with the revision to AFCARS made by the 2016 final rule (§§ 1355.41 through 1355.47).

## Regulatory Impact Analysis

### Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with the Office of Management and Budget (OMB) and determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. ACF determined that the costs to title IV-E agencies as a result of this rule will not be significant as defined in Executive Order 12866 (have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Because the rule is not economically significant as defined in E.O. 12866, no cost-benefit analysis needs to be included in this final rule. This final rule is considered an E.O. 13771 (/executive-order/13771) deregulatory action.

### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605 (<https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=605&type=usc&link-type=html>)(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this final rule will not result in a significant impact on a substantial number of small entities. This final rule does not affect small entities because it is applicable only to state and tribal title IV-E agencies.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104-4 (<https://api.fdsys.gov/link?collection=plaw&congress=104&lawtype=public&lawnum=4&link-type=html>)) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$146 million. This final rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$146 million or more.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

## Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 8 (<https://api.fdsys.gov/link?collection=uscode&title=5&year=mostrecent&section=8&type=usc&link-type=html>).

## Executive Order 13132 (/executive-order/13132)

Executive Order 13132 (/executive-order/13132) requires that federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. Consistent with E.O. 13132 (/executive-order/13132) and *Guidance for Implementing E.O. 13132 (/executive-order/13132)* issued on October 28, 1999, the Department must include in “a separately identified portion of the preamble to the regulation” a “federalism summary impact statement” (Secs. 6(b)(2)(B) & (c)(2)). The Department’s “federalism summary impact statement is as follows—

- “A description of the extent of the agency’s prior consultation with State and local officials”—ACF held an informational call for the NPRM on April 5, 2018 and the public comment period was open from March 15, 2018 to April 16, 2018 where we solicited comments via *regulations.gov*, email, and postal mail.
- “A summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation”—As we discussed in the preamble to this final rule, state commenters support delaying the compliance date for the 2016 AFCARS final rule; however, Indian tribes, organizations representing tribal interests, and all but one organization opposed delaying implementation of the 2016 final rule. Our need for issuing this final rule is to provide the title IV-E agencies that must submit AFCARS time to revise systems to meet new AFCARS requirements. We provide an additional year to balance the need for updated data with the needs of our grantees.
- “A statement of the extent to which the concerns of State and local officials have been met” (Secs. 6(b)(2)(B) &

---

📄 Start Printed Page 42227

6(c)(2)—As we discuss in the section-by-section discussion preamble, we proposed in the NPRM to delay for an additional two fiscal years the date by which title IV-E agencies must comply with the 2016 final rule. Our balance to meet the states’ needs for a delay, as expressed in their comments, is to provide an additional one year.

## Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106-58 (<https://api.fdsys.gov/link?collection=plaw&congress=106&lawtype=public&lawnum=58&link-type=html>)) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency’s determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This final rule will not have an impact on family well-being as defined in the law.

## Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 35 (<https://api.fdsys.gov/link?collection=uscode&title=44&year=mostrecent&section=35&type=usc&link-type=html>), as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. PRA rules require that ACF estimate the total burden created by this proposed rule regardless of what information is available. ACF provides burden and cost estimates using the best available information. Information collection for AFCARS is currently authorized under OMB number 0970-0422. This final rule does not make changes to the AFCARS requirements for title IV-E agencies; it delays the effective date and provides title IV-E agencies with additional time to comply with §§ 1355.41 through 1355.47. Thus, the annual burden hours for recordkeeping and reporting does not change from those currently authorized under OMB number 0970-0422. Therefore, we are not seeking comments on any information collection requirements through this final rule.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

### **Tribal Consultation Statement**

ACF is committed to consulting with Indian tribes and tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has tribal implications. During the comment period, CB held an information session on April 5, 2018 where the NPRM was presented by CB officials. Prior to this information session, the NPRM was linked to on the CB website, a link to the NPRM was emailed to CB's tribal lists (on March 13, 2018 when the NPRM was available for public inspection and March 15, 2018 when the NPRM was published), and CB issued ACYF-CB-IM-18-01 (issued March 16, 2018). Additionally, ACF held a tribal consultation on November 6, 2017 during which tribes requested that ACF leave the 2016 final rule in place, stating that the ICWA-related data elements are very important for accountability. At a meeting with tribal representatives at the Secretary's Tribal Advisory Committee on May 9 and 10, 2018, representatives stated the following: they support the 2016 final rule; they have concerns that states are not following ICWA; the ICWA-related data elements are critical to informing Congress, HHS, states, and tribes on how Native children and families are doing in state child welfare systems; and AFCARS information would help inform issues such as foster care disproportionality.

As we developed this final rule, we carefully considered the comments from Indian tribes and organizations representing tribal interests, whose comments were to not delay the implementation of the 2016 final rule. However, we must balance the need for data with the needs of our grantees, the title IV-E agencies, that must revise their systems to meet new AFCARS requirements and will ultimately be held accountable via compliance and penalties to report the data.

### **List of Subjects in 45 CFR Part 1355 (/select-citation/2018/08/21/45-CFR-1355)**

- Adoption and foster care
- Child welfare
- Grant programs—social programs

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: July 20, 2018.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

Approved: July 25, 2018

Alex M. Azar II,

Secretary.

For the reasons set forth in the preamble, we amend 45 CFR part 1355 (/select-citation/2018/08/21/45-CFR-1355) as follows:

### **PART 1355—GENERAL**

1. The authority citation for part 1355 continues to read as follows:

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

**Authority:** 42 U.S.C. 620 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent&section=620&type=usc&link-type=html>) *et seq.*, 42 U.S.C. 670 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent&section=670&type=usc&link-type=html>) *et seq.*; 42 U.S.C. 1302 (<https://api.fdsys.gov/link?collection=uscode&title=42&year=mostrecent&section=1302&type=usc&link-type=html>).

2. Amend § 1355.40 by revising paragraph (a) to read as follows:

**§ 1355.40 Foster care and adoption data collection.**

(a) *Scope.* State and tribal title IV-E agencies must follow the requirements of this section and appendices A through E of this part until September 30, 2020. As of October 1, 2020, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

★\*                      ★\*                      ★\*                      ★\*                      ★\*

[FR Doc. 2018-17947 (/a/2018-17947) Filed 8-20-18; 8:45 am]

BILLING CODE 4184-25-P

---

PUBLISHED DOCUMENT

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	<b>1. Log No:</b> ACYF-CB-IM-19-02	<b>2. Issuance Date:</b> April 19, 2019
	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Title IV-E of the Social Security Act, Adoption and Foster Care Analysis and Reporting System (AFCARS)	

## INFORMATION MEMORANDUM

**TO:** State, Tribal, and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

**SUBJECT:** Notice of Proposed Rulemaking (NPRM) on revised AFCARS data elements

**LEGAL AND RELATED:** Section 479; Title IV-E of the Social Security Act; 45 CFR 1355

**PURPOSE:** The purpose of this Information Memorandum is to inform title IV-E agencies that the Children's Bureau published a NPRM to revise the AFCARS data elements in the *Federal Register* on April 19, 2019 ([84 FR 16572](#)).

### BACKGROUND:

- Currently, title IV-E agencies collect and report to AFCARS case-level information on all children in foster care and those who have been adopted with title IV-E agency involvement (regulated under [45 CFR 1355.40](#) and the [appendices of 1355](#)). Title IV-E agencies must submit the AFCARS data twice a year based on two six-month reporting periods.
- On December 14, 2016, the Children's Bureau (CB) published a final rule promulgating revised AFCARS requirements ([81 FR 90524](#)). It significantly expanded the data elements required to be reported by state and tribal title IV-E agencies and for the first time, required state title IV-E agencies to report to AFCARS information on the Indian Child Welfare Act of 1978 (ICWA).
- [Executive Order \(E.O.\) 13777](#) (issued February 24, 2017) directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The Department of Health and Human Services' Regulatory Reform Task Force identified the 2016 AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.
- In response to E.O. 13777, CB published an Advance NPRM (ANPRM) on March 15, 2018 ([83 FR 11449](#)) that solicited comments on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the 2016 final rule.



**INFORMATION:**

Thirty-six states provided comments indicating the 2016 final rule was too burdensome and should be streamlined. After analyzing the ANPRM comments, CB published this 2019 NPRM proposing to streamline the AFCARS data elements in the 2016 final rule to reduce title IV-E agencies' reporting burden. In determining the data elements to propose, we reviewed each data element in the 2016 final rule and evaluated whether it is needed for the purposes of a title IV-B/IV-E statutory requirement, program monitoring, Congressional reporting, or budgeting.

A brief summary of the major changes proposed in the 2019 NPRM are below:

- **Data elements retained:** We propose to retain data elements on the child, placements, and parents including the child's health, behavioral or mental health conditions, circumstances present at removal, prior adoption and guardianship, youth who are pregnant or parenting, youth who may be victims of sex trafficking, permanency plans, and caseworker visits.
- **Data elements modified:** We propose to retain and simplify data elements on the child and placements including the child's health assessments, child financial and medical assistance, educational information, and special education to keep only essential information as identified by ANPRM commenters. We also propose to reduce the ICWA-related data elements to information that is essential for identifying nationally the population of children to whom ICWA applies.
- **Data elements removed:** We propose to remove data elements related to sexual orientation for the child, adoptive parents, foster parents, and legal guardians, educational stability, private agency placement, juvenile justice involvement, and transition planning because we do not use the information for the reasons cited above. We propose to remove data elements that required states to report detailed information on ICWA's requirements and are tied to the Department of Interior's regulations, the ICWA statute, and court actions, including: court findings related to involuntary and voluntary termination of parental rights, including good cause findings, qualified expert witness testimony, and information on active efforts.

We did not propose substantive changes to the following sections of the final AFCARS rule: Reporting Populations, Adoption and Guardianship Assistance File, Data Structure, Data File Standards, Compliance and Penalties. In some of these areas, we propose technical or conforming changes only.

More information on the AFCARS NPRM and previous rulemakings may be found on the Children's Bureau website at [What's New in Laws & Policies](#).

**COMMENTS:** Please submit comments on the 2019 NPRM to [Regulations.gov](#) on or before June 18, 2019.

/s/

\_\_\_\_\_  
Jerry Milner  
Acting Commissioner  
Administration on Children, Youth and Families

Attachment:  
[AFCARS 2019 NPRM](#)

**Disclaimer:** Information Memoranda (IMs) provide information or recommendations to states, tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.

HHS000049

12/21/2020

Regulations.gov - Proposed Rule Document

Regulations.gov will start redirecting users to the Beta at <https://beta.regulations.gov> on Tuesdays and Thursdays for 24 hours starting at 8am ET. Please note that all comments that are submitted through the Beta, both during the redirect and regular operations are provided to agencies.



## Adoption and Foster Care Analysis and Reporting System

This Proposed Rule document was issued by the **Administration of Children and Families (ACF)**

Comment Period Closed  
Jun 18 2019, at 11:59 PM ET

For related information, [Open Docket Folder](#)

### Action

Notice of proposed rulemaking.

### Summary

ACF proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. This notice of proposed rulemaking (NPRM) amends the AFCARS regulations that require title IV-E agencies to collect and report data to ACF on children in out-of-home care, who exit out-of-home care to adoption or legal guardianship, and children who are covered by a title IV-E adoption or guardianship assistance agreement.

### Dates

In order to be considered, we must receive written comments on this NPRM on or before June 18, 2019.

### Addresses

We encourage the public to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the proposed rule, please go to <http://www.regulations.gov/>. You may submit comments, identified by docket number, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-Mail:** [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include [docket number and/or RIN number] in subject line of the message.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document. Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork

ID: ACF-2018-0003-0224

View original printed format:

### Document Information

**Date Posted:**

Apr 19, 2019

**RIN:**

0970-AC72

**CFR:**

45 CFR Part 1355

**Federal Register Number:**

2019-07827

[Show More Details](#)

### Comments

**150**  
Comments Received \*

See attached

[View Comment](#)

See attached

[View Comment](#)

See attached

[View Comment](#)

### Docket Information

12/21/2020

Regulations.gov - Proposed Rule Document

Reduction Act (PRA) section of this preamble. A copy of these comments also may be sent to the HHS representative listed after the For Further Information Contact heading.

## For Further Information Contact

Kathleen McHugh, Director, Policy Division, Children's Bureau,  
[cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov).

## Supplementary Information

### Table of Contents

- I. Executive Summary per Executive Order 13563
- II. Background on AFCARS and Regulation Development
- III. Overview of Major Proposed Revisions to Data Elements
- IV. Implementation Timeframe
- V. Public Participation
- VI. Section-by-Section Discussion of Regulatory Provisions
- VII. Regulatory Impact Analysis
- VIII. Tribal Consultation Statement

### I. Executive Summary per Executive Order 13563

Executive Order (E.O.) 13563 requires that regulations be accessible, consistent, written in plain language, and easy to understand. This means that regulatory preambles for lengthy or complex rules (both proposed and final) must include executive summaries. Below is the executive summary for this AFCARS NPRM.

#### (1) Purpose of the AFCARS NPRM.

(a) *The need for the regulatory action and how the action will meet that need:* This NPRM proposes revisions to streamline the AFCARS data elements that were finalized in the AFCARS final rule published on December 14, 2016 (81 FR 90524). This action is in response to E.O. 13777 (issued February 24, 2017) that directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

(b) *Legal authority for the final rule:* Section 479 of the Social Security Act (the Act) mandates HHS regulate a data collection system for national adoption and foster care data. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

#### (2) Summary of the Major Provisions of the NPRM.

(a) *Data Elements.* We propose to remove and replace the data elements as described below to reduce the AFCARS reporting burden. We propose to modify the data elements in the out-of-home care data file (§ 1355.44) that title IV-E agencies must report. In particular, we propose to streamline data elements related to child information, placements, and permanency planning

*This document is contained in*  
[ACF-2018-0003](#)

#### Related Dockets:

- [ACF-2015-0001](#)
- [ACF-2018-0004](#)

#### Related RINs:

None

#### Related Documents:

- [Adoption and Foster Care Analysis and Reporting System](#)
- [Adoption and Foster Care Analysis and Reporting System...](#)

#### Related Comments:

[View all](#)

\* This count refers to the total comment/submissions received on this *document*, as of 11:59 PM yesterday. Note: Agencies review all submissions, however some agencies may choose to redact, or withhold, certain submissions (or portions thereof) such as those containing private or proprietary information, inappropriate language, or duplicate/near duplicate examples of a mass-mail campaign. This can result in discrepancies between this count and those displayed when conducting searches on the Public Submission document type. For specific information about an agency's public submission policy, refer to its website or the Federal Register document.

Document text and images  
 courtesy of the  
 Federal Register

12/21/2020

Regulations.gov - Proposed Rule Document

based on public comments to the Advanced Notice of Proposed Rule Making (ANPRM) and the work of federal experts with an interest in AFCARS data. We retained all data elements in the adoption and guardianship assistance data file (§ 1355.45) with conforming changes based on edits we made in § 1355.44.

(b) *Conforming Changes*. We propose to make conforming changes to §§ 1355.41, 1355.43, and 1355.46 to update the citations or dates as a result of our proposed amendments in other sections.

(3) *Costs and Benefits*. The benefits are that we will streamline the AFCARS data elements which will reduce the title IV-E agency reporting burden from the 2016 final rule, thus resulting in an estimated \$39.2 million in total annual savings. (Affected entities will continue to incur \$43.7 million in annual costs, net of federal reimbursements, attributable to the 2016 final rule.) This NPRM, if finalized as proposed, is expected to be an E.O. 13771 deregulatory action.

## II. Background on AFCARS and Regulation Development

AFCARS is authorized by section 479 of the Act, which mandates that HHS regulate a data collection system for national adoption and foster care data. Title IV-E agencies must submit data files on a semi-annual basis to ACF. We use AFCARS data for a variety of requirements, including but not limited to budgeting, providing national statistics on the child welfare population, providing reports to Congress, and monitoring compliance with title IV-B and IV-E requirements. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995. At that time, the requirements were set forth in regulations at 45 CFR 1355.40 through 1355.47 and the appendices to part 1355. Per the 2016 final rule, the requirements are set forth in regulations at 45 CFR 1355.40 through 1355.47. The regulations specify the reporting population, standards for compliance, and all data elements.

We published the 2016 final rule revising the AFCARS regulations on December 14, 2016 (*81 FR 90524*) and it included child welfare legislative changes that occurred since 1993, data elements related to the Indian Child Welfare Act (ICWA), and implemented fiscal penalties for noncompliant AFCARS data. The 2016 final rule provided two fiscal years for title IV-E agencies to comply with sections 1355.41 through 1355.47 and required title IV-E agencies to continue to report AFCARS data in accordance with section 1355.40 and the appendices to part 1355 until September 30, 2019.

### Executive Order 13777

On February 24, 2017, the President issued E.O. 13777 *Enforcing the Regulatory Reform Agenda* to lower regulatory burdens on the American people. It directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

In response to the E.O. 13777, ACF published two notices in the Federal Register on March 15, 2018:

- NPRM proposing to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-.47) by an additional two fiscal years, until October 1, 2021 (*83 FR 11450*).
- ANPRM soliciting specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required

12/21/2020

Regulations.gov - Proposed Rule Document

to comply with the 2016 final rule and listed questions for which we sought a response (83 FR 11449).

### Implementation Delay of the 2016 Final Rule

The comment period ended on April 16, 2018. In response to the NPRM on implementation delay, we received 43 comments and based on the comments, we issued a final rule to delay the implementation of the 2016 final rule for one additional fiscal year, until October 1, 2020 (Published August 21, 2018, 83 FR 42225). However, since we are proposing in this NPRM to revise the AFCARS data elements, we will revisit this implementation date to provide a timeframe to allow title IV-E agencies time to comply with the revised AFCARS data elements when we finalize this proposal through a final rule.

### Advance Notice of Proposed Rulemaking

The ANPRM's comment period was open for 90 days and ended on June 13, 2018. Through the ANPRM, ACF asked the public to give specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the AFCARS requirements in 2016 final rule. The ANPRM listed questions specifically asking the public to comment on regarding the 2016 final rule:

- Identify the data elements that are overly burdensome for title IV-E agencies,
- Identify limitations title IV-E agencies will encounter in data reporting, including an explanation with cost and burden estimates for recordkeeping, reporting, and the number of children in foster care who are Indian children as defined in ICWA, and
- Recommendations on data elements to retain, simplify, and remove with justifications, such as its use at the national level or why the data would not be reliable in national statistics and would be better asked through a qualitative case review.

In response to the ANPRM, we received 237 comments from 38 states, 38 Indian tribes or consortiums, 62 organizations representing state or tribal interests, national public advocacy groups, professional associations, universities, two members of Congress, and 97 private citizens. The following is a summary and analysis of the public comments relevant to the specific issues for which we sought input.

*Summary of State Comments:* Thirty-six of the 38 states supported making revisions to streamline the AFCARS regulation. This was based on each state's self-assessment of the cost and burden/work hours needed at various levels of the agency and the number of hours it will take to complete the work required to comply with the AFCARS 2016 final rule. States shared similar concerns for implementing the requirements of the 2016 final rule such as: (1) Requiring the additional data elements could adversely impact their ability to provide safety, permanency, and well-being for youth in their care; (2) the additional work needed to comply would pull valuable resources away from the field and decrease the amount of time caseworkers have to work with families and children toward reunification, safety and risk assessments and planning, adoption, and other permanency activities; and (3) many new data elements are qualitative and therefore more accurately evaluated by quality assurance staff, through a case review or other monitoring efforts. The comments from the two states that did not support revising AFCARS focused on the value of the information that may be gleaned from certain data elements related to sexual orientation and ICWA. Even though the vast majority of states supported streamlining the AFCARS data elements, they also expressed that the 2016 final rule was a considerable improvement to the current AFCARS, will improve data reporting, and provide national

12/21/2020

Regulations.gov - Proposed Rule Document

information on a number of new topics, including ICWA, health needs, and permanency. States recognized that more comprehensive data allows them to better understand the children and families they serve. However, they felt that the 2016 final rule was far-reaching and made suggestions for streamlining the data elements, based on their cost and burden analysis.

*State Comments regarding Burden Estimates:* States ranged considerably in estimating the work needed and length of time it would take to comply with the 2016 final rule. The variability in state estimates is expected and appropriate because there is considerable variability across states in sophistication and capacity of information systems, availability of both staff and financial resources, and populations of children in care. It is expected for a state with a large number of children in foster care to provide a much different burden estimate than a state with fewer children in foster care. Each state made a case about the increased and excessive burden as it applied to that specific state. States estimated it would take between 200 to 25,000 hours to accomplish tasks related to the ICWA-related data elements and 800 to 70,000 hours for completing work on all other data elements. Some of the tasks associated with these wide-ranging hours included:

- Developing or modifying policies, procedures, rules, case management systems, and electronic case records to comply with the AFCARS requirements,
- Searching for and gathering the information required to be reported for the data elements,
- Entering the information into the system, and
- Training staff on the requirements and changes.

Hours related to developing and administering staff training ranged from 20 to 102,000 hours depending on the number of staff that require training and materials that must be developed.

*State Comments regarding Cost Estimates:* States' estimates varied considerably, depending on the size of the state's out-of-home care population, staffing needs, the length of time states have to implement new AFCARS requirements, and the level of current system functionality, including modifications needed and data exchanges with other agency systems. As mentioned previously, variability in state cost estimates is appropriate because significant differences exist across state systems, resources, and populations of children in care. States estimated that total costs to comply with the 2016 final rule ranged from \$1 million for one year to \$45 million over multiple years. They provided ranges for specific costs, such as \$41 million to hire and train new staff for administrative support, \$600,000 to \$1 million for total initial costs, and \$741,000 to \$11 million for ongoing costs. These costs included:

- Analyzing policies, practice, and casework to determine and implement modifications to capture and report data,
- Systems changes (for example, contract and staff costs to revise systems),
- Developing and administering staff training, ongoing monitoring, and quality assurance, and
- Reporting the data to ACF.

*State Comments regarding Data Elements:* Based in large part on the cost and hours required to complete the work to comply with the 2016 final rule, 36 states are in favor of streamlining the data elements in the 2016 final rule, many of whom provided recommendations. States recommended revisions to the data elements around education, health assessments and conditions, youth pregnancy/fathering, siblings, prior adoptions, caseworker visits, and sex trafficking. The reasons provided for streamlining included that it would be costly to modify their systems to report so many new data elements



12/21/2020

Regulations.gov - Proposed Rule Document

(compared to the AFCARS prior to the 2016 final rule) and they did not see the benefit at the national level for providing new information that was not explicitly used for monitoring. A third of the states expressed concerns with the data elements around sexual orientation and recommended they be removed due to reasons such as it will not be reliable because youth would self-report, which could result in an undercount, and due to the sensitive and private nature of the information, they questioned the implications of having this information in a government record. Regarding the ICWA-related data elements, half of the states expressed concern with the large number of and detailed questions asked related to ICWA's requirements, with five states expressly asking for no ICWA-related data elements in AFCARS. Many states felt that some of the ICWA-related data elements in the 2016 final rule are redundant, overly detailed, could be streamlined, or are too specific for a national data set and are better suited for a qualitative review. Four states reported that ICWA-applicable children in their out-of-home care populations were well under one percent (1%). However, states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.

*Summary of Comments from Indian Tribes and Organizations Representing Tribal Interests:* The 38 Indian tribes/consortiums and all organizations representing tribal interests opposed streamlining the AFCARS data elements and primarily focused their comments on ICWA's requirements and the ICWA-related data elements. They did not provide specific comments on or estimates for cost or burden related to the 2016 final rule. In general, they expressed that the state burden in collecting the ICWA-related data elements is not significant enough to warrant streamlining it because of their concerns regarding ICWA compliance. Most of the commenters provided the following general reasons for keeping all ICWA-related data elements in AFCARS:

- ICWA has been law for 40 years but there has been little in-depth data and limited federal oversight regarding this law.
- Collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families are kept together when possible and provide insight into state compliance with ICWA's requirements.
- Without any uniform, national data regarding ICWA's requirements, policymakers do not understand the scope of issues to inform policy changes.
- While some Indian tribes reported good working relationships with some states, the commenters expressed concerns that there are children in state custody who are not identified as Indian children and thus are not protected under ICWA.

Largely, the commenters representing tribal interests expressed support for retaining all of the data elements in the 2016 final rule and specifically, all of the ICWA-related data elements for similar reasons as noted above. They also expressed that:

- States should currently be asking questions that ascertain whether a child is an Indian child as defined in ICWA, including inquiring about the family's tribal membership status,
- Specific data elements on notification of proceedings and transfers to tribal court are important because the timelines in ICWA are rarely met, and
- Information on termination of parental rights, removals under ICWA, and placement preferences are important for determining ICWA compliance.

12/21/2020

Regulations.gov - Proposed Rule Document

Regarding the other data elements in the 2016 final rule, the commenters largely supported those for reasons such as the information will underscore the importance of certain casework activities (e.g., sibling placement whenever possible) and it will show trends in removal circumstances, placements, and permanency outcomes that will inform policymaking and provide a basis for education and training.

*Summary of Comments from Organizations and Other Entities:* The two members of Congress and most other advocacy and trade organizations, universities, private individuals, and other groups primarily focused their comments on which data elements from the 2016 final rule to remove or retain. They did not provide specific comments on or estimates for cost or burden related to any aspect of the 2016 final rule. The majority of these commenters opposed streamlining the data for reasons similar to the commenters representing tribal interests, such as underscoring the importance of certain casework activities and showing national trends. The commenters provided broad commentary on the benefit of having new data outweighs the burden of having to report it. A few commenters supported streamlining based on the cost and system changes states will need to make to comply with AFCARS requirements. We received numerous comments that were outside the scope of the ANPRM, which did not address the questions for which we sought public comment, such as there has been ample opportunities to comment on AFCARS via prior rulemakings, repeated requests for feedback is an undue burden, and ACF's authority to collect ICWA-related data elements in AFCARS.

Commenters expressed support and some offered modifications for particular data elements in the 2016 final rule such as health assessments, educational status and special education, placement types, caseworker visits, circumstances present at removal, prior adoptions, title IV-E guardianships, youth who are pregnant or parenting, and youth who may be victims of sex trafficking. They suggested that updates to AFCARS were long overdue and that the data elements related to ICWA and sexual orientation in particular will yield important national information because current methods of reporting, for example via the Child and Family Services Plans (CFSP) and case file reviews, do not result in reliable or consistent data, thus are ineffective at providing a national picture of children placed in out-of-home care.

*Comment Analysis:* We reviewed and analyzed all of the ANPRM comments, costs, and burden estimates and considered them as it related to meeting the requirements of E.O. 13777. ACF heard the concerns and interests of all stakeholders and after careful consideration, we believe that proposing revisions to the AFCARS regulation through a NPRM is warranted and within the spirit of E.O. 13777 to streamline and reduce burden on title IV-E agencies.

Commenters sufficiently argued that many new data elements are qualitative and therefore more accurately evaluated by quality assurance staff, through a case review, or other monitoring efforts. We must strongly weigh the desire for more information with the burden on those who are required to report it. The need for streamlining was convincingly argued through the states' detailed work and cost estimates that the 2016 final rule has many data elements that can be streamlined while still providing critical information on the out-of-home care population from a national perspective.

More states submitted comments and more detailed comments and cost/burden estimates in response to the ANPRM than in response to our previous AFCARS proposals, thereby providing us with much more rich and valuable information than we have had to date. Most of the state comments to the ANPRM were detailed and contained comprehensive burden and cost

12/21/2020

Regulations.gov - Proposed Rule Document

estimates illustrating the work they will have to undergo to implement the 2016 final rule. While some states indicated that the 2016 final rule made improvements in the AFCARS requirements that will enhance the knowledge about the children/youth in out-of-home care, the vast majority agreed and convincingly articulated that some of the data elements should be streamlined.

Regarding the ICWA-related data elements, section 479(c)(1) of the Act requires that any data collection system developed and implemented under this section must avoid unnecessary diversion of resources from agencies. Requiring every state to modify its systems to be able to report on a large number of data elements when the foster care population does not reflect that the data elements will be applicable to a majority of their children does not meet this mandate. Additionally, according to AFCARS data on the race\ethnicity distribution of children\youth in care as of September 30, 2016, in 33 states, children who have a reported race as American Indian/Alaskan Native made up less than one percent of the children in foster care. We believe AFCARS can be streamlined in a way that is responsive to all concerned and in a way that can balance the need for updated data with reducing the burden on title IV-E agencies.

In response to the commenters that supported the data elements as promulgated in the 2016 final rule, we note that title IV-E agencies are to develop case management/electronic case records that meet the agency's business need. As such, title IV-E agencies may collect all of the data elements contained in the 2016 final rule regardless of what is ultimately required to be reported to ACF by title IV-E agencies in a rule that finalizes this NPRM. The AFCARS data elements are information that we require be reported to ACF, but we understand that title IV-E agencies collect more information in their own case records to support case practice that meets the needs of the children and families they serve. We commend the willingness to collect a more comprehensive array of information. However, the information we require title IV-E agencies to report to ACF via AFCARS must take into consideration and reflect the circumstances and capacity of all title IV-E agencies in setting the AFCARS requirements.

ACF understands and appreciates that Congress and stakeholders are interested in the well-being of children in foster care and we understand that national data about these children is useful for many reasons. However, the vast majority of commenters that opposed streamlining are not required to report AFCARS data and did not offer any specific estimates regarding the burden or cost placed on reporting title IV-E agencies. These commenters believed it was necessary for agencies to report qualitative data on particular topics through AFCARS for policy making purposes and justified it with general statements that the benefits of more data outweigh the burden to report it. However, it was not well illustrated why AFCARS is the best vehicle for collecting this data when there are other effective options for gathering qualitative information at the national level, such as via surveys, research, or the Child and Family Services Review.

The suggestion that more data elements in AFCARS is essential for policy making was not sufficiently validated in the ANPRM comments. It would have been useful if the commenters identified the specific policies that they felt needed the detailed level of AFCARS data so urgently and why AFCARS specifically is the best means for collection of this data. Congress has passed approximately 24 laws that significantly amended federal child welfare programs since 1995, when AFCARS became effective. These policy changes were made despite not having the additional data from the 2016 final rule. Congress recently amended the statute at section 479 of the Act to require data elements it deems relevant for national public interest. For example, Congress required collection of information on sex trafficking

12/21/2020

Regulations.gov - Proposed Rule Document

victims (section 479(c)(3)(E) of the Act) and prior adoptions/guardianships (section 479(d) of the Act).

Based on state cost estimates, ACF is also concerned that a significant expansion of AFCARS at this time would negatively impact states' ability to take advantage of the new title IV-E prevention services program (see section 471(e) of the Act). Title IV-E is a cost reimbursement program, therefore, states must secure funding for the services, interventions, evaluation, data collection, and reporting out of their own resources before being reimbursed by the federal government for a portion of those costs. State cost estimates of the 2016 final rule are significant. Imposing additional reporting costs at this time, coupled with the new limits on federal funding for foster care maintenance payments for children in certain congregate care facilities and the reinstatement of eligibility criteria for infants and children up to age two in the title IV-E adoption assistance program included in the *Family First Prevention Services Act* (Public Law (Pub. L.) 115-123) may severely impede states' ability to opt into the title IV-E prevention services program.

### Input From Federal Agency Experts

As part of the process to meet the requirements of E.O. 13777 and on-going intra-agency collaboration related to data collection and analysis at ACF, the Children's Bureau consulted with the Department's subject matter experts with an interest in AFCARS data. We reviewed each data element in the 2016 final rule and evaluated whether it is needed for a specific purpose, such as a title IV-B/IV-E statutory requirement and program monitoring, Congressional reporting, or budgeting, and to specifically identify whether including the data in AFCARS would improve the accuracy and reliability of the data. Given current budgetary constraints on title IV-E and federal agencies, the objective was to be clear on how each data element meets a mandate and how ACF will use the data, thus justifying it being a requirement for reporting. The subject matter experts identified a number of data elements that do not have a specific purpose for title IV-B/IV-E statute or program monitoring, Congressional reporting, or budgeting. Additionally, the Children's Bureau consulted with representatives of the Department of Interior (DOI) regarding the ICWA-related data elements to retain in AFCARS.

After considering all input from ANPRM commenters and the Department's subject matter experts with an interest in AFCARS, ACF proposes to streamline the AFCARS data elements to what ACF believes is a reasonable amount. We believe that this proposal meets the requests from states to streamline and reduce redundancies in the regulation; from Indian tribes, tribal organizations, and other stakeholders for keeping data elements related to specific areas; and to meet the requirements of E.O. 13777.

### III. Overview of Major Proposed Revisions to Data Elements

The revisions proposed in this NPRM reflect ACF's review and analysis of the ANPRM comments and input from the Department's subject matter experts with an interest in AFCARS data, and consideration related to meeting the requirements of the E.O. 13777. The proposed revisions streamline the data elements to ones with a specific purpose for title IV-B/IV-E statute and program monitoring, Congressional reporting, budgeting, and areas where reporting of required information to AFCARS would improve the accuracy and reliability of the data in AFCARS. An overview of the major proposed revisions to the AFCARS data elements follows.

For the out-of-home care data file, the 2016 final rule required approximately 272 items where we require title IV-E agencies to report information. In this NPRM, we propose to reduce these points to approximately 183,

12/21/2020

Regulations.gov - Proposed Rule Document

representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify.

We propose a simplification of data elements related to health assessments, child financial and medical assistance, child's relationship to foster/adoptive parents and legal guardians, and inter-jurisdictional adoptive/guardianship placements to keep only essential information as identified by ANPRM commenters on children in out-of-home care and who exit to adoption or legal guardianship. We propose to remove the following data elements because the information is too detailed or qualitative for a national data set, it may be inaccurately reported and therefore would be difficult to portray in a meaningful way and it does not have a specific purpose for title IV-B/IV-E statute and program monitoring, Congressional reporting, or budgeting:

- Educational stability,
- authority for placement and care responsibility,
- private agency living arrangement,
- juvenile justice involvement,
- transition plan and date, and
- interjurisdictional adoption or guardianship jurisdiction (name).

As stated in section II, a third of the states expressed concerns with the data elements around sexual orientation and recommended they be removed. States commented that if this information is important to decisions affecting the child, the information will be in the case file; however, when it is not pertinent, states said that asking for sexual orientation may be perceived as intrusive and worrisome to those who have experienced trauma and discrimination as a result of gender identity or sexual orientation. This would be a mandatory conversation a worker must have in order to complete the data elements. Mandating such a conversation may be contraindicated based on a child's history of abuse or neglect.

In addition to the ANPRM comments, we reviewed the 2014 document entitled "Current Measures of Sexual Orientation and Gender Identity in Federal Surveys" prepared by the OMB Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys. Most concerning to our AFCARS work is the section of the document that "reviews and identifies issues for Federal agencies to consider when choosing sexual orientation and gender identity (SOGI) questions for inclusion in Federal surveys and administrative databases." Overall, regardless of whether questions on sexual orientation are asked in a survey, interview, or otherwise, they may be considered sensitive and/or personal which means that certain issues must be considered. The paper specifically indicates that "before incorporating SOGI questions in surveys or administrative databases, Federal agencies need to consider the purpose and objectives of the survey or database and the reason to add SOGI questions." Further, the paper advises that new questions added to a survey or data base should be validated with qualitative techniques and question validation efforts should include both the SOGI and non-SOGI groups. In addition, the paper identifies other considerations when developing questions in this area. This includes a person's age, and the paper specifically notes that "teenagers may be in the midst of developing their sexual orientation . . . and therefore they may be unsure of how to respond to SOGI questions." Adolescents may use different terms to describe their sexual orientation than terms used by adults. Bullying related to one's sexual orientation may cause some adolescents to be reluctant to identify themselves with terms that must be regulated in AFCARS. This emphasizes the importance that respondents are confident that their responses are private, anonymous, and confidential. Other factors that are relevant to asking questions related to sexual orientation are cultural or racial/ethnic considerations and geography. For

12/21/2020

Regulations.gov - Proposed Rule Document

example, there may also be regional differences in interviewers' and respondents' comfort with questions about their sexual orientation.

As a result of our review of the OMB document, in particular, taking into consideration the need to validate questions related to sexual orientation and ensure responses about sexual orientation, especially with adolescents, are private, anonymous, and confidential, it is clear that AFCARS is not the appropriate vehicle to collect this information. It is not feasible for us to test the validity or accuracy of adding questions related to sexual orientation across all title IV-E agencies. Additionally, it is impossible to ensure that a child's response to a question on sexual orientation would be kept private, anonymous, or confidential considering a caseworker would be gathering this information to enter into a child's case electronic record. Information in case records are kept confidential, but because the child is in the placement and care of the title IV-E agency, information on the child's case must be disclosed to courts and providers under specific circumstances, to assist the child and family. Information on sexual orientation, if it is not relevant to the child's needs, is not appropriate to be included. Information on sexual orientation is more appropriately collected through a survey because that would allow for testing of the questions, training by staff administering the survey, and addressing the issues raised by the OMB paper to provide more controls for allowing anonymity, privacy, and confidentiality.

We acknowledge that other personal information is reported to AFCARS, such as medical or mental health information. This data, however, is documented in official documents, such as medical reports and records, and is in the child's case record because section 475(1)(C) of the Act requires health and education records be in the case plan. Information on sexual orientation is not required by the Act to be in the child's case plan, and while states agreed that the individual workers knowing this information about children and families they work with may help them in assisting families, there is no statutory requirement that it be reported to a national administrative data set.

However, there was support from commenters for keeping the circumstance at removal on whether there was family conflict related to the child's sexual orientation, gender identity, or gender expression. This means that agencies will report whether this was a circumstance surrounding the child at removal. This is different than asking for someone's sexual orientation because the information would be gathered during the course of the investigation that resulted in the child's removal from the home and documented in the case record. The data element *Child and family circumstances at removal*, has many circumstances to which the agency will report whether each "applies" or "does not apply." If family conflict related to the child's sexual orientation, gender identity, or gender expression (§ 1355.44(d)(4)(xxx)) was not known as a circumstance surrounding the child at removal, or was not documented in the electronic case record, the information will be reported to AFCARS as "does not apply." This does not require the worker to have a conversation in instances where it is not appropriate or not applicable to the child's wellbeing. We believe that this circumstance at removal captures information appropriate for a national data set that will provide insight into issues of potential discrimination, safety concerns, and homelessness experienced by youth because it is inherent in what the circumstance is asking. Additionally, there will be an opportunity for analysis via a combination of information gleaned from other data elements, for example, the sex and marital status of foster parents, adoptive parents, and legal guardians. The information from these data elements will provide an overview of the number of foster, adoptive, and legal guardian couples who identify as non-heterosexual. While we understand the importance of collecting sexual orientation data and appreciate the comments that supported keeping the data elements, we



12/21/2020

Regulations.gov - Proposed Rule Document

must balance this with the need to collect accurate data per the statute and in a manner that is consistent with children's treatment needs.

We propose a simplification of the ICWA-related data elements to the information that commenters to the ANPRM and others during consultation indicated were essential for identifying the number of children in out-of-home care nationally, who should be afforded the protections of ICWA. The ICWA-related data elements from the 2016 final rule that we kept and revised are:

- Whether the state title IV-E agency made inquiries of whether the child is an Indian child as defined in ICWA,
- child's tribal membership and all federally recognized tribes that may potentially be the Indian child's tribe,
- whether ICWA applies for the child and the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies,
- whether the Indian child's tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a), and
- tribal membership of mother, father, foster parents, adoptive parents, and legal guardians.

During consultation, tribal representatives expressed a need for information on the tribal membership of children in foster care and their foster care/adoptive placements, whether ICWA applies to the child, and notification of proceedings per ICWA requirements. These data elements were identified as the most important pieces of information to be able to know the number of children nationally where ICWA applies and provide some national information on whether the state made inquiries and whether notification to the Indian child's tribe occurred.

The ICWA-related data elements from the 2016 final rule that we are removing are request to transfer to tribal court, denial of transfer, court findings related to involuntary and voluntary termination of parental rights, including good cause findings, qualified expert witness testimony, whether active efforts were made prior to the termination/modification, removals under ICWA, available ICWA foster care/pre-adoptive placement preferences, adoption/guardianship placement preferences under ICWA, good cause and basis for good cause under ICWA, and information on active efforts. These data elements asked for detailed information on ICWA's requirements, tied to DOI regulations and the ICWA statute, and court actions.

We also understand that it is important to states, Indian tribes, and stakeholders to know the information behind the data elements we are removing. While we have demonstrated that the detailed ICWA-related information from the 2016 final rule is not appropriate for AFCARS, we are also demonstrating a commitment to obtain alternative methods that will inform aspects of ICWA. First, using the information that will be reported for other data elements proposed in the NPRM, ACF, researchers, and others will be able to analyze aspects of ICWA to inform an assessment of ICWA that occurs outside of AFCARS reporting. Below are areas where commenters identified they wanted to keep some of the ICWA-related data elements and we explain what we propose to collect in other data elements that will inform aspects of ICWA:

- *Transfers*: We propose to collect whether any child in the out-of-home care reporting population exits out-of-home care to a transfer to an Indian tribe (that operates a title IV-E program or that does not operate a title IV-E program) in § 1355.44(g)(4). We do not require reporting on the specifics of ICWA requirements as to whether there was a request orally on the record or in writing, whether the state court denied the request, and good cause because this information is better for a qualitative assessment that can provide context. The

12/21/2020

Regulations.gov - Proposed Rule Document

information proposed in this NPRM on transfers can be used to inform a qualitative assessment.

- *Placement preferences for foster care, adoption and guardianship:* We proposed to collect tribal membership of foster/adoptive parents and guardians, whether placement is relative or kin, and the name of the jurisdiction where the child is living for foster care (see section 1355.44(e)). We do not require reporting on what placements were available, whether the placement meets the requirements of the Indian child's tribe or ICWA, or whether there was good cause to deviate from the Indian child's tribe's or ICWA's placement preferences. The information we propose in this NPRM on placements and tribal membership can be used to inform a qualitative assessment that will allow context, because placement decisions are specific to the child's needs.
- *Voluntary or involuntary termination/modifications of parental rights:* We propose to collect whether a termination/modification of parental rights is voluntary or involuntary and will require it be reported for all children (§ 1355.44(c)(5)). We do not require reporting of the ICWA-specific requirements on court findings regarding reasonable doubt on continued custody, qualified expert witness testimony, and whether efforts to prevent the breakup of the Indian family were unsuccessful. However, knowing whether the termination/modification was involuntary or voluntary can be used to inform a qualitative assessment on these proceedings because these decisions are specific to each case and court action and thus need context to fully understand them.

Additionally, the Court Improvement Program (CIP) requires grantees to engage in meaningful and ongoing collaboration with the state child welfare agency and tribes (section 438(b)(1)(C) of the Act). In furtherance of this statutory mandate, the next program instruction for the CIP will encourage grantees to work with the dependency courts across their jurisdictions to enhance efforts to collect and track key ICWA data indicators. This is logical because the requirements of ICWA and accompanying regulations are upon state courts. The capacity of state and county courts to collect and track data varies widely across the country. Many courts either do not track ICWA-related data currently or do so inconsistently. The forthcoming program instruction's emphasis on collecting and tracking ICWA-related data will be coupled with technical assistance through the CB's technical assistance provider for CIP grantees and the courts to help address this historic and ongoing information gap. CIP grantees will be encouraged to use CIP grant funds to assess the court's ICWA practice, support the court's data infrastructure, and train key court personnel on the importance of monitoring ICWA. Specifically, CIP grantees will be encouraged and supported to collect and monitor data on court inquiries, orders and findings related to:

- Identification of Indian children as defined in ICWA,
- notice to Indian tribes,
- tribal participation as parties in hearings involving Indian children,
- tribal intervention in dependency cases,
- transfer of ICWA cases to tribal courts, and
- placement of Indian children according to tribal preferences.

These are two examples of how we are committed obtaining more information on ICWA through appropriate and alternative methods that allow for a fuller understanding of ICWA's role in child welfare cases that AFCARS cannot provide. Thus, based on the ANPRM comments and consultation, we believe that this proposal represents a balance for the need for data on the population of children to whom ICWA applies and state concerns for the burden and costs for collecting and reporting the large number of ICWA-related data elements in the 2016 final rule.

12/21/2020

Regulations.gov - Proposed Rule Document

We note that due to the low numbers of children in the out-of-home care reporting population where ICWA applies, we will not be able to release specific information regarding the child's tribal membership or ICWA applicability to requestors, except for the Indian tribe of which the child is or may be a member. When AFCARS data is released to the public by the National Data Archive on Child Abuse and Neglect (NDACAN), the data is de-identified, meaning that it does not include names, numbers, or other information that would make directly identifying the children possible. However, when the NDACAN provides data on populations where the number of children in the out-of-home care reporting population is low (for example, a county), there is a risk of possibly identifying a child using a unique combination of indirect identifiers in the AFCARS data, such as tribal membership and dates of removals, placements, and exits. To mitigate these risks, the NDACAN takes specific measures in releasing the data to protect confidentiality. Thus, to protect the confidentiality of these children, we will be unable to release certain information related to tribal membership or ICWA applicability, except to the Indian tribe of which the child is or may be a member.

#### IV. Implementation Timeframe

Implementation of changes to the AFCARS data elements as described in this NPRM will be dependent on the issuance of a final rule. We expect provisions in an eventual final rule to be effective no sooner than the start of the second federal fiscal year following the publication of the final rule. A precise effective date will be dependent on the publication date of the final rule, but this construct provides title IV-E agencies with at least one full year before we will require them to begin collecting and reporting new AFCARS data elements. We welcome public comments on specific provisions included in this proposed rule that may warrant a longer phase-in period.

#### V. Public Participation

We understand that there have been several opportunities to comment, in general, on AFCARS. However, each comment solicitation has been on a different iteration of AFCARS. In this NPRM, AFCARS is streamlined from the 2016 final rule, thus commenters must focus their comments on the data elements proposed in this specific rulemaking. Commenters should consider how this proposed iteration of AFCARS will impact their work and budgets and be specific when commenting on this NPRM. Commenters should identify the specific data elements to which their comments apply and provide specific supporting information for the comment. We welcome public comments on the data elements that we are proposing to remove or revise from the 2016 final rule.

We encourage commenters to speak to the following:

- Whether the information is readily available or collected as part of the title IV-E agency's casework.
- Recordkeeping hours spent annually to adjust existing ways to comply with AFCARS requirements, gather and enter information into the electronic case management system, and training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing training and manuals).
- Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information proposed in this NPRM to ACF.
- Timeframes required to complete the work.
- Specifically how reporting the data elements in this NPRM will enhance their work with children and families.

12/21/2020

Regulations.gov - Proposed Rule Document

We understand that stakeholders who are not title IV-E agencies will not be able to offer specific estimates regarding the burden or cost placed on title IV-E agencies for reporting AFCARS because they are not required to report AFCARS data. However, we believe that it would be appropriate and helpful for commenters to provide specific reasons as to why they think AFCARS is the most effective vehicle for collection of the data proposed in this NPRM and why no other current method is feasible to collect the information. Additional comments that would be helpful would describe any work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS and how AFCARS data, which is aggregated at the national level, would help their specific work with title IV-E agencies, children, and families.

## VI. Section-by-Section Discussion of Regulatory Provisions

### Section 1355.41 Scope of the Adoption and Foster Care Analysis and Reporting System

This section states the scope of AFCARS. Paragraph (c) of this section prescribes the definitions of terms used in the AFCARS data elements and these terms as defined in the 2016 final rule are unchanged. We propose to make minor conforming amendments to paragraphs (c)(1) and (2) to update the citations to the ICWA-related data elements as a result of our proposed amendments to § 1355.44.

### Section 1355.43 Data Reporting Requirements

This section states the AFCARS data reporting requirements and these requirements are unchanged from the 2016 final rule. In paragraph (b)(3), we propose that the title IV-E agency report the date of removal, exit date, and exit reason for each child who had an out-of-home care episode prior to October 1, 2020. As stated in the 2016 final rule, this means that title IV-E agencies do not need to report complete historical and current information for these children. We are proposing this change of the new date to October 1, 2020 to conform to the date in the final rule we published in the Federal Register on August 21, 2018 (83 FR 42225).

### Section 1355.44 Out-of-Home Care Data File Elements

This section states the data element descriptions for the out-of-home care data file.

#### Section 1355.44(a) General Information

In paragraph (a), we propose that title IV-E agencies collect and report general information that identifies the reporting title IV-E agency as well as the child in out-of-home care. We propose the data elements below and they are unchanged from the 2016 final rule.

*Title IV-E agency.* In paragraph (a)(1), we propose that the title IV-E agency indicate the name of the title IV-E agency responsible for submitting AFCARS data to ACF. A state title IV-E agency must indicate its state name. ACF will work with tribal title IV-E agencies to provide guidance during implementation.

*Report date.* In paragraph (a)(2), we propose that the title IV-E agency indicate the report period date, which is the last month and year that corresponds with the end of the report period.

*Local agency.* In paragraph (a)(3), we propose that the title IV-E agency report the name of the local county, jurisdiction, or equivalent unit that has responsibility for the child. ACF will work with tribal title IV-E agencies to provide guidance during implementation.

12/21/2020

Regulations.gov - Proposed Rule Document

*Child record number.* In paragraph (a)(4), we propose that the title IV-E agency report the child's record number, which is a unique person identification number, as an encrypted number. The child record number must remain the same for the child no matter where the child lives while in the placement and care responsibility of the title IV-E agency and across all report periods and out-of-home care episodes. This number remains the same if the child exits the out-of-home care data file and enters the reporting population for the adoption and guardianship assistance data file. The title IV-E agency must apply and retain the same encryption routine or method for the child record number across all report periods. The title IV-E agency's encryption methodology must meet all ACF standards prescribed through technical bulletins or policy.

#### Section 1355.44(b) Child Information

In paragraph (b), we propose that the title IV-E agency collect and report child specific information for the identified child in out-of-home care.

*Child's date of birth.* In paragraph (b)(1), we propose that the title IV-E agency report the child's date of birth including the month, day and year. If the child was abandoned and the actual date of birth is not known, an estimated date of birth is to be provided. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c) (3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster children.

*Child's sex.* In paragraph (b)(2), we propose to require the title IV-E agency to report only the child's sex. The proposed response options are "male" and "female". The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from "gender" to "sex". Commenters to the ANPRM suggested that the data element "gender" in the 2016 final rule be revised to reflect a gender other than male or female but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

*Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.* In paragraph (b)(3), we propose to require the state title IV-E agency to report whether it made inquiries to determine if the child is an Indian child as defined in ICWA. The 2016 final rule requires state title IV-E agencies to report whether it specifically inquired with seven different people/entities. We propose to modify this data element from the 2016 final rule to require the state title IV-E agency to report generally whether inquiries were made as to whether the child is an Indian child as defined in ICWA and remove the list of specific people/entities. As we explained in section II, the specifics of the individual people/entities inquired with are better suited for a qualitative review because this information is too detailed for national statistics and therefore would be difficult to portray in a meaningful way. However, during consultation, it was noted that knowing whether the title IV-E agency inquired about the child's status as an Indian child as defined in ICWA is essential in determining whether ICWA applies for a child. Commenters to the ANPRM also noted that this information is useful demographic information on the children in the out-of-home care reporting population.

*Child's tribal membership.* In paragraph (b)(4), we propose to require the state title IV-E agency to report whether the child is a member of or eligible for membership in an Indian tribe and if so, indicate all of the federally recognized tribes with which the child may potentially be associated. This information must be submitted in a format specified by ACF. In the 2016 final rule, this is part of the data elements on *Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act*. We propose to modify this

12/21/2020

Regulations.gov - Proposed Rule Document

data element from the 2016 final rule to make it a separate data element asking about the child's tribal membership status and report all federally recognized tribes that may potentially be the Indian child's tribe(s), if applicable. During consultation, it was noted that knowing whether the child is a member of or eligible for membership in an Indian tribe is essential in determining whether ICWA applies for a child. Commenters to the ANPRM also noted that this information is useful demographic information on the children in the out-of-home care reporting population.

*Application of ICWA.* In paragraph (b)(5), we propose to require the state title IV-E agency to report whether ICWA applies for the child and if yes, the date the Indian tribe or state or tribal court notified the state title IV-E agency that ICWA applies. In the 2016 final rule, this information is split among multiple data elements that ask whether the state title IV-E agency knows or has reason to know that the child is an Indian child as defined in ICWA, whether a court determined that ICWA applies, and if so, the date of the court determination. We propose to revise this data element from the 2016 final rule to only ask whether ICWA applies for the child, with a response of "yes", "no", or "unknown," and if yes, the date the state title IV-E agency was notified of this determination. As we explained in section II, commenters to the ANPRM felt that some of the ICWA-related data elements were redundant because they asked for similar information in multiple data elements. This is one area that the commenters noted should be combined. The data we propose to collect in paragraph (b)(5) will identify the child records in the out-of-home care reporting population where ICWA applies and will provide a national number of the children in the out-of-home care reporting population to whom ICWA applies.

*Notification.* In paragraph (b)(6), we propose to require the state title IV-E agency to report whether the child's Indian tribe was sent legal notice, in accordance with 25 U.S.C. 1912(a), if the state title IV-E agency indicated "yes" in paragraph (b)(5)(i). The data element in the 2016 final rule requires state title IV-E agencies to report also whether notice was sent to the Indian child's parent or Indian custodian. We propose to modify this data element from the 2016 final rule to only require the state title IV-E agency to respond with "yes" or "no" that it sent notification to the Indian tribe. Notification was identified during consultation as a key aspect of ICWA's requirements that should remain in AFCARS because notification is critical to meaningful access to and participation in adjudications. The data will help identify to what extent notification is being done by the state title IV-E agency on a national level for children in the out-of-home care reporting population.

*Child's race.* In paragraph (b)(7), we propose to require the title IV-E agency to report the race of the child. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster children. In paragraph (b)(7)(vi) for *Race-unknown*, we added instructions to clarify that this category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known. If a child is abandoned, the title IV-E agency must report per paragraph (b)(7)(vii). We made this clarifying edit to address some confusion expressed by commenters to the ANPRM. All other data elements are unchanged from the 2016 final rule.

*Child's Hispanic or Latino ethnicity.* In paragraph (b)(8), we propose to require the title IV-E agency to report the Hispanic or Latino ethnicity of the child. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster children.



12/21/2020

Regulations.gov - Proposed Rule Document

*Health assessment.* In paragraph (b)(9), we propose to require the title IV-E agency to report whether the child had a health assessment during the current out-of-home care episode. We propose to simplify this data element from the 2016 final rule to require the title IV-E agency to respond “yes” or “no” and to remove the additional data elements for reporting the date of the child's most recent health assessment and if it was within the timeframes established by the agency. Commenters suggested removing these data elements because the specific information around the dates of health assessments and whether they are timely is too detailed for national statistics and therefore would be difficult to portray in a meaningful way. However, commenters noted that knowing whether a child had a health assessment will support ACF in assessing the current state of the well-being of children placed in out-of-home care and implementation of title IV-B requirement around health assessment and planning per section 422(b)(15) (A) of the Act.

*Health, behavioral or mental health conditions.* In paragraph (b)(10), we propose to require the title IV-E agency to report whether the child was diagnosed by a qualified professional as having one or more health, behavioral or mental health conditions from a list of eleven conditions prior to or during the child's current out-of-home care episode. If so, the agency must report whether it is an existing condition or a previous condition (a previous diagnoses that no longer exists as a current condition). The title IV-E agency must also report if the child had an exam or assessment, but none of the conditions apply, or if the agency has not received the results of the exam or assessment. When the child has not had an exam or assessment, the agency must indicate so. This is unchanged from the 2016 final rule. We continue to propose this data element because the annual outcomes report to Congress includes statistics on children with a diagnosed disability and also must contain information on children placed in a child care institution with a special needs or another diagnosed mental or physical illness or condition, per section 479A(a)(7)(A)(i)(III) of the Act. The information needed for the annual outcomes report to Congress comes from AFCARS data.

*School enrollment.* In paragraph (b)(11), we propose to require the title IV-E agency to report whether the child is a full-time student at and enrolled in (or in the process of enrolling in) elementary or secondary education, or is a full or part-time student at and enrolled in post-secondary education or training, or college, or whether the child is not enrolled in any school setting. This is unchanged from the 2016 final rule. We continue to propose this data element because we will use this information, combined with other AFCARS data elements, to assess nationally the well-being of children placed in out-of-home care as part of monitoring the title IV-B and IV-E programs through reviews.

*Educational level.* In paragraph (b)(12), we propose to require the title IV-E agency to report the highest educational level from kindergarten to college or post-secondary education/training, as well as a general equivalency diploma (GED), completed by the child as of the last day of the report period. This is unchanged from the 2016 final rule. We continue to propose this data element because we will use this information, combined with other AFCARS data elements to assess nationally the well-being of children placed in out-of-home care as part of monitoring the title IV-B and IV-E programs through reviews.

*Pregnant or parenting.* In paragraph (b)(13), we propose to require the title IV-E agency to report whether the child has ever fathered or bore a child, as well as whether the child and child(ren) are placed together in foster care. This is unchanged from the 2016 final rule. This data element is used in the annual report to Congress consistent with section 479A(a)(7)(B) of the Act and budget formulation for the title IV-E program.

12/21/2020

Regulations.gov - Proposed Rule Document

*Special education.* In paragraph (b)(14), we propose to require the title IV-E agency to report on the child's special education status by indicating if the child has an Individualized Education Program (IEP) or an Individualized Family Service Program (IFSP). This is unchanged from the 2016 final rule. We continue to propose this data element because the annual report to Congress must contain information on children placed in a child care institution receiving specialized education, per section 479A(a)(7)(A)(i)(IV) of the Act.

*Prior adoption.* In paragraph (b)(15), we propose to require the title IV-E agency to report whether the child experienced a prior legal adoption, including any public, private, or independent adoption in the United States or adoption in another country, and a tribal customary adoption, prior to the current out-of-home care episode. If so, the title IV-E agency must report the date it was finalized and whether the child's prior adoption was an intercountry adoption. This is unchanged from the 2016 final rule. We continue to propose this data element to fulfill the statutory mandate in section 479(c)(3)(C)(ii) and 479(d) of the Act which requires information regarding children who enter into foster care after prior finalization of an adoption. This information will also be used to improve consistency with the data we provide to the State Department for their reports regarding international adoptions. Currently, the information is reported via a narrative in the CFSP and annual updates. This proposed method is preferred because currently the information must be compiled from the narratives and the reporting is not consistent across title IV-E agencies. Having this information in AFCARS will improve the accuracy, reliability, and consistency of the data because it will become an automated reporting through AFCARS.

*Prior guardianship.* In paragraph (b)(16), we propose to require the title IV-E agency to report whether the child experienced a prior legal guardianship and if so, to report the date that the prior legal guardianship became legalized. This is unchanged from the 2016 final rule. We continue to propose this data element to fulfill the statutory mandate in section 479(d) of the Act which requires information regarding children who enter into foster care after prior finalization of a legal guardianship.

*Child financial and medical assistance.* In paragraph (b)(17), we propose to require the title IV-E agency to report whether the child received financial and medical assistance, other than title IV-E foster care maintenance payments. We propose to revise this data element from the 2016 final rule to simplify the types of assistance to be reported to only include: "state/tribal adoption assistance"; "state/tribal foster care"; "Title IV-E adoption subsidy"; "Title IV-E guardianship assistance"; "Title IV-A TANF"; "Title IV-B"; "Chafee Foster Care Independence Program"; or "Other". The data element in the 2016 final rule required state title IV-E agencies to report also whether the child received SSI or Social Security Benefits, title XIX, title XXI, title XX, or child support. We propose to remove those five data elements due to ANPRM comments that cited reporting on the multiple financial options as burdensome and suggested these data elements be streamlined. The financial categories that remain are the essentials for children in out-of-home care to meet the requirement in section 479(c)(3)(D) of the Act related to the nature of assistance supporting the child. The other categories were determined to be extraneous information and delineating these categories in AFCARS does not enhance information about the child when other reporting methods, such as the CB-496 financial reporting form, exist to address this information.

*Title IV-E foster care during report period.* In paragraph (b)(18), we propose to require the title IV-E agency to report whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period. This is unchanged from the 2016 final rule. We propose to continue this data element because section 479(c)(3)(D) of the Act requires

12/21/2020

Regulations.gov - Proposed Rule Document

the collection of the extent and nature of assistance provided by federal, state, and local adoption and foster care programs and it is used for the federal title IV-E reviews per 45 CFR 1356.71.

*Siblings.* In paragraphs (b)(19) through (21), we propose to require title IV-E agency to report the total number of siblings that the child has, if applicable, the number of siblings who are in foster care as defined in § 1355.20, and the number of siblings who are in the same living arrangement as the child, on the last day of the report period. This is unchanged from the 2016 final rule. We continue to propose these data elements on siblings because we will use this information, combined with other AFCARS data elements to assess nationally the well-being of children placed in out-of-home care as part of monitoring the title IV-B and IV-E programs through the Child and Family Services Reviews (CFSR).

#### Section 1355.44(c) Parent or Legal Guardian Information

In paragraph (c), we propose that the title IV-E agency collect and report information on the child's parent(s) or legal guardian(s).

*Year of birth parent(s) or legal guardian(s).* In paragraphs (c)(1) and (2), we propose to require the title IV-E agency to report the birth year of the child's parent(s) or legal guardian(s). If the child has both a parent and a legal guardian, or two different sets of legal parents, the title IV-E agency must report on those who had legal responsibility for the child. If the child was abandoned and the identity of the parent or legal guardian is unknown and cannot be ascertained, the title IV-E agency would indicate "abandoned." If there is not another parent or legal guardian, the title IV-E agency would indicate "not applicable." This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of biological parents.

*Tribal membership mother and father.* In paragraphs (c)(3) and (4), we propose to require the title IV-E agency to report whether the biological or adoptive mother and father are members of an Indian tribe. This is unchanged from the 2016 final rule. During consultation, it was noted that knowing whether the mother and father are members of an Indian tribe is necessary in determining whether ICWA applies for a child.

*Termination/modification of parental rights.* In paragraph (c)(5), we propose to require the title IV-E agency to report whether the rights for each parent were terminated or modified on a voluntary or involuntary basis. A voluntary termination means the parent(s) voluntarily relinquished parental rights to the title IV-E agency, with or without court involvement. In paragraph (c)(5)(i), we propose that the title IV-E agency report each date the petition to terminate/modify parental rights was filed, if applicable. In paragraph (c)(5)(ii), we propose that the title IV-E agency report the date parental rights were terminated/modified, if applicable. This is unchanged from the 2016 final rule. Section 479(c)(3)(B) of the Act requires title IV-E agencies to report on the status of the foster care population, including children available for adoption. The termination/modification dates, petition dates, and whether it is voluntary or involuntary is used for title IV-E program monitoring via the CFSR to monitor compliance with the requirement in section 475(5)(E) of the Act. In the case of a child who has been in foster care under the responsibility of the title IV-E agency for 15 of the most recent 22 months, section 475(5)(E) of the Act requires the title IV-E agency to file a petition to terminate the parental rights unless an exception exists, as defined in statute. Having this information in AFCARS will improve the accuracy and reliability of the dates to use for the CFSR.

#### Section 1355.44(d) Removal Information

12/21/2020

Regulations.gov - Proposed Rule Document

In paragraph (d), we propose that the title IV-E agency collect and report information on each of the child's removal(s).

*Date of child's removal.* In paragraph (d)(1), we propose to require the title IV-E agency to collect and report the date(s), on which the child was removed for each removal of a child who enters the placement and care responsibility of the title IV-E agency. For a child who ran away or whose whereabouts are unknown at the time of removal, the title IV-E agency would indicate the date they received placement and care responsibility. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(3)(C) of the Act which requires that the data collection system include characteristics of children entering out-of-home care. This information is also used in the annual outcomes report to Congress.

*Removal transaction date.* In paragraph (d)(2), we propose to require the title IV-E agency to report the transaction date for each of the child's removal dates reported in paragraph (d)(1) using a non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) was entered into the information system. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(2) of the Act which requires the collection of this data element in order to assure that the data collected is reliable and consistent over time.

*Environment at removal.* In paragraph (d)(3), we propose to require the title IV-E agency to report the type of environment (household or facility) from a list of seven that the child was living in at the time of each of the child's removals reported in paragraph (d)(1). This is unchanged from the 2016 final rule. We continue to propose this data element because it enables us to analyze removals of children over time for technical assistance and monitoring.

*Child and family circumstances at removal.* In paragraph (d)(4), we propose to require the title IV-E agency to report all of the circumstances surrounding the child and family at each removal reported in paragraph (d)(1) from a list of 34 circumstances. The agency must report all child and family circumstances that are present at the time of each removal, including the circumstances that contributed to the decision to place the child into out-of-home care. We continue to propose this data element because multiple sections of the Act require the information that will be reported in the circumstances: Section 479(c)(3)(C) of the Act requires identification of the characteristics of children placed in foster care, the annual outcomes report to Congress must contain information on children placed in a child care institution with special needs or another diagnosed mental or physical illness or condition, per section 479A(a)(7)(A)(i)(III) of the Act, and section 471(d) of the Act requires an annual report to Congress regarding information on children and youth who are sex trafficking victims. We propose to make only minor revisions to three circumstances which are in paragraphs (d)(4)(ix), (xxvi), and (xxx). In paragraph (d)(4)(ix) *Abandonment*, we propose to revise the instruction to not include a child who is left at a "safe haven" and in paragraph (d)(4)(xxvi) *Voluntary relinquishment for adoption*, we propose to include the instruction that this includes a child who is left at a "safe haven." We understand from providing technical assistance to title IV-E agencies that there may be specific laws and policies in the states that separate children who are "abandoned" from those who are left at a "safe haven" and a better reflection of this in the data is to include children left at a "safe haven" under paragraph (d)(4)(xxvi) *Voluntary relinquishment for adoption*. In paragraph (d)(4)(xxx) *Family conflict related to child's sexual orientation, gender identity, or gender expression*, we modified the data element definition to define it as the child's expressed or perceived sexual orientation, gender identity, gender expression, or any conflict related to the ways in which a child manifests

12/21/2020

Regulations.gov - Proposed Rule Document

masculinity or femininity. These revisions clarify the purpose of the circumstance, which is to know whether the child's expression or the caregiver's perception of the child's sexual orientation or gender identity is a circumstance associated with the child's removal. The rest of the circumstances are unchanged from the 2016 final rule.

*Victim of sex trafficking prior to entering foster care.* In paragraph (d)(5), we propose to require the title IV-E agency to report whether the child had been a victim of sex trafficking before the current out-of-home care episode and if yes, the agency must indicate whether it reported each instance to law enforcement and the dates of each report. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(E)(i) of the Act requires the data system collection include an annual number of children who were victims of sex trafficking prior to entering foster care and this information will inform reports required in sections 471(a)(34)(B) and 471(d) of the Act on children and youth reported to be sex trafficking victims.

*Victim of sex trafficking while in foster care.* In paragraph (d)(6), we propose to require the title IV-E agency to report whether the child was a victim of sex trafficking while in out-of-home care during the current episode and if yes, the agency must indicate whether it reported each instance to law enforcement and the dates of each report. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(E)(ii) of the Act requires the data system collection include an annual number of children who were victims of sex trafficking while in foster care and this information will inform reports required in sections 471(a)(34)(B) and 471(d) of the Act on children and youth reported to be sex trafficking victims.

#### **Section 1355.44(e) Living Arrangement and Provider Information**

In paragraph (e), we propose that the title IV-E agency collect and report information on each of the child's living arrangements for each out-of-home care episode.

*Date of living arrangement.* In paragraph (e)(1), we propose to require the title IV-E agency to report the date of each living arrangement. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the length of placement in an out-of-home care setting.

*Foster family home.* In paragraph (e)(2), we propose to require the title IV-E agency to report whether or not a child resides in a foster family home for each living arrangement. If the title IV-E agency reports "yes", then the agency must complete paragraph (e)(3). This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the length and type of placement.

*Foster family home type.* In paragraph (e)(3), we propose to require the title IV-E agency to report the foster family home type. The title IV-E agency must indicate whether each of the following proposed foster family home types "applies" or "does not apply": licensed home, therapeutic foster family home, shelter care foster family home, relative foster family home, pre-adoptive home, and kin foster family home. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the type of placement for the child.

*Other living arrangement type.* In paragraph (e)(4), we propose to require the title IV-E agency to report whether a child is placed in one of 14 living



12/21/2020

Regulations.gov - Proposed Rule Document

arrangements for a child who is not placed in a foster family home, as indicated in paragraph (e)(2) of this section, for each living arrangement. The proposed living arrangement types are mutually exclusive and are as follows: “group home-family-operated”, “group home-staff-operated”, “group home-shelter care”, “residential treatment center”, “qualified residential treatment program”, “child care institution”, “child care institution-shelter care”, “supervised independent living”, “juvenile justice facility”, “medical or rehabilitative facility”, “psychiatric hospital”, “runaway”, “whereabouts unknown”, and “placed at home”. We propose to modify the list of options from the 2016 final rule to include a “qualified residential treatment program” as a new placement option per revisions made by Public Law 115-123 at section 472(k)(2)(A) and (4) of the Act to add these specialized placements where children may be placed. Qualified residential treatment programs must meet specific requirements outlined at section 472(k)(4) of the Act and should not be reported under the response option “residential treatment centers.” We also propose to modify the definition of the response option “residential treatment center” to include when the child is placed with a parent who is in a licensed residential family-based treatment facility for substance abuse per section 472(j) of the Act. We propose this revision due to the changes made by Public Law 115-123 at section 472(j) of the Act to allow foster care maintenance payments for a child placed with a parent in these specified placements. We propose to modify the definition of the response option “child care institution” to include a setting specializing in providing prenatal, post-partum, or parenting supports for youth per section 472(k)(2)(B) of the Act, and a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims per section 472(k)(2)(D) of the Act. We propose this revision due to the changes made by Public Law 115-123 at section 472(k) of the Act. The other response options are unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the type of placement. The annual outcomes report to Congress must contain information on children placed in a child care institution or other setting that is not a foster family home including the type of the placement setting, per section 479A(a)(7)(A) of the Act.

*Location of living arrangement.* In paragraph (e)(5), we propose to require the title IV-E agency to report the location of each living arrangement. The proposed locations are as follows: “Out-of-State or out-of-Tribal service area”; “In-State or in-Tribal service area”; “Out-of-country”; and “Runaway or whereabouts unknown”. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(C) of the Act requires that the data collection system include information on children placed in foster care outside the title IV-E agency that has placement and care responsibility.

*Jurisdiction or country where child is living.* In paragraph (e)(6), we propose to require the title IV-E agency to report and name the jurisdiction or country where the child is living in a format according to ACF’s specifications. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include information on children placed in foster care outside the title IV-E agency that has placement and care responsibility. Further, this information will be used to inform the information provided in paragraph (e)(5).

*Marital status of the foster parent(s).* In paragraph (e)(7), we propose to require the title IV-E agency to report foster parent’s marital status. The marital status response options are as follows: “married couple”, “unmarried couple”, “separated”, and “single adult”. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A)



12/21/2020

Regulations.gov - Proposed Rule Document

of the Act requires the collection of comprehensive national information on the demographic characteristics of foster parents. Also, this information is currently used to inform recruitment campaigns for foster parents.

*Child's relationship to the foster parent(s).* In paragraph (e)(8), we propose to require the title IV-E agency to report the child's relationship to the foster parent(s). We propose to simplify the response options from the 2016 final rule from seven to three: "relative(s)", "nonrelative(s)", and "kin". We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information on the demographic characteristics of foster parents. However, we propose to streamline the response options because primarily we are interested in knowing whether the child's foster parent is a relative, nonrelative, or kin. This will inform placement types and be used for foster parent recruitment campaigns. However, the level of specificity in the 2016 final rule's response options serves no identified purpose.

*Year of birth for foster parent(s).* In paragraphs (e)(9) and (14), we propose to require the title IV-E agency to report the year of birth of the foster parent(s). If there is no second foster parent, then the title IV-E agency must leave paragraph (e)(14) blank. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents.

*Foster parent(s) tribal membership.* In paragraphs (e)(10) and (15), we propose to require the title IV-E agency to report the tribal membership of the foster parent(s). If there is no second foster parent, then the title IV-E agency must leave paragraph (e)(15) blank. This is unchanged from the 2016 final rule. Commenters to the ANPRM noted that knowing whether the foster parents are members of an Indian tribe will provide information related to ICWA placement preferences in AFCARS.

*Race of foster parent(s).* In paragraphs (e)(11) and (16), we propose to require the title IV-E agency to report the race of the foster parent(s). If there is no second foster parent, then the title IV-E agency must leave paragraph (e)(16) blank. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents.

*Hispanic or Latino ethnicity of foster parent(s).* In paragraphs (e)(12) and (17), we propose to require the title IV-E agency to report the Hispanic or Latino ethnicity of the foster parent(s). If there is no second foster parent, then the title IV-E agency must leave paragraph (e)(17) blank. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents.

*Sex of foster parent(s).* In paragraphs (e)(13) and (18), we propose to require the title IV-E agency to report the sex of the foster parent(s). If there is no second foster parent, then the title IV-E agency must leave paragraph (e)(18) blank. The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from "gender" to "sex". We propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents. Commenters to the ANPRM suggested that the data element "gender" in the 2016 final rule be revised to reflect a gender other than male or female, but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

12/21/2020

Regulations.gov - Proposed Rule Document

### Section 1355.44(f) Permanency Planning

In paragraph (f), we propose that the title IV-E agency collect and report information related to permanency planning for children in out-of-home care, which includes permanency plans, hearings, and caseworker visits with the child.

*Permanency plan and date.* In paragraph (f)(1), we propose to require the title IV-E agency to report each permanency plan established for the child. The proposed permanency plan options are as follows: “reunify with parent(s) or legal guardian(s)”; “live with other relatives”; “adoption”; “guardianship”; “planned permanent living arrangement”; and “permanency plan not established”. In paragraph (f)(2), we propose to require the title IV-E agency to report the date of each permanency plan. These data elements are unchanged from the 2016 final rule. We continue to propose these data elements because section 479(c)(3)(B) of the Act requires that the data collection system include the goals for ending or continuing foster care and this information is used in the annual outcomes report to Congress.

*Date of periodic review(s) and permanency hearing(s).* In paragraph (f)(3), we propose to require the title IV-E agency to report the date of each periodic review, either by a court, or an administrative review (as defined in section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act. In paragraph (f)(4), we propose to require the title IV-E agency to report the date of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act. These data elements are unchanged from the 2016 final rule. This information will be used for title IV-B/IV-E program monitoring via the CFSP and having this information in AFCARS will allow us to more accurately assess the quality and frequency of these hearings/reviews.

*Caseworker visit dates and locations.* In paragraph (f)(5), we propose to require the title IV-E agency to report the date of each in-person, face-to-face caseworker visit with the child, consistent with section 422(b)(17) of the Act. In paragraph (f)(6), we propose to require the title IV-E agency to report each caseworker visit location from two response options: “Child’s residence” and “other location.” These data elements are unchanged from the 2016 final rule. Currently, information on caseworker visits to meet the requirements of section 424(f) and 479A(a)(6) of the Act is reported via the CFSP and annual updates. Reporting this information in AFCARS instead will improve the accuracy of the data and alleviate the burden of agencies having to report on this as a narrative in the CFSP and annual updates.

### Section 1355.44(g) General Exit Information

In paragraph (g), we propose that the title IV-E agency collect and report exit information for each out-of-home care episode. An exit occurs when the title IV-E agency’s placement and care responsibility of the child ends.

*Date of exit.* In paragraph (g)(1), we propose to require the title IV-E agency to report the date for each of the child’s exits from out-of-home care. If this data element is applicable, the data elements in paragraphs (g)(2) and (3) of this section must have a response. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(3) of the Act which requires that the data collection system include the length of a child’s placement in out-of-home care. This information is also used in the annual outcomes report to Congress that measures the length of time children are in foster care, re-entry rates, and permanency and calculating awards for the adoption and guardianship incentives payment program under section 473A of the Act.

12/21/2020

Regulations.gov - Proposed Rule Document

*Exit transaction date.* In paragraph (g)(2), we propose to require the title IV-E agency to report a non-modifiable, computer-generated date which accurately indicates the date of each response to paragraph (g)(1) of this section. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(2) of the Act which requires that the data collected is reliable and consistent over time.

*Exit reason.* In paragraph (g)(3), we propose to require the title IV-E agency to report the reason for each of the child's exits from out-of-home care. The proposed exit reasons are as follows: "not applicable"; "reunify with parents/legal guardian"; "live with other relatives"; "adoption"; "emancipation"; "guardianship"; "runaway or whereabouts unknown"; "death of child"; and "transfer to another agency". This is unchanged from the 2016 final rule. This information in combination with the date of exit is used in the annual outcomes report to Congress that measures the length of time children are in foster care, re-entry rates, and permanency.

*Transfer to another agency.* In paragraph (g)(4), we propose to require the title IV-E agency to report the type of agency that received placement and care responsibility for the child if the title IV-E agency indicated the child was transferred to another agency in paragraph (g)(3). The proposed agency types are: "state title IV-E agency"; "tribal title IV-E agency"; "Indian tribe or tribal agency (non-IV-E)"; "juvenile justice agency"; "mental health agency"; "other public agency"; and "private agency". This is unchanged from the 2016 final rule. This information is used to provide further information on the transfer indicated in paragraph (g)(3) that aids in data accuracy consistent with the requirement for reliable and consistent data in section 479(c)(2) of the Act.

#### Section 1355.44(h) Exit to Adoption and Guardianship Information

In paragraph (h), we propose that the title IV-E agency collect and report information only if the title IV-E agency indicated the child exited to adoption or legal guardianship in *Exit reason* paragraph (g)(3) of this section. Otherwise, the title IV-E agency must leave paragraph (h) blank.

*Marital status of the adoptive parent(s) or guardian(s).* In paragraph (h)(1), we propose to require the title IV-E agency to report the marital status of the adoptive parent(s) or legal guardian(s). The marital status response options are as follows: "married couple"; "married but individually adopting or obtaining legal guardianship"; "unmarried couple"; and "single adult". This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and of children who exit from foster care. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns.

*Child's relationship to the adoptive parent(s) or guardian(s).* In paragraph (h)(2), we propose to require the title IV-E agency to report the type of relationship between the child and the adoptive parent(s) or legal guardian(s). We propose to simplify the response options from the 2016 final rule from seven to four: "relative(s)"; "nonrelative(s)"; "foster parent(s)"; and "kin". We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information on the demographic characteristics of adoptive parents and children who exit from foster care. However, we propose to streamline the response options because primarily we are interested in knowing whether the child's adoptive parent(s) or guardian(s) is a relative, nonrelative, or kin to inform permanency outcomes data and family recruitment. However, the level

12/21/2020

Regulations.gov - Proposed Rule Document

of specificity in the 2016 final rule's response options serves no identified purpose.

*Date of birth of the adoptive parent or guardian.* In paragraph (h)(3) and (8), we propose to require the title IV-E agency to report the date of the birth of the adoptive parent(s) or legal guardian(s). The title IV-E agency must leave (h)(8) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns.

*Adoptive parent or guardian tribal membership.* In paragraph (h)(4) and (9), we propose to require the title IV-E agency to report whether the adoptive parent(s) or guardian(s) is a member of an Indian tribe. The title IV-E agency must leave paragraph (h)(9) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. Commenters to the ANPRM noted that knowing whether the adoptive parents or legal guardians are members of an Indian tribe will provide information related to ICWA placement preferences in AFCARS. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns.

*Race of adoptive parent or guardian.* In paragraph (h)(5) and (h)(10), we propose to require the title IV-E agency to report the adoptive parent(s) or guardian(s)'s race as determined by the individual. The title IV-E agency must leave paragraph (h)(10) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care.

*Hispanic or Latino ethnicity of first adoptive parent or guardian.* In paragraph (h)(6) and (h)(11), we propose to require the title IV-E agency to report whether the adoptive parent(s) or guardian(s) is of Hispanic or Latino ethnicity as determined by the individual. The title IV-E agency must leave paragraph (h)(11) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care.

*Sex of first adoptive parent or guardian.* In paragraph (h)(7) and (12), we propose to require the title IV-E agency to report the sex of the adoptive parent(s) or guardian(s). The title IV-E agency must leave paragraph (h)(12) blank if there is no second adoptive parent, legal guardian, or other member of the couple. The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from "gender" to "sex". We propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns. While some agencies currently allow individuals to identify as a gender other than male or female and commenters to the ANPRM suggested that the data element "gender" in the final 2016 rule be revised to reflect a gender other than male or female, but HHS did not identify a compelling reason to

12/21/2020

Regulations.gov - Proposed Rule Document

increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

*Inter/Intrajurisdictional adoption or guardianship.* In paragraph (h)(13), we propose to require the title IV-E agency to report whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. The proposed placement types are as follows: “interjurisdictional adoption or guardianship”; “intercountry adoption or guardianship”; and “intrajurisdictional adoption or guardianship”. This is unchanged from the 2016 final rule. We continue to propose this data element to inform permanency outcomes information, adoption recruitment campaigns, and statutorily mandated efforts to remove barriers to placing children for adoption in a timely manner per section 471(a)(23) of the Act.

*Assistance agreement type.* In paragraph (h)(14), we propose to require the title IV-E agency to report the type of assistance agreement between the title IV-E agency and the adoptive parent(s) or legal guardian(s). The proposed assistance agreement types are as follows: “Title IV-E adoption assistance agreement;” “State/tribal adoption assistance agreement;” “Adoption-Title IV-E agreement non-recurring expenses only;” “Adoption-Title IV-E agreement Medicaid only;” “Title IV-E guardianship assistance agreement;” “State/tribal guardianship assistance agreement;” or “no agreement”. This is unchanged from the 2016 final rule. We continue to propose this data element because it is used in calculations for the adoption and guardianship incentives payment program under section 473A of the Act.

*Siblings in adoptive or guardianship home.* In paragraph (h)(15), we propose to require the title IV-E agency to report the number of siblings of the child who are in the same adoptive or guardianship home as the child. This is unchanged from the 2016 final rule. We continue to propose this data element so that the information reported can be used with other AFCARS data elements to assess nationally the current state of the well-being of children adopted or in a legal guardianship as part of monitoring the title IV-E and IV-B programs through the CFSR.

## Section 1355.45 Adoption and Guardianship Assistance Data File

This section states the data element descriptions for the adoption and guardianship assistance data file. The data elements in this section are unchanged from 2016 final rule with the exceptions described below.

In paragraph (b)(2), we propose to require the title IV-E agency to report the sex of the child using the response options of “male or” “female”. The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from “gender” to “sex”. Commenters to the ANPRM suggested that the data element “gender” in the 2016 rule be revised to reflect a gender other than male or female, but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

In paragraph (b)(3)(vi), for *Race-unknown*, we added instructions that this paragraph must be reported if the child or parent or legal guardian does not know, or is unable to communicate the race, or at least one race of the child is not known. We also clarified that this category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known. We made these clarifying edits to match edits we propose in section 1355.44(b)(7)(vi).

In paragraph (f), we propose to require the title IV-E agency to indicate the agency that placed the child for adoption or legal guardianship from the

12/21/2020

Regulations.gov - Proposed Rule Document

following three options: “title IV-E agency”; “private agency under agreement”; and “Indian tribe under contract/agreement”. In the 2016 final rule, this data element was required to be reported in the out-of-home care data file in section 1355.44(h)(17). However, as we examined AFCARS per E.O. 13777, we noted that this information needs to be reported as part of the adoption and guardianship assistance data file because we must know the placing agency in order to calculate the awards for adoption incentive payments for “preadolescent child” adoptions per section 473A(g)(6)(B) and “older child” adoptions per section 473A(g)(7)(B) of the Act. Thus, instead of requiring title IV-E agencies to report this information in the out-of-home care data file, we propose to require it be reported in the adoption and guardianship assistance data file.

### Section 1355.46 Compliance

This section states compliance requirements for AFCARS data. The compliance requirements in this section are unchanged from 2016 final rule and state the type of assessments ACF will conduct to determine the accuracy of a title IV-E agency's data, the data that is subject to these assessments, the compliance standards and the manner in which the title IV-E agency initially determined to be out of compliance can correct its data. We propose to amend paragraph (c)(2) to update the cross references in this section to mirror the proposed revisions to sections 1355.44 and 1355.45.

## VII. Executive Orders 12866, 13563, and 13771

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with OMB and determined that this proposed rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. ACF determined that the costs to title IV-E agencies as a result of this proposed rule will not be economically significant as defined in E.O. 12866 (have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities). As required in E.O. 12866, a cost-benefit analysis needs to be included in this proposed rule. Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), was issued on January 30, 2017. This rule, if finalized, is considered an E.O. 13771 deregulatory action. Annualizing these costs and cost savings in perpetuity and discounting at 7 percent back to 2016, we estimate that this rule would generate \$29.9 million in annualized cost savings discounted relative to 2016 at 7 percent over a perpetual time horizon, in 2016 dollars. Details on the estimated costs of this rule can be found in the Paperwork Reduction Act analysis. This proposed rule is considered an E.O. 13771 deregulatory action. As described below, this NPRM will save approximately 544,337 burden hours. After multiplying by the average wage rate of affected individuals, this amounts to \$39,192,264 in savings each year, relative to the estimated costs and burden of the 2016 final rule, in the year this NPRM (when finalized) will become effective, which is in FY 2021. We used the information that states provided in comments to the ANPRM on the cost and burden associated with implementing the 2016 final rule as the basis for these burden estimate calculations and reduced it by 33 percent to represent the reduction in the workload associated with reporting the data proposed in this NPRM relative to the 2016 final rule. We relied on this approach because of the type of data elements that we removed, which specifically were



12/21/2020

Regulations.gov - Proposed Rule Document

qualitative in nature and required a significant amount of training and staff time to locate the information and ensure proper data entry.

### Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to state and tribal title IV-E agencies.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104-4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). In 2018, that threshold is approximately \$150 million. This proposed rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$150 million or more.

### Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 8.

### Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106-58) requires federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This final regulation will not have an impact on family well-being as defined in the law.

### Executive Order 13132

E.O. 13132 requires that federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. Consistent with E.O. 13132 and *Guidance for Implementing E.O. 13132* issued on October 28, 1999, the Department must include in "a separately identified portion of the preamble to the regulation" a "federalism summary impact statement" (Secs. 6(b)(2)(B) & (c)(2)). The Department's federalism summary impact statement is as follows—

- "A description of the extent of the agency's prior consultation with state and local officials"—The public comment period is open for 60 days wherein we solicit comments via regulations.gov, email, and postal mail. During this comment period, we will hold informational calls.
- "A summary of the nature of their concerns and the agency's position supporting the need to issue the regulation"—As we discussed in sections II and III of the preamble to this proposed rule, state commenters support making revisions to streamline the AFCARS regulation. However, Indian tribes, organizations representing tribal interests, and most other national advocacy organizations, universities, private individuals, and other groups opposed streamlining. We took the comments into consideration and believe that based on our analysis of the comments, the best way to reduce the burden to title IV-E agencies, who are required to submit the data to ACF and will be held to penalties for non-compliant data submissions, is to propose revisions to the AFCARS regulation through a NPRM. We believe that the states sufficiently argued through detailed work and cost estimates in response to the

12/21/2020

Regulations.gov - Proposed Rule Document

ANPRM that the 2016 final rule has many data elements that can be streamlined while still providing critical information on the reporting population.

- “A statement of the extent to which the concerns of state and local officials have been met” (Secs. 6(b)(2)(B) and 6(c)(2))—As we discussed in the section-by-section discussion preamble, we propose in the NPRM fewer data elements than is in the 2016 final rule, many of which were identified in state comments to the ANPRM to be overly burdensome for numerous reasons. We believe that these reduced data requirements balance the need for updated information with the burden to comply with AFCARS requirements.

### Paperwork Reduction Act

This final rule contains information collection requirements (ICRs) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. A description of these provisions is given in the following paragraphs with an estimate of the annual burden. To fairly evaluate whether an information collection should be approved by OMB, the Department solicits comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Information collection for AFCARS is currently authorized under OMB number 0970-0422. This proposed rule contains information collection requirements in proposed § 1355.44, the out-of-home care data file, and § 1355.45, the adoption and guardianship assistance data file, that the Department has submitted to OMB for its review. We propose:

- State and tribal title IV-E agencies to report information on children who are in the out-of-home care reporting population per § 1355.42(a),
- State and tribal title IV-E agencies to report information on children who are in the adoption and guardianship assistance reporting population per § 1355.42(b), and
- State title IV-E agencies to report ICWA-related information in the out-of-home care data file.

### BURDEN ESTIMATE

The following are estimates.

Through the ANPRM, ACF asked the public to give specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the AFCARS requirements in 2016 final rule. The ANPRM listed questions specifically asking the public to identify the data elements that are overly burdensome for title IV-E agencies, an explanation with cost and burden estimates for recordkeeping, reporting, and recommendations on data elements to retain, simplify, and remove with justifications. Section II of the preamble provides a summary and analysis of the ANPRM comments. Regarding burden, the state commenters provided estimates for the recordkeeping and reporting burden hours to implement the 2016 final rule. This included identifying the staff positions that we used to determine the labor rate, hour estimates for searching data sources, gathering information, entering the information into the system, developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS

12/21/2020

Regulations.gov - Proposed Rule Document

requirements, and training personnel on AFCARS requirements. We used the estimates provided by states to determine the cost to implement the 2016 final rule. In this section, we discuss our assumptions for the estimates and calculations for estimates.

For the 2016 final rule, based on the state ANPRM comments, we estimate the total burden of the 2016 final rule to be 1,768,744 hours. We estimated this by using either the median or the average of the states' estimates for the various recordkeeping and reporting tasks and adding them together. States ranged considerably in estimating the work needed and length of time it would take to comply with the 2016 final rule, which is expected and appropriate because there is considerable variability across states in sophistication of information systems, availability of both staff and financial resources, and populations of children in care. Thus, we used the median of the states' estimates for the estimates related to training and developing or modifying procedures and systems. We used the average of the states' estimates for the estimates of gathering/entering information, reporting, and the labor rate.

To estimate the burden of this NPRM, we used the estimates to implement the 2016 final rule and reduced the recordkeeping hours and reporting hours by approximately 33 percent. This represents the approximate workload reduction associated with reporting fewer data elements as proposed in this NPRM.

*Respondents:* The 66 respondents comprise 52 state title IV-E agencies and 14 tribal title IV-E agencies, which are Indian tribes, tribal organizations or consortium with an approved title IV-E plan under section 479B of the Act. The estimates provided in the NPRM are spread across respondents for the purposes of the PRA estimates; however, we understand based on the ANPRM comments that actual burden hours and costs will vary due to sophistication and capacity of information systems, availability of staff and financial resources, and populations of children in care.

*Recordkeeping burden:* Searching data sources, gathering information, and entering the information into the system, developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements, administrative tasks associated with training personnel on the AFCARS requirements (*e.g.*, reviewing instructions, developing the training and manuals), and training personnel on AFCARS requirements.

*Reporting burden:* Extracting the information for AFCARS reporting and transmitting the information to ACF.

#### Annualized Cost to the Federal Government

Federal reimbursement under title IV-E will be available for a portion of the costs that title IV-E agencies will incur as a result of the revisions proposed in this rule, depending on each agency's cost allocation plan, information system, and other factors. For this estimate, we used the 50% Federal Financial Participation (FFP) rate.

Collection— AFCARS	Total annualburden hours	Averagehourly laborrate	Total cost	EstimateFederal costs(50% FFP)
Recordkeeping	1,212,163	\$72	\$87,275,736	\$43,637,868
Reporting	2,244	72	161,568	80,784
Total				43,718,652

12/21/2020

Regulations.gov - Proposed Rule Document

Cost savings of NPRM: 544,337 hours × \$72 labor rate = \$39,192,264

### Assumptions for Estimates

We made a number of assumptions when calculating the burden and costs that were informed by the states' estimates provided in their comments to the ANPRM:

- *Number of children in out-of-home care:* To determine the number of children for which title IV-E agencies will have to report in the out-of-home care data file on average, ACF used the most recent FY 2016 AFCARS data available: 273,539 children entered in foster care during FY 2016. Of those, 6,033 children had a reported race of American Indian/Alaska Native. We used the number of children who entered foster care rather than the entire population of children in foster care because agencies will not have to collect and report all data elements on all children in foster care; therefore, this accounts for the variances in burden. This is consistent with the 2016 final rule and the 2016 final rule is what we use to estimate the relative savings of this NPRM.
- *Out-of-home care data elements:* For the out-of-home care data file, the 2016 final rule required approximately 272 items where we require title IV-E agencies to report information. In this NPRM, we propose to reduce these points to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify. This represents approximately a 33 percent reduction in the total items that we propose agencies to report in this NPRM.
- *Number of children receiving adoption and guardianship assistance:* To determine the number of children for which title IV-E agencies must report in the adoption and guardianship assistance file, ACF used the most recent title IV-E Programs Quarterly Financial Report, CB-496, for FY 2016: 456,715 children received title IV-E adoption assistance and 24,689 children received guardianship assistance.
- *Adoption and guardianship assistance data elements:* There are approximately 19 items where we require title IV-E agencies report information for the adoption and guardianship assistance data file, which is not a significant change from the 2016 final rule.
- *Systems changes:* ACF assumed that the burden for title IV-E agencies to modify systems based in part on the estimates states' provided in response to the ANPRM. Additionally, as of July 2018, 29 states and tribes have declared as moving forward with a new or transitional Comprehensive Child Welfare Information Systems (CCWIS) (see also 45 CFR 1355.50 *et seq.* for requirements). ACF recognizes that most title IV-E agencies will require revisions to electronic case management systems to meet the requirements proposed in this NPRM. As more title IV-E agencies build CCWIS, ACF anticipates it will lead to more efficiency in reporting and less costs and burden associated with reporting AFCARS data.
- *Labor rate:* Based on the state comments to the ANPRM, ACF assumes that there will be a mix of the following positions working to meet both the one-time and annual requirements of this proposed rule. We reviewed 2017 Bureau of Labor Statistics data and for this estimate, we used the job roles of: Information technology (IT) and computer programming, administrative, management, caseworkers, subject matter experts, and legal staff. For this estimate, we used the job roles of: Computer Information and Systems Managers (11-3021) with an average hourly wage of \$71.99, Computer and Mathematical Occupations (15-0000) (*e.g.*, computer and information analysts, computer programmers, and database and systems administrators) with an average hourly wage of \$43.18,

12/21/2020

Regulations.gov - Proposed Rule Document

Office and Administrative Support Occupations (43-000) (e.g., administrative assistants, data entry, legal secretaries, government program eligibility interviewers, information and record clerks) with an average hourly wage of \$18.24, Social and Community Service Managers (11-9151) with an average hourly wage estimate of \$33.91, Community and Social Service Operations (21-0000) (e.g., Social Workers, Child and Family Social Workers, Counselors, Social Service Specialists) with an average hourly wage of \$23.10, and Paralegals and Legal Assistants (23-2011) with an average hourly wage estimate of \$25.92. Thus, ACF averaged these wages to come to an average labor rate of \$36.05. In order to ensure we took into account overhead costs associated with these labor costs, ACF doubled this rate (\$72).

### Calculations for Estimates

We used the information that states provided in comments to the ANPRM on the cost and burden associated with implementing the 2016 final rule as the basis for these burden estimate calculations. Thus, for these estimates, we are using the states' estimates and reducing them by 33 percent to represent the reduction in the workload associated with reporting the data proposed in this NPRM. We relied on this approach because of the type of data elements that we removed, which specifically were qualitative in nature and required a significant amount of training and staff time to locate the information and ensure proper data entry.

*Recordkeeping:* Adding the bullets below produces a total of 1,212,163 record keeping hours annually, as summarized below.

- For the out-of-home care data file, searching data sources, gathering information, and entering the information into the system would take on average 4.02 hours annually for all children who enter foster care, for a total of 1,099,627 hours annually. States provided estimates that ranged from 3 to 15 hours related to these tasks for the 2016 final rule. The range depended on whether the work was for the ICWA-related data elements or not. The average of the hours provided from the states that broke out this information in their ANPRM comments was 6 hours annually. We used the average because there were not significant outliers in the comments provided. For the purposes of this NPRM estimate, we reduced the 6 hours by 33 percent since that represents the reduction in data elements to be reported per this NPRM, which is 4.02 hours. (4.02 hours × 273,539 children = 1,099,627 annual hours for this bullet.)
- For the adoption and guardianship assistance data file, we estimated in the 2016 final rule that updates or changes on an annual or biennial basis will take an average of 0.2 hours annually for records of children who have an adoption assistance agreement and 0.3 hours annually for children who have a guardianship assistance agreement. The data elements in the adoption and guardianship assistance data file did not significantly change and we did not receive information from state estimates to determine that a change in these estimates was warranted. As noted earlier, the number of children in adoption or guardianship assistance agreements increased, which reflects the most recent data available, FY 2016. The new total annual hours is estimated to be 98,750. (0.2 hours × 456,715 children = 91,343 hours. 0.3 hours × 24,689 children = 7,407 hours. 91,343 hours + 7,407 hours = 98,750 total annual burden hours for this bullet.)
- Developing or modifying standard operating procedures and IT systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements is estimated at 6,700 hours annually. States provided estimates in response to

12/21/2020

Regulations.gov - Proposed Rule Document

the ANPRM that ranged from 1,000 to 20,000 hours, which varied widely depending on the size of the state's out-of-home care population, type, sophistication, and age of systems. To estimate the annual hours, we chose to use the median of these estimates provided by the state commenters, rather than relying on the average of those provided in the comments, because it would be distorted by the considerable hour range. The median hours from state's estimates was 10,000, and we reduced it by 33 percent since that represents the reduction in data elements to be reported per this NPRM, which is 6,700 hours. Thus, we estimate 6,700 hours annually for this bullet. ( $10,000 \times 0.67 = 6,700$  hours)

- Administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals) and training personnel on AFCARS requirements we estimate will take on average 7,086 hours annually. In response to the ANPRM, states provided varying estimates for the hours and cost of training that were not broken out the same way. For example, one estimate was 40 hours to develop training materials and 2 hours of training per staff person. Other estimates were only totals of training hours that ranged between 42,712 to 102,000 hours encompassing initial and ongoing training to implement the 2016 final rule. Another estimate broke out ongoing training at 8,500 hours annually. To estimate the annual hours related to training tasks, we used the median of the hours provided from the ANPRM comments, rather than relying on the average, because it would be distorted by the considerable hour ranges and associated tasks. We understand that training hours will vary depending on the size of the agency's workforce needing training. The median hours from state's estimates was 10,576, and we reduced it by 33 percent since that represents the reduction in data elements to be reported per this NPRM, which is 7,086 hours. Thus we estimate 7,086 hours annually for this bullet. ( $10,576 \times 0.67 = 7,086$  hours)

*Reporting:* We estimate that extracting the information for AFCARS reporting and transmitting the information to ACF would take on average 17 hours annually. Very few states broke out reporting in their ANPRM comments and the average of the hours provided came to 26 hours. Since the NPRM reduces the data elements by 33 percent, we reduced the estimated burden related to reporting that amount. Thus we estimate 17 hours for this task. ( $26 \times 0.67 = 17$  hours)

Collection— AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Recordkeeping	66	2	9,183	1,212,163
Reporting	66	2	17	2,244
Total				1,214,407

Title IV-E agencies must comply with the current AFCARS requirements in 45 CFR 1355.40 and the appendix to part 1355 until September 30, 2020 (45 CFR 1355.40, per the final rule on implementation delay published August 21, 2018, 83 FR 42225). On October 1, 2020 (FY 2021), title IV-E agencies must comply with the provisions of the 2016 final rule. When this NPRM is finalized, title IV-E agencies must comply with the provisions proposed in this NPRM, which is scheduled to begin on October 1, 2020 (FY 2021), because this NPRM does not propose to change the implementation date. Because



12/21/2020

Regulations.gov - Proposed Rule Document

we anticipate that this NPRM will be finalized before the 2016 final rule becomes effective, the year in which title IV-E agencies will experience savings from the 2016 final rule is FY 2021. We used fiscal years in this estimate because AFCARS data reporting periods are categorized by fiscal years. The savings is generated by the reductions proposed in this NPRM, which reduces the data that title IV-E agencies must report from what was published in the 2016 final rule. As discussed above, we estimate approximately a 33 percent reduction in the total items that we propose agencies to report in this NPRM from the 2016 final rule, as discussed previously. These charts represent the burden hour and cost savings we estimate that this NPRM will have over the 2016 final rule's requirements. This NPRM will save approximately 544,337 burden hours. After multiplying by the average wage rate of affected individuals, this amounts to \$39,192,264 in savings each year relative to the 2016 final rule, in the year this NPRM (when finalized) will become effective, FY 2021.

*Savings of NPRM Relative to 2016 Final Rule*

<b>Burden hour savings of NPRM</b>	<b>Total annualburden hoursfor 2016final rule</b>	<b>Total annualburden hoursfor NPRM</b>	<b>Difference(hours)</b>
FY 2021	1,768,744	1,214,407	554,337

In the above estimates, ACF acknowledges: (1) ACF has used average figures for title IV-E agencies of very different sizes and of which, some may have larger populations of children served than other agencies, and (2) these are rough estimates based on the ANPRM comments in which they ranged in the level of detail they provided regarding burden hours, costs, and work needing to be completed.

OMB is required to make a decision concerning the collection of information contained in this regulation between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB or the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202-395-6974 or by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Please mark faxes and emails to the attention of the desk officer for ACF.

### **VIII. Tribal Consultation Statement**

ACF is committed to consulting with Indian tribes and tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has tribal implications and within the requirements of E.O. 13175 *Consultation and Coordination With Indian Tribal Governments*. Section II of this NPRM provides a summary and analysis of the ANPRM comments. The comments to the ANPRM allowed us to assess whether and how we could potentially reduce burden on title IV-E agencies to report AFCARS data, per E.O. 13777, while still adhering to the requirements of section 479 of the Act and collecting useful data that will inform efforts to improve the child welfare system. This includes assessing the need for ICWA-related data elements as strongly illustrated by the tribal commenters. Additionally during the comment period of the ANPRM, CB held consultation on May 15 and 16, 2018 where the ANPRM and history of the AFCARS regulation, including the Executive Order precipitating another look at AFCARS, was presented by CB officials. During this time, tribal leaders, officials and representatives

12/21/2020

Regulations.gov - Proposed Rule Document

identified the ICWA-related information they felt was important to retain in AFCARS because it was essential in determining whether ICWA applied for a child or it provided basic information on ICWA's requirements. Prior to these information sessions, the ANPRM, 2016 final rule and other AFCARS supplementary information was linked to on the CB website. Additionally, links to the ANPRM and the AFCARS supplementary information was emailed to CB's tribal lists (on March 13, 2018 when the ANPRM was available for public inspection and March 15, 2018 when the ANPRM was published), and CB issued ACYF-CB-IM-18-01 (issued March 16, 2018). CB also issued ACYF-CB-IM-18-03 on August 21, 2018 announcing publication of the final rule regarding implementation of the 2016 final rule and announcing our intent to issue a NPRM to revise the data elements per the spring 2018 unified agenda. This was also emailed to CB's tribal lists. Additionally, ACF held a tribal consultation on November 6, 2017 during which tribes requested that ACF leave the 2016 final rule in place, stating that the ICWA-related data elements are very necessary for accountability. At a meeting with tribal representatives at the Secretary's Tribal Advisory Committee on May 9 and 10, 2018, representatives stated the following: They supported the 2016 final rule, have concerns that states are not following ICWA, that the ICWA-related data elements are critical to informing Congress, HHS, states, and tribes on how Native children and families are doing in state child welfare systems and that AFCARS information would help inform issues such as foster care disproportionality.

As we developed this proposed rule, we carefully considered the comments to the ANPRM from Indian tribes and organizations representing tribal interests, whose comments unequivocally supported keeping most, if not all, ICWA-related data elements in AFCARS. However, we must balance the need for data with the needs of our grantees, the title IV-E agencies, that must revise their systems to meet new AFCARS requirements and will ultimately be held accountable via compliance and penalties to report the data. We look forward to engaging in consultation during the comment period of this NPRM and to receiving comments on this proposal.

## List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: February 5, 2019.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: February 12, 2019.

Alex M. Azar II,

Secretary.

For the reasons set forth in the preamble, HHS and ACF propose to amend 45 CFR part 1355 as follows:

## Part 1355 General

1. The authority citation for part 1355 continues to read as follows:

### Authority

42 U.S.C. 620 *et seq.*, 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

12/21/2020

Regulations.gov - Proposed Rule Document

2. In § 1355.41, revise paragraphs (c)(1) and (2) to read as follows:

§ 1355.41

Scope of the Adoption and Foster Care Analysis and Reporting System.

\* \* \* \* \*

(c) \* \* \*

(1) Terms in §§ 1355.41 through 1355.47 are defined as they appear in § 1355.20, except that for purposes of data elements related to the Indian Child Welfare Act of 1978 (ICWA), terms that appear in § 1344.44(b)(3) through (6), (c)(3) and (4), (e)(10) and (15), and (h)(4) and (9) are defined as they appear in 25 CFR 23.2 and 25 U.S.C. 1903.

(2) For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to § 1355.44(b)(5)(i), for § 1355.44(c)(1) and (2) and (d)(3), the term “legal guardian” includes an Indian custodian as defined in ICWA at 25 U.S.C. 1903 if the Indian custodian has legal responsibility for the child.

3. In § 1355.43, revise paragraph (b)(3) to read as follows:

§ 1355.43

Data reporting requirements.

\* \* \* \* \*

(b) \* \* \*

(3) For a child who had an out-of-home care episode(s) as defined in § 1355.42(a) prior to October 1, 2020, the title IV-E agency must report only the information for the data described in § 1355.44(d)(1) and (g)(1) and (3) for the out-of-home care episode(s) that occurred prior to October 1, 2020.

\* \* \* \* \*

4. Revise § 1355.44 to read as follows:

§ 1355.44

Out-of-home care data file elements.

(a) *General information*—(1) *Title IV-E agency*. Indicate the title IV-E agency responsible for submitting the AFCARS data in a format according to ACF's specifications.

(2) *Report date*. The report date corresponds with the end of the report period. Indicate the last month and the year of the report period.

(3) *Local agency*. Indicate the local county, jurisdiction, or equivalent unit that has primary responsibility for the child in a format according to ACF's specifications.

(4) *Child record number*. Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the title IV-E agency in out-of-home care and across all report periods and episodes. The title IV-E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(b) *Child information*—(1) *Child's date of birth*. Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. Abandoned means that the child was left alone or with others and the identity of the

12/21/2020

Regulations.gov - Proposed Rule Document

parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(2) *Child's sex.* Indicate whether the child is “male” or “female.”

(3) *Reason to know a child is an “Indian Child” as defined in the Indian Child Welfare Act.* For state title IV-E agencies only: Indicate whether the state title IV-E agency made inquiries whether the child is an Indian child as defined in ICWA. Indicate “yes” or “no.”

(4) *Child's tribal membership.* For state title IV-E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in an Indian tribe. Indicate “yes,” “no,” or “unknown”.

(ii) If the state title IV-E agency indicated “yes” in paragraph (b)(4)(i) of this section, indicate all federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s). The title IV-E agency must submit the information in a format according to ACF's specifications.

(5) *Application of ICWA.* For state title IV-E agencies only:

(i) Indicate whether ICWA applies for the child. Indicate “yes,” “no,” or “unknown”.

(ii) If the state title IV-E agency indicated “yes” in paragraph (b)(5)(i) of this section, indicate the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies.

(6) *Notification.* For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(5)(i) of this section, the state title IV-E agency must indicate whether the Indian child's tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a). Indicate “yes” or “no”.

(7) *Child's race.* In general, a child's race is determined by the child, the child's parent(s) or legal guardian(s). Indicate whether each race category listed in paragraphs (b)(7)(i) through (vii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The child or parent or legal guardian does not know, or is unable to communicate the race, or at least one race of the child is not known. This category does not apply when the child has been abandoned or

12/21/2020

Regulations.gov - Proposed Rule Document

the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

(vii) *Race—abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—declined.* The child or parent(s) or legal guardian(s) has declined to identify a race.

(8) *Child's Hispanic or Latino ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent(s) or legal guardian(s) does not know or is unable to communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child is abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."

(9) *Health assessment.* Indicate whether the child had a health assessment during the current out-of-home care episode. This assessment could include an initial health screening or any follow-up health screening per section 422(b)(15)(A) of the Act. Indicate "yes" or "no."

(10) *Health, behavioral or mental health conditions.* Indicate whether the child was diagnosed by a qualified professional, as defined by the state or tribe, as having a health, behavioral or mental health condition, prior to or during the child's current out-of-home care episode as of the last day of the report period. Indicate "child has a diagnosed condition" if a qualified professional has made such a diagnosis and for each paragraph (b)(10)(i) through (xi) of this section, indicate "existing condition," "previous condition" or "does not apply," as applicable. "Previous condition" means a previous diagnoses that no longer exists as a current condition. Indicate "no exam or assessment conducted" if a qualified professional has not conducted a medical exam or assessment of the child and leave paragraphs (b)(10)(i) through (xi) blank. Indicate "exam or assessment conducted and none of the conditions apply" if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed and leave paragraphs (b)(10)(i) through (xi) of this section blank. Indicate "exam or assessment conducted but results not received" if a qualified professional has conducted a medical exam or assessment but the title IV-E agency has not yet received the results of such an exam or assessment and leave paragraphs (b)(10)(i) through (xi) of this section blank.

(i) *Intellectual disability.* The child has, or had previously, significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect the child's socialization and learning.

(ii) *Autism spectrum disorder.* The child has, or had previously, a neurodevelopment disorder, characterized by social impairments, communication difficulties, and restricted, repetitive, and stereotyped patterns of behavior. This includes the range of disorders from autistic disorder, sometimes called autism or classical autism spectrum disorder, to milder forms known as Asperger syndrome and pervasive developmental disorder not otherwise specified.

12/21/2020

Regulations.gov - Proposed Rule Document

(iii) *Visual impairment and blindness.* The child has, or had previously, a visual impairment that may adversely affects the day-to-day functioning or educational performance, such as blindness, amblyopia, or color blindness.

(iv) *Hearing impairment and deafness.* The child has, or had previously, an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's day-to-day functioning and educational performance.

(v) *Orthopedic impairment or other physical condition.* The child has, or had previously, a physical deformity, such as amputations and fractures or burns that cause contractures, or an orthopedic impairment, including impairments caused by a congenital anomalies or disease, such as cerebral palsy, spina bifida, multiple sclerosis, or muscular dystrophy.

(vi) *Mental/emotional disorders.* The child has, or had previously, one or more mood or personality disorders or conditions over a long period of time and to a marked degree, such as conduct disorder, oppositional defiant disorder, emotional disturbance, anxiety disorder, obsessive-compulsive disorder, or eating disorder.

(vii) *Attention deficit hyperactivity disorder.* The child has, or had previously, a diagnosis of the neurobehavioral disorders of attention deficit or hyperactivity disorder (ADHD) or attention deficit disorder (ADD).

(viii) *Serious mental disorders.* The child has, or had previously, a diagnosis of a serious mental disorder or illness, such as bipolar disorder, depression, psychotic disorders, or schizophrenia.

(ix) *Developmental delay.* The child has been assessed by appropriate diagnostic instruments and procedures and is experiencing delays in one or more of the following areas: Physical development or motor skills, cognitive development, communication, language, or speech development, social or emotional development, or adaptive development.

(x) *Developmental disability.* The child has, or had previously been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402), section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely and results in substantial functional limitations in three or more areas of major life activity. Areas of major life activity include: Self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of "developmental disability," do not indicate the individual conditions that form the basis of this diagnosis separately in other data elements.

(xi) *Other diagnosed condition.* The child has, or had previously, a diagnosed condition or other health impairment other than those described in paragraphs (b)(10)(i) through (x) of this section, which requires special medical care, such as asthma, diabetes, chronic illnesses, a diagnosis as HIV positive or AIDS, epilepsy, traumatic brain injury, other neurological disorders, speech/language impairment, learning disability, or substance use issues.

(11) *School enrollment.* Indicate whether the child is a full-time student at and enrolled in (or in the process of enrolling in) "elementary" or "secondary" education, or is a full or part-time student at and enrolled in "post-secondary



12/21/2020

Regulations.gov - Proposed Rule Document

education or training” or “college,” as of the earlier of the last day of the report period or the day of exit for a child exiting out-of-home care prior to the end of the report period. A child is still considered enrolled in school if the child would otherwise be enrolled in a school that is currently out of session. An “elementary or secondary school student” is defined in section 471(a)(30) of the Act as a child that is: Enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the state or other jurisdiction in which the institution is located, instructed in elementary or secondary education at home in accordance with a home school law of the state or other jurisdiction in which the home is located, in an independent study elementary or secondary education program in accordance with the law of the state or other jurisdiction in which the program is located, which is administered by the local school or school district, or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by a regularly updated information in the case plan of the child. Enrollment in “post-secondary education or training” refers to full or part-time enrollment in any post-secondary education or training, other than an education pursued at a college or university. Enrollment in “college” refers to a child that is enrolled full or part-time at a college or university. If child has not reached compulsory school age, indicate “not school-age.” If the child has reached compulsory school-age, but is not enrolled or is in the process of enrolling in any school setting full-time, indicate “not enrolled.”

(12) *Educational level.* Indicate the highest educational level from kindergarten to college or post-secondary education/training completed by the child as of the last day of the report period. If child has not reached compulsory school-age, indicate “not school-age.” Indicate “kindergarten” if the child is currently in or about to begin 1st grade. Indicate “1st grade” if the child is currently in or about to begin 2nd grade. Indicate “2nd grade” if the child is currently in or about to begin 3rd grade. Indicate “3rd grade” if the child is currently in or about to begin 4th grade. Indicate “4th grade” if the child is currently in or about to begin 5th grade. Indicate “5th grade” if the child is currently in or about to begin 6th grade. Indicate “6th grade” if the child is currently in or about to begin 7th grade. Indicate “7th grade” if the child is currently in or about to begin 8th grade. Indicate “8th grade” if the child is currently in or about to begin 9th grade. Indicate “9th grade” if the child is currently in or about to begin 10th grade. Indicate “10th grade” if the child is currently in or about to begin 11th grade. Indicate “11th grade” if the child is currently in or about to begin 12th grade. Indicate “12th grade” if the child has graduated from high school. Indicate “GED” if the child has completed a general equivalency degree or other high school equivalent. Indicate “Post-secondary education or training” if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Indicate “College” if the child has completed at least a semester of study at a college or university.

(13) *Pregnant or parenting.* (i) Indicate whether the child is pregnant as of the end of the report period. Indicate “yes” or “no.”

(ii) Indicate whether the child has ever fathered or bore a child. Indicate “yes” or “no.”

(iii) Indicate whether the child and his/her child(ren) are placed together at any point during the report period, if the response in paragraph (b)(13)(ii) of this section is “yes.” Indicate “yes,” “no,” or “not applicable” if the response in paragraph (b)(13)(ii) of this section is “no.”

(14) *Special education.* Indicate whether the child has an Individualized Education Program (IEP) as defined in section 614(d)(1) of Part B of Title I of the Individuals with Disabilities Education Act (IDEA) and implementing regulations, or an Individualized Family Service Program (IFSP) as defined in

12/21/2020

Regulations.gov - Proposed Rule Document

section 636 of Part C of Title I of IDEA and implementing regulations, as of the end of the report period. Indicate “yes” if the child has either an IEP or an IFSP or “no” if the child has neither.

(15) *Prior adoption.* Indicate whether the child experienced a prior legal adoption before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another country and tribal customary adoptions. Indicate “yes,” “no” or “abandoned” if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal adoption, the title IV-E agency must complete paragraphs (b)(15)(i) and (ii) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(i) *Prior adoption date.* Indicate the month and year that the most recent prior adoption was finalized. In the case of a prior intercountry adoption where the adoptive parent(s) readopted the child in the United States, the title IV-E agency must provide the date of the adoption (either the original adoption in the home country or the re-adoption in the United States) that is considered final in accordance with applicable laws.

(ii) *Prior adoption intercountry.* Indicate whether the child's most recent prior adoption was an intercountry adoption, meaning that the child's prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “yes” or “no.”

(16)(i) *Prior guardianship.* Indicate whether the child experienced a prior legal guardianship before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(d) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making. Indicate “yes,” “no,” or “abandoned” if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal guardianship, the title IV-E agency must complete paragraph (b)(16)(ii) of this section; otherwise the title IV-E agency must leave it blank.

(ii) *Prior guardianship date.* Indicate the month and year that the most recent prior guardianship became legalized.

(17) *Child financial and medical assistance.* Indicate whether the child received financial and medical assistance at any point during the six-month report period. Indicate “child has received support/assistance” if the child was the recipient of such assistance during the report period, and indicate which of the following sources of support described in paragraphs (b)(17)(i) through (vii) of this section “applies” or “does not apply.” Indicate “no support/assistance received” if none of these apply.

(i) *State/Tribal adoption assistance.* The child is receiving an adoption subsidy or other adoption assistance paid for solely by the state or Indian tribe.

(ii) *State/Tribal foster care.* The child is receiving a foster care payment that is solely funded by the state or Indian tribe.

12/21/2020

Regulations.gov - Proposed Rule Document

(iii) *Title IV-E adoption subsidy.* The child is determined eligible for a title IV-E adoption assistance subsidy.

(iv) *Title IV-E guardianship assistance.* The child is determined eligible for a title IV-E guardianship assistance subsidy.

(v) *Title IV-A TANF.* The child is living with relatives who are receiving a Temporary Assistance for Needy Families (TANF) cash assistance payment on behalf of the child.

(vi) *Title IV-B.* The child's living arrangement is supported by funds under title IV-B of the Act.

(vii) *Chafee Foster Care Independence Program.* The child is living independently and is supported by funds under the John F. Chafee Foster Care Independence Program.

(viii) *Other.* The child is receiving financial support from another source not previously listed in paragraphs (b)(17)(i) through (vi) of this section.

(18) *Title IV-E foster care during report period.* Indicate whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period that is claimed under title IV-E foster care with a "yes" or "no," as appropriate. Indicate "yes" if the child has met all eligibility requirements of section 472(a) of the Act and the title IV-E agency has claimed, or intends to claim, federal reimbursement for foster care maintenance payments made on the child's behalf during the report period.

(19) *Total number of siblings.* Indicate the total number of siblings of the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must indicate "0." If the title IV-E agency indicates "0," the title IV-E agency must leave paragraphs (b)(20) and (21) of this section blank.

(20) *Siblings in foster care.* Indicate the number of siblings of the child who are in foster care as defined in § 1355.20. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must leave this paragraph blank. If the child has siblings, but they are not in foster care as defined in § 1355.20, the title IV-E agency must indicate "0." If the title IV-E agency reported "0," leave paragraph (b)(21) of this section blank.

(21) *Siblings in living arrangement.* Indicate the number of siblings of the child who are in the same living arrangement as the child, on the last day of the report period. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must leave this paragraph blank. If the child has siblings, but they are not in the same living arrangement as the child, the title IV-E agency must indicate "0."

(c) *Parent or legal guardian information—(1) Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological, legal or adoptive) or legal guardian of the child. To the extent that a child has both a parent and a legal guardian, or two different sets of legal parents, the title IV-E agency must report on those who had legal responsibility for the child. We are not seeking information on putative parent(s) in this paragraph. If there is only one parent or legal guardian of the child, that person's year of birth must be reported here. If the child was abandoned indicate "abandoned." Abandoned means that the child was left

12/21/2020

Regulations.gov - Proposed Rule Document

alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(2) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological, legal or adoptive) or legal guardian of the child. We are not seeking information on putative parent(s) in this paragraph. If the child was abandoned, indicate "abandoned." Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." Indicate "not applicable" if there is not another parent or legal guardian.

(3) *Tribal membership mother.* For state title IV-E agencies only: Indicate whether the biological or adoptive mother is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(4) *Tribal membership father.* For state title IV-E agencies only: Indicate whether the biological or adoptive father is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(5) *Termination/modification of parental rights.* Indicate whether the termination/modification of parental rights for each parent (biological, legal and/or putative) was voluntary or involuntary. Voluntary means the parent voluntarily relinquished their parental rights to the title IV-E agency, with or without court involvement. Indicate "voluntary" or "involuntary." Indicate "not applicable" if there was no termination/modification and leave paragraphs (c) (5)(i) and (ii) of this section blank.

(i) *Termination/modification of parental rights petition.* Indicate the month, day and year that each petition to terminate/modify the parental rights of a biological, legal and/or putative parent was filed in court, if applicable. Indicate "deceased" if the parent is deceased.

(ii) *Termination/modification of parental rights.* Enter the month, day and year that the parental rights were voluntarily or involuntarily terminated/modified, for each biological, legal and/or putative parent, if applicable. If the parent is deceased, enter the date of death.

(d) *Removal information—(1) Date of child's removal.* Indicate the removal date(s) in month, day and year format for each removal of a child who enters the placement and care responsibility of the title IV-E agency. For a child who is removed and is placed initially in foster care, indicate the date that the title IV-E agency received placement and care responsibility. For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV-E agency, indicate the date that the title IV-E agency received placement and care responsibility. For a child who is removed and is placed initially in a non-foster care setting, indicate the date that the child enters foster care as the date of removal.

(2) *Removal transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) of this section was entered into the information system.

(3) *Environment at removal.* Indicate the type of environment (household or facility) the child was living in at the time of each removal for each removal reported in paragraph (d)(1) of this section. Indicate "parent household" if the child was living in a household that included one or both of the child's parents, whether biological, adoptive or legal. Indicate "relative household" if the child was living with a relative(s), the relative(s) is not the child's legal guardian and neither of the child's parents were living in the household.

12/21/2020

Regulations.gov - Proposed Rule Document

Indicate "legal guardian household" if the child was living with a legal guardian(s), the guardian(s) is not the child's relative and neither of the child's parents were living in the household. Indicate "relative legal guardian household" if the child was living with a relative(s) who is also the child's legal guardian. Indicate "justice facility" if the child was in a detention center, jail or other similar setting where the child was detained. Indicate "medical/mental health facility" if the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. Indicate "other" if the child was living in another situation not so described, such as living independently or homeless.

(4) *Child and family circumstances at removal.* Indicate all child and family circumstances that were present at the time of the child's removal and/or related to the child being placed into foster care for each removal reported in paragraph (d)(1) of this section. Indicate whether each circumstance described in paragraphs (d)(4)(i) through (xxxiv) of this section "applies" or "does not apply" for each removal indicated in paragraph (d)(1) of this section.

(i) *Runaway.* The child has left, without authorization, the home or facility where the child was residing.

(ii) *Whereabouts unknown.* The child's whereabouts are unknown and the title IV-E agency does not consider the child to have run away.

(iii) *Physical abuse.* Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

(iv) *Sexual abuse.* Alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child's welfare.

(v) *Psychological or emotional abuse.* Alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child's welfare.

(vi) *Neglect.* Alleged or substantiated negligent treatment or maltreatment of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person who is responsible for the child's welfare.

(vii) *Medical neglect.* Alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so.

(viii) *Domestic violence.* Alleged or substantiated violent act(s), including any forceful detention of an individual that results in, threatens to result in, or attempts to cause physical injury or mental harm. This is committed by a person against another individual residing in the child's home and with whom such person is in an intimate relationship, dating relationship, is or was related by marriage, or has a child in common. This circumstance includes domestic violence between the child and his or her partner and applies to a child or youth of any age (including those younger and older than the age of majority). This does not include alleged or substantiated maltreatment of the child by a person who is responsible for the child's welfare.

(ix) *Abandonment.* The child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This does not include a child left at a "safe haven" as defined by the title IV-E agency. This category does not apply when the identity of the parent(s) or legal guardian(s) is known.

(x) *Failure to return.* The parent, legal guardian or caretaker did not or has not returned for the child or made his or her whereabouts known. This category

12/21/2020

Regulations.gov - Proposed Rule Document

does not apply when the identity of the parent, legal guardian or caretaker is unknown.

(xi) *Caretaker's alcohol use.* A parent, legal guardian or other caretaker responsible for the child uses alcohol compulsively that is not of a temporary nature.

(xii) *Caretaker's drug use.* A parent, legal guardian or other caretaker responsible for the child uses drugs compulsively that is not of a temporary nature.

(xiii) *Child alcohol use.* The child uses alcohol.

(xiv) *Child drug use.* The child uses drugs.

(xv) *Prenatal alcohol exposure.* The child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome.

(xvi) *Prenatal drug exposure.* The child has been identified as prenatally exposed to drugs.

(xvii) *Diagnosed condition.* The child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition.

(xviii) *Inadequate access to mental health services.* The child and/or child's family has inadequate resources to access the necessary mental health services outside of the child's out-of-home care placement.

(xix) *Inadequate access to medical services.* The child and/or child's family has inadequate resources to access the necessary medical services outside of the child's out-of-home care placement.

(xx) *Child behavior problem.* The child's behavior in his or her school and/or community adversely affects his or her socialization, learning, growth and/or moral development. This includes all child behavior problems, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

(xxi) *Death of caretaker.* Existing family stress in caring for the child or an inability to care for the child due to the death of a parent, legal guardian or other caretaker.

(xxii) *Incarceration of caretaker.* The child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his or her ability to care for the child.

(xxiii) *Caretaker's significant impairment—physical/emotional.* A physical or emotional illness or disabling condition of the child's parent, legal guardian or caretaker that adversely limits his or her ability to care for the child.

(xxiv) *Caretaker's significant impairment—cognitive.* The child's parent, legal guardian or caretaker has cognitive limitations that impact his or her ability to function in areas of daily life, which adversely affect his or her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence.

(xxv) *Inadequate housing.* The child's or his or her family's housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the child to reside.



12/21/2020

Regulations.gov - Proposed Rule Document

(xxvi) *Voluntary relinquishment for adoption.* The child's parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the title IV-E agency, in writing, for the purpose of having the child adopted. This includes a child left at a "safe haven" as defined by the title IV-E agency.

(xxvii) *Child requested placement.* The child, age 18 or older, has requested placement into foster care.

(xxviii) *Sex trafficking.* The child is a victim of sex trafficking at the time of removal.

(xxix) *Parental immigration detention or deportation.* The parent is or was detained or deported by immigration officials.

(xxx) *Family conflict related to child's sexual orientation, gender identity, or gender expression.* There is family conflict related to the child's expressed or perceived sexual orientation, gender identity, or gender expression. This includes any conflict related to the ways in which a child manifests masculinity or femininity.

(xxxi) *Educational neglect.* Alleged or substantiated failure of a parent or caregiver to enroll a child of mandatory school age in school or provide appropriate home schooling or needed special educational training, thus allowing the child or youth to engage in chronic truancy.

(xxxii) *Public agency title IV-E agreement.* The child is in the placement and care responsibility of another public agency that has an agreement with the title IV-E agency pursuant to section 472(a)(2)(B) of the Act and on whose behalf title IV-E foster care maintenance payments are made.

(xxxiii) *Tribal title IV-E agreement.* The child is in the placement and care responsibility of an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement and on whose behalf title IV-E foster care maintenance payments are made.

(xxxiv) *Homelessness.* The child or his or her family has no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.

(5) *Victim of sex trafficking prior to entering foster care.* Indicate whether the child had been a victim of sex trafficking before the current out-of-home care episode. Indicate "yes" if the child was a victim or "no" if the child had not been a victim.

(i) *Report to law enforcement.* If the title IV-E agency indicated "yes" in paragraph (d)(5) introductory text of this section, indicate whether the title IV-E agency made a report to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate "yes" if the agency made a report to law enforcement and indicate "no" if the agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated "yes" in paragraph (d)(5)(i) of this section, indicate the date that the agency made the report to law enforcement.

(6) *Victim of sex trafficking while in foster care.* Indicate "yes" if the child was a victim of sex trafficking while in out-of-home care during the current out-of-home care episode. Indicate "no" if the child was not a victim of sex trafficking during the current out-of-home care episode.

(i) *Report to law enforcement.* If the title IV-E agency indicated "yes" in this paragraph (d)(6) of this section, indicate whether the agency made a report to

12/21/2020

Regulations.gov - Proposed Rule Document

law enforcement for entry into the NCIC database. Indicate “yes” if the title IV-E agency made a report(s) to law enforcement and indicate “no” if the title IV-E agency did not make a report.

(ii) *Date*. If the title IV-E agency indicated “yes” in paragraph (d)(6)(i) of this section, indicate the date(s) the agency made the report(s) to law enforcement.

(e) *Living arrangement and provider information*—(1) *Date of living arrangement*. Indicate the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. In the case of a child who has run away, whose whereabouts are unknown, or who is already in a living arrangement and remains there when the title IV-E agency receives placement and care responsibility, indicate the date of the VPA or court order providing the title IV-E agency with placement and care responsibility for the child, rather than the date when the child was originally placed in the living arrangement.

(2) *Foster family home*. Indicate whether each of the child's living arrangements is a foster family home, with a “yes” or “no” as appropriate. If the child has run away or the child's whereabouts are unknown, indicate “no.” If the title IV-E agency indicates that the child is living in a foster family home, by indicating “yes,” the title IV-E agency must complete paragraph (e) (3) of this section. If the title IV-E agency indicates “no,” the title IV-E agency must complete paragraph (e)(4) of this section.

(3) *Foster family home type*. If the title IV-E agency indicated that the child is living in a foster family home in paragraph (e)(2) of this section, indicate whether each foster family home type listed in paragraphs (e)(3)(i) through (vi) of this section applies or does not apply; otherwise the title IV-E agency must leave this paragraph (e)(3) blank.

(i) *Licensed home*. The child's living arrangement is licensed or approved by the state or tribal licensing/approval authority.

(ii) *Therapeutic foster family home*. The home provides specialized care and services.

(iii) *Shelter care foster family home*. The home is so designated by the state or tribal licensing/approval authority, and is designed to provide short-term or transitional care.

(iv) *Relative foster family home*. The foster parent(s) is related to the child by biological, legal or marital connection and the relative foster parent(s) lives in the home as his or her primary residence.

(v) *Pre-adoptive home*. The home is one in which the family and the title IV-E agency have agreed on a plan to adopt the child.

(vi) *Kin foster family home*. The home is one in which there is a kin relationship as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(4) *Other living arrangement type*. If the title IV-E agency indicated that the child's living arrangement is other than a foster family home in paragraph (e) (2) of this section, indicate the type of setting; otherwise the title IV-E agency must leave this paragraph blank. Indicate “group home-family operated” if the child is in a group home that provides 24-hour care in a private family home where the family members are the primary caregivers. Indicate “group home-staff operated” if the child is in a group home that provides 24-hour care for children where the care-giving is provided by shift or rotating staff. Indicate

12/21/2020

Regulations.gov - Proposed Rule Document

“group home-shelter care” if the child is in a group home that provides 24-hour care which is short-term or transitional in nature, and is designated by the state or tribal licensing/approval authority to provide shelter care. Indicate “residential treatment center” if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions or if the child is placed with a parent who is in a licensed residential family-based treatment facility for substance abuse per section 472(j) of the Act. This does not include a qualified residential treatment program defined in section 472(k)(4) of the Act. Indicate “qualified residential treatment program” if the child is in a placement that meets all of the requirements of section 472(k)(2)(A) and (4) of the Act. Indicate “child care institution” if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the state or tribal authority responsible for licensing or approving child care institutions. This includes a setting specializing in providing prenatal, post-partum, or parenting supports for youth per section 472(k)(2)(B) of the Act, and a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims per section 472(k)(2)(D) of the Act. This does not include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Indicate “child care institution-shelter care” if the child is in a child care institution and the institution is designated to provide shelter care by the state or tribal authority responsible for licensing or approving child care institutions and is short-term or transitional in nature. Indicate “supervised independent living” if the child is living independently in a supervised setting. Indicate “juvenile justice facility” if the child is in a secure facility or institution where alleged or adjudicated juvenile delinquents are housed. Indicate “medical or rehabilitative facility” if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate “psychiatric hospital” if the child is in a facility that provides emotional or psychological health care and is licensed or accredited as a hospital. Indicate “runaway” if the child has left, without authorization, the home or facility where the child was placed. Indicate “whereabouts unknown” if the child is not in the physical custody of the title IV-E agency or person or institution with whom the child has been placed, the child's whereabouts are unknown and the title IV-E agency does not consider the child to have run away. Indicate “placed at home” if the child is home with the parent(s) or legal guardian(s) in preparation for the title IV-E agency to return the child home permanently.

(5) *Location of living arrangement.* Indicate whether each of the child's living arrangements reported in paragraph (e)(1) of this section is located within or outside of the reporting state or tribal service area or is outside of the country. Indicate “out-of-state or out-of-tribal service area” if the child's living arrangement is located outside of the reporting state or tribal service area but inside the United States. Indicate “in-state or in-tribal service area” if the child's living arrangement is located within the reporting state or tribal service area. Indicate “out-of-country” if the child's living arrangement is outside of the United States. Indicate “runaway or whereabouts unknown” if the child has run away from his or her living arrangement or the child's whereabouts are unknown. If the title IV-E agency indicates either “out-of-state or out-of-tribal service area” or “out-of-country” for the child's living arrangement, the title IV-E agency must complete paragraph (e)(6) of this section; otherwise the title IV-E agency must leave paragraph (e)(6) of this section blank.

(6) *Jurisdiction or country where child is living.* Indicate the state, tribal service area, Indian reservation, or country where the reporting title IV-E agency placed the child for each living arrangement, if the title IV-E agency indicated either “out-of-state” or “out-of-tribal service area” or “out-of-country” in paragraph (e)(5) of this section; otherwise the title IV-E agency must leave

12/21/2020

Regulations.gov - Proposed Rule Document

paragraph (e)(6) of this section blank. The title IV-E agency must report the information in a format according to ACF's specifications.

(7) *Marital status of the foster parent(s)*. Indicate the marital status of the child's foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate "married couple" if the foster parents are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate "unmarried couple" if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. Indicate "separated" if the foster parent is legally separated or is living apart from his or her spouse. Indicate "single adult" if the foster parent is not married and is not living with another individual as part of a couple. If the response is either "married couple" or "unmarried couple," the title IV-E agency must complete the paragraphs for the second foster parent in paragraphs (e)(14) through (18) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(8) *Child's relationships to the foster parent(s)*. Indicate the type of relationship between the child and his or her foster parent(s), for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate "relative(s)" if the foster parent(s) is the child's relative (by biological, legal or marital connection). Indicate "non-relative(s)" if the foster parent(s) is not related to the child (by biological, legal or marital connection). Indicate "kin" if the foster parent(s) has kin relationship to the child as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(9) *Year of birth for first foster parent*. Indicate the year of birth for the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section.

(10) *First foster parent tribal membership*. For state title IV-E agencies only: Indicate whether the first foster parent is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(11) *Race of first foster parent*. Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (e)(11)(i) through (vii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

12/21/2020

Regulations.gov - Proposed Rule Document

(v) *Race—White*. A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown*. The foster parent does not know his or her race, or at least one race.

(vii) *Race—declined*. The first foster parent has declined to identify a race.

(12) *Hispanic or Latino ethnicity of first foster parent*. Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the first foster parent does not know his or her ethnicity indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined."

(13) *Sex of first foster parent*. Indicate whether the first foster parent is "female" or "male."

(14) *Year of birth for second foster parent*. Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. The title IV-E agency must leave this paragraph blank if there is no second foster parent according to paragraph (e)(7) of this section.

(15) *Second foster parent tribal membership*. For state title IV-E agencies only: Indicate whether the second foster parent is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(16) *Race of second foster parent*. Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (e)(16)(i) through (vii) of this section applies with a "yes" or "no." The title IV-E agency must leave this paragraph blank if there is no second foster parent according to paragraph (e)(7) of this section.

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White*. A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown*. The second foster parent does not know his or her race, or at least one race.

12/21/2020

Regulations.gov - Proposed Rule Document

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(17) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second foster parent does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined." The title IV-E agency must leave this paragraph blank if there is no second foster parent according to paragraph (e)(7) of this section.

(18) *Sex of second foster parent.* Indicate whether the second foster parent is "female" or "male."

(f) *Permanency planning—(1) Permanency plan.* Indicate each permanency plan established for the child. Indicate "reunify with parent(s) or legal guardian(s)" if the plan is to keep the child in out-of-home care for a limited time and the title IV-E agency is to work with the child's parent(s) or legal guardian(s) to establish a stable family environment. Indicate "live with other relatives" if the plan is for the child to live permanently with a relative(s) (by biological, legal or marital connection) who is not the child's parent(s) or legal guardian(s). Indicate "adoption" if the plan is to facilitate the child's adoption by relatives, foster parents, kin or other unrelated individuals. Indicate "guardianship" if the plan is to establish a new legal guardianship. Indicate "planned permanent living arrangement" if the plan is for the child to remain in foster care until the title IV-E agency's placement and care responsibility ends. The title IV-E agency must only select "planned permanent living arrangement" consistent with the requirements in section 475(5)(C)(i) of the Act. Indicate "permanency plan not established" if a permanency plan has not yet been established.

(2) *Date of permanency plan.* Indicate the month, day and year that each permanency plan(s) was established during each out-of-home care episode.

(3) *Date of periodic review.* Enter the month, day and year of each periodic review, either by a court or by administrative review (as defined in section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act.

(4) *Date of permanency hearing.* Enter the month, day and year of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act.

(5) *Caseworker visit dates.* Enter each date in which a caseworker had an in-person, face-to-face visit with the child consistent with section 422(b)(17) of the Act. Indicate the month, day and year of each visit.

(6) *Caseworker visit location.* Indicate the location of each in-person, face-to-face visit between the caseworker and the child. Indicate "child's residence" if the visit occurred at the location where the child is currently residing, such as the current foster care provider's home, child care institution or facility. Indicate "other location" if the visit occurred at any location other than where the child currently resides, such as the child's school, a court, a child welfare office or in the larger community.



12/21/2020

Regulations.gov - Proposed Rule Document

(g) *General exit information.* Provide exit information for each out-of-home care episode. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends.

(1) *Date of exit.* Indicate the month, day and year for each of the child's exits from out-of-home care. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends. If the child has not exited out-of-home care the title IV-E agency must leave this paragraph blank. If this paragraph is applicable, paragraphs (g)(2) and (3) of this section must have a response.

(2) *Exit transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g) (1) of this section was entered into the information system.

(3) *Exit reason.* Indicate the reason for each of the child's exits from out-of-home care. Indicate "not applicable" if the child has not exited out-of-home care. Indicate "reunify with parent(s)/legal guardian(s)" if the child was returned to his or her parent(s) or legal guardian(s) and the title IV-E agency no longer has placement and care responsibility. Indicate "live with other relatives" if the child exited to live with a relative (related by a biological, legal or marital connection) other than his or her parent(s) or legal guardian(s). Indicate "adoption" if the child was legally adopted. Indicate "emancipation" if the child exited care due to age. Indicate "guardianship" if the child exited due to a legal guardianship of the child. Indicate "runaway or whereabouts unknown" if the child ran away or the child's whereabouts were unknown at the time that the title IV-E agency's placement and care responsibility ends. Indicate "death of child" if the child died while in out-of-home care. Indicate "transfer to another agency" if placement and care responsibility for the child was transferred to another agency, either within or outside of the reporting state or tribal service area.

(4) *Transfer to another agency.* If the title IV-E agency indicated the child was transferred to another agency in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility for the child from the following options: "State title IV-E agency," "Tribal title IV-E agency," "Indian tribe or tribal agency (non-IV-E)," "juvenile justice agency," "mental health agency," "other public agency" or "private agency."

(h) *Exit to adoption and guardianship information.* Report information in paragraph (h) only if the title IV-E agency indicated the child exited to adoption or legal guardianship in paragraph (g)(3) of this section. Otherwise the title IV-E agency must leave paragraphs (h)(1) through (15) of this section blank.

(1) *Marital status of the adoptive parent(s) or guardian(s).* Indicate the marital status of the adoptive parent(s) or legal guardian(s). Indicate "married couple" if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate "married but individually adopting or obtaining legal guardianship" if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws, but are individually adopting or obtaining legal guardianship. Indicate "separated" if the foster parent is legally separated or is living apart from his or her spouse. Indicate "unmarried couple" if the adoptive parents or guardians are living together as a couple, but are not united in matrimony according to applicable laws. Use this response option even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate "single adult" if the adoptive parent or legal guardian is not married and is not living with another individual as part of a couple. If the response is "married couple" or "unmarried couple," the title IV-E agency also must complete paragraphs for

12/21/2020

Regulations.gov - Proposed Rule Document

the second adoptive parent or second legal guardian in paragraphs (h)(8) through (12) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(2) *Child's relationship to the adoptive parent(s) or guardian(s)*. Indicate the type of relationship between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in paragraphs (h)(2)(i) through (iv) of this section "applies" or "does not apply."

(i) *Relative(s)*. The adoptive parent(s) or legal guardian(s) is the child's relative (by biological, legal or marital connection).

(ii) *Kin*. The adoptive parent(s) or legal guardian(s) has a kin relationship with the child, as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the adoptive parent(s) or legal guardian(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(iii) *Non-relative(s)*. The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.

(iv) *Foster parent(s)*. The adoptive parent(s) or legal guardian(s) was the child's foster parent(s).

(3) *Date of birth of first adoptive parent or guardian*. Indicate the month, day and year of the birth of the first adoptive parent or legal guardian.

(4) *First adoptive parent or guardian tribal membership*. For state title IV-E agencies only: Indicate whether the first adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(5) *Race of first adoptive parent or guardian*. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (h)(5)(i) through (vii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White*. A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown*. The first adoptive parent or legal guardian does not know his or her race, or at least one race.

(vii) *Race—Declined*. The first adoptive parent, or legal guardian has declined to identify a race.

(6) *Hispanic or Latino ethnicity of first adoptive parent or guardian*. In general, an individual's ethnicity is determined by the individual. An individual is of

12/21/2020

Regulations.gov - Proposed Rule Document

Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the first adoptive parent or legal guardian does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined."

(7) *Sex of first adoptive parent or guardian.* Indicate whether the first adoptive parent is "female" or "male."

(8) *Date of birth of second adoptive parent, guardian, or other member of the couple.* Indicate the month, day and year of the date of birth of the second adoptive parent, legal guardian, or other member of the couple. The title IV-E agency must leave this paragraph blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(9) *Second adoptive parent, guardian, or other member of the couple tribal membership.* For state title IV-E agencies only: Indicate whether the second adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(10) *Race of second adoptive parent, guardian, or other member of the couple.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (h)(10)(i) through (vii) of this section applies with a "yes" or "no." The title IV-E agency must leave this paragraph blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The second adoptive parent, legal guardian, or other member of the couple does not know his or her race, or at least one race.

(vii) *Race—Declined.* The second adoptive parent, legal guardian, or other member of the couple has declined to identify a race.

(11) *Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second adoptive parent, legal guardian, or other member of the couple does not know his or her ethnicity,

12/21/2020

Regulations.gov - Proposed Rule Document

indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.” The title IV-E agency must leave this paragraph blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(12) *Sex of second adoptive parent, guardian, or other member of the couple.* Indicate whether the second adoptive parent, guardian, or other member of the couple is “female” or “male.”

(13) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. Indicate “interjurisdictional adoption or guardianship” if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the state or tribal service area but within the United States. Indicate “intercountry adoption or guardianship” if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the United States. Indicate “intrajurisdictional adoption or guardianship” if the reporting title IV-E agency placed the child within the same state or tribal service area as the one with placing responsibility.

(14) *Assistance agreement type.* Indicate the type of assistance agreement between the title IV-E agency and the adoptive parent(s) or legal guardian(s): “Title IV-E adoption assistance agreement”; “State/tribal adoption assistance agreement”; “Adoption-Title IV-E agreement non-recurring expenses only”; “Adoption-Title IV-E agreement Medicaid only”; “Title IV-E guardianship assistance agreement”; “State/tribal guardianship assistance agreement”; or “no agreement” if there is no assistance agreement.

(15) *Siblings in adoptive or guardianship home.* Indicate the number of siblings of the child who are in the same adoptive or guardianship home as the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must indicate “not applicable.” If the child has siblings, but they are not in the same adoptive or guardianship home as the child, the title IV-E agency must indicate “0.”

5. In § 1355.45, revise paragraphs (b)(2) and (b)(3)(vi) and add paragraph (f) to read as follows:

§ 1355.45

Adoption and guardianship assistance data file elements.

\* \* \* \* \*

(b) \* \* \*

(2) *Child's sex.* Indicate “male” or “female.”

(3) \* \* \*

(vi) *Race—Unknown.* The child or parent or legal guardian does not know the race, or at least one race of the child is not known. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

\* \* \* \* \*

(f) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate “title IV-E agency” if the reporting title IV-E agency placed the child for adoption or legal guardianship. Indicate “private agency under agreement” if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting

12/21/2020

Regulations.gov - Proposed Rule Document

title IV-E agency. Indicate "Indian tribe under contract/agreement" if an Indian tribe, tribal organization or consortia placed the child for adoption or legal guardianship through a contract or an agreement with the reporting title IV-E agency.

6. In § 1355.46, revise the second sentence of paragraph (c)(2) to read as follows:

§ 1355.46  
Compliance.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \* In addition, each record subject to compliance standards within the data file must have the data elements described in §§ 1355.44(a)(1) through (4), 1355.44(b)(1) and (2), and 1355.45(a) and (b)(1) and (2) be 100 percent free of missing data, invalid data and internally inconsistent data (see paragraphs (b)(1) through (3) of this section). \* \* \*

\* \* \* \* \*

[FR Doc. 2019-07827 Filed 4-16-19; 4:15 pm]  
BILLING CODE 4184-25-P

<h1 style="font-size: 2em; margin: 0;">ACF</h1> <p style="font-size: 1.2em; margin: 0;">Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	<b>1. Log No:</b> ACYF-CB-IM-20-07	<b>2. Issuance Date:</b> May 12, 2020
	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Title IV-E of the Social Security Act; Adoption and Foster Care Analysis and Reporting System (AFCARS)	

## INFORMATION MEMORANDUM

**TO:** State, Tribal, and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

**SUBJECT:** 2020 Final Rule on Revised AFCARS Data Elements

**LEGAL AND RELATED:** Title IV-E of the Social Security Act – §479; 45 CFR 1355.40 et seq.

**PURPOSE:** To inform title IV-E agencies that the Children’s Bureau (CB) published a final rule to revise the AFCARS data elements in the *Federal Register* on May 12, 2020 ([85 FR 28410](#)).

**BACKGROUND:** Currently, title IV-E agencies report to AFCARS case-level information on all children in foster care and those who have been adopted with title IV-E agency involvement (per [45 CFR 1355.40](#) and the [appendices A-E of 1355](#)). CB published a final rule revising AFCARS in December 2016 ([81 FR 90524](#)) that significantly expanded the data elements title IV-E agencies must report. The Department of Health and Human Services (HHS) Regulatory Reform Task Force (per [Executive Order \(E.O.\) 13777](#)) identified the 2016 final rule as one in which the reporting burden may impose costs that exceed benefits. In response, CB published an Advance Notice of Proposed Rulemaking (March 15, 2018, [83 FR 11449](#)) soliciting specific feedback on the 2016 final rule, followed by a proposed rule (April 19, 2019, [84 FR 16572](#)) to streamline the AFCARS data elements from the 2016 final rule and reduce the reporting burden on title IV-E agencies.

**INFORMATION:** The 2020 final rule improves on the 2016 final rule because it is responsive to stakeholders by expanding data collection in key areas without impeding agencies’ primary function of serving children and families. While we scaled back the information to be reported from the 2016 final rule, the 2020 final rule allows for a sophisticated analysis related to a child’s experience in out-of-home care and includes information about: sibling placements, child health and education, caseworker visits, sex trafficking victims, mental health conditions, prior adoptions/guardianships, whether the youth is pregnant or parenting, and the sex of the foster/adoptive parents and legal guardians. Importantly, the 2020 final rule will provide us greater insight into the experiences of children in foster care who fall under the protection of the Indian Child Welfare Act of 1978, but within the strictures of HHS authority. Also, through the 2020 final rule, we will gain greater insight into the experiences of children whose sexual orientation/gender identity played a role in their entry into foster care.

**Disclaimer:** Information Memoranda (IMs) provide information or recommendations to states, tribes, grantees, and others on a variety of child welfare issues. IMs do not establish requirements or supersede existing laws or official guidance.



These data points will allow analysis of the child's demographics intersecting with other data points, such as: whether the child is a member of a tribe, whether the child is placed with relatives, the number of entries/exits experienced, length of time to permanency from removal, diagnosed conditions, whether the child is placed with same sex couples, and the like. We believe this will help agencies better ensure the well-being of children and families and the data will help inform CB monitoring efforts that look at case circumstances and may help inform disproportionality. Lastly, CB made conforming changes only in the areas of: scope, data file structure and standards (45 CFR 1355.43), the Adoption and Guardianship Assistance Data File (45 CFR 1355.45), and compliance (45 CFR 1355.46), and did not make any changes to the reporting populations (45 CFR 1355.42) and penalties (45 CFR 1355.47).

The timing of publication of this rule is important because without it, the 2016 final rule would have gone into effect in October 2020. Promulgating this regulation now will ease the burden that the 2016 final rule placed on the reporting title IV-E agencies. Under the 2020 final rule, title IV-E agencies will have more than two fiscal years to implement the requirements of 45 CFR 1355.41-47.

**Implementation Timeframe:** We are providing two full Federal fiscal years for title IV-E agencies to comply with [45 CFR 1355.41 through 1355.47](#), which we believe is sufficient for title IV-E agencies to implement changes for AFCARS. The first official report period will cover **October 1, 2022 to March 31, 2023**, making the first due date for data files no later than **May 15, 2023**. Title IV-E agencies must continue to report AFCARS data in the same manner they do currently, per [45 CFR 1355.40](#) and [appendices A-E to part 1355](#) through September 30, 2022 (data file due no later than November 14, 2022). We will provide technical assistance to title IV-E agencies throughout this implementation period.

**Compliance and Penalties for the 2020 Final Rule:** Beginning with the data file due May 15, 2023, data must meet the reporting requirements and quality standards, such as the information must be complete, submitted on time, and internally consistent (45 CFR [1355.43](#) and [1355.46](#)). If a title IV-E agency fails to meet the standards, CB will provide technical assistance and the title IV-E agency will have an opportunity to correct and resubmit the data (45 CFR 1355.46(d)). CB will implement the statutory penalty structure in the law at §474(f) of the Act, thus, if the title IV-E agency does not resubmit or correct its data, we will apply the penalty provisions as outlined in [45 CFR 1355.47](#). CB cannot waive the penalty because there is no flexibility in applying the penalty structure to all title IV-E agencies, which has been in law since 2003.

Inquiries to: [CB Regional Program Managers](#) and [AFCARS@acf.hhs.gov](mailto:AFCARS@acf.hhs.gov)

/s/

---

Elizabeth Darling  
Commissioner  
Administration on Children, Youth and Families

Attachment: AFCARS 2020 Final Rule ([85 FR 28410](#))

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

## LEGAL STATUS

This site displays a prototype of a "Web 2.0" version of the daily Federal Register. It is not an official legal edition of the Federal Register, and does not replace the official print version or the official electronic version on GPO's govinfo.gov.

The documents posted on this site are XML renditions of published Federal Register documents. Each document posted on the site includes a link to the corresponding official PDF file on govinfo.gov. This prototype edition of the daily Federal Register on FederalRegister.gov will remain an unofficial informational resource until the Administrative Committee of the Federal Register (ACFR) issues a regulation granting it official legal status. For complete information about, and access to, our official publications and services, go to [About the Federal Register](#) on NARA's archives.gov.

The OFR/GPO partnership is committed to presenting accurate and reliable regulatory information on FederalRegister.gov with the objective of establishing the XML-based Federal Register as an ACFR-sanctioned publication in the future. While every effort has been made to ensure that the material on FederalRegister.gov is accurately displayed, consistent with the official SGML-based PDF version on govinfo.gov, those relying on it for legal research should verify their results against an official edition of the Federal Register. Until the ACFR grants it official status, the XML rendition of the daily Federal Register on FederalRegister.gov does not provide legal notice to the public or judicial notice to the courts.

LEGAL STATUS

## Adoption and Foster Care Analysis and Reporting System

A Rule by the [Children and Families Administration](#) on 05/12/2020

## DOCUMENT DETAILS

**Printed version:**

PDF (<https://www.govinfo.gov/content/pkg/FR-2020-05-12/pdf/2020-09817.pdf>)

**Publication Date:**

05/12/2020 (/documents/2020/05/12)

**Agencies:**

Administration for Children and Families (<https://www.federalregister.gov/agencies/children-and-families-administration>)

**Dates:**

This final rule is effective on July 13, 2020. As of May 12, 2020, the effective date for amendatory instructions 3 and 5, published December 14, 2016, at 81 FR 90524 (/citation/81-FR-90524), and delayed August 21, 2018, at 83 FR 42225 (/citation/83-FR-42225), are further delayed to October 1, 2022.

**Effective Date:**

07/13/2020

**Document Type:**

Rule

**Document Citation:**

85 FR 28410

**Page:**

28410-28434 (25 pages)

**CFR:**

45 CFR 1355

**RIN:**

0970-AC72

**Document Number:**

2020-09817

[Feedback](#) [LS](#)

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

---

**DOCUMENT STATISTICS****Page views:**

7,262

as of 12/21/2020 at 12:15 pm EST

---

**DOCUMENT STATISTICS**

---

**ENHANCED CONTENT****Docket Number:**ACF-2018-0003 (<https://beta.regulations.gov/docket/ACF-2018-0003>)**Docket Name:**

AFCARS 2018-2020

**Docket RIN**

0970-AC72

---

**ENHANCED CONTENT**

---

**PUBLISHED DOCUMENT**

---

 Start Printed Page 28410

---

**AGENCY:**

Children's Bureau (CB); Administration on Children, Youth and Families (ACYF); Administration for Children and Families (ACF); Department of Health and Human Services (HHS).

**ACTION:**

Final rule.

**SUMMARY:**

This rule finalizes revisions to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations proposed on April 19, 2019. AFCARS regulations require title IV-E agencies to collect and report data to ACF on children in out-of-home care, children who exit out-of-home care to adoption or legal guardianship, and children who are covered by a title IV-E adoption or guardianship assistance agreement.

**DATES:**

This final rule is effective on July 13, 2020. As of May 12, 2020, the effective date for amendatory instructions 3 and 5, published December 14, 2016, at 81 FR 90524 (/citation/81-FR-90524), and delayed August 21, 2018, at 83 FR 42225 (/citation/83-FR-42225), are further delayed to October 1, 2022.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen McHugh, Director, Policy Division, Children's Bureau, (202) 205-8618, [cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov) (<mailto:cbcomments@acf.hhs.gov>).

**SUPPLEMENTARY INFORMATION:**

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

## Table of Contents

- I. Executive Summary per Executive Order 13563 (/executive-order/13563)
- II. Background on the AFCARS Final Rule: Data Elements and Decision Making
- III. Overview of 2019 Notice of Proposed Rulemaking Comments
- IV. Implementation Timeframe
- V. Section-by-Section Discussion of Regulatory Provisions and Responses to Comments
- VI. Regulatory Impact Analysis
- VII. Tribal Consultation Statement

### I. Executive Summary per Executive Order 13563 (/executive-order/13563)

Executive Order (E.O.) 13563 requires that regulations be accessible, consistent, written in plain language, and easy to understand. This means that regulatory preambles for lengthy or complex rules (both proposed and final) must include executive summaries. Below is the executive summary for this AFCARS final rule.

(1) *Purpose of the AFCARS final rule.*

(a) *The need for the regulatory action and how the action will meet that need:* On February 24, 2017, the President issued E.O. 13777 (/executive-order/13777) *Enforcing the Regulatory Reform Agenda* to lower regulatory burdens on the American people. It directed Federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS final rule published on December 14, 2016 (81 FR 90524 (/citation/81-FR-90524), hereafter referred to as the 2016 final rule) as one in which the reporting burden may impose costs that exceed benefits. In response to E.O. 13777, (/executive-order/13777) we published in the **Federal Register** an Advance Notice of Proposed Rulemaking on March 15, 2018 (83 FR 11449 (/citation/83-FR-11449), hereafter referred to as the 2018 ANPRM), soliciting specific feedback on the 2016 final rule data elements. Based on the feedback we received and our review of the need for and utility of the data elements, we later published a streamlined proposal for AFCARS in a Notice of Proposed Rulemaking on April 19, 2019 (84 FR 16572 (/citation/84-FR-16572), hereafter referred to as the 2019 NPRM). This final rule is an E.O. 13771 (/executive-order/13771) deregulatory action which finalizes the proposal in the 2019 NPRM to streamline the AFCARS data elements.

(b) *Legal authority for the final rule:* AFCARS is a data collection system for national adoption and foster care data authorized under section 479 of the Social Security Act (the Act). Section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of children in foster care and those who are adopted with state involvement and their biological, foster, and adoptive parents. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

(2) *Summary of the major provisions of the final rule.*

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(a) *Out-of-home care data file data elements.* We finalize the out-of-home care data elements proposed in the 2019 NPRM. The out-of-home care data file in the 2016 final rule requires title IV-E agencies to report approximately 272 items; this final rule reduces the number of required items to approximately 183. This final rule does not include data elements asking for information on, among other things, the sexual orientation of the child, foster parent, adoptive parent, or legal guardian, and reduces data elements related to the Indian Child Welfare Act of 1978 (ICWA).

(b) *Conforming changes.* We made conforming changes to §§ 1355.40, 1355.41, 1355.43, 1355.45, and 1355.46 to update the citations or dates as a result of amendments in other sections.

(3) *Costs and benefits.* The benefits are that the streamlined AFCARS data elements will reduce the title IV-E agency reporting burden from the 2016 final rule, thus resulting in an estimated \$46 million in total annual savings. (Affected entities will continue to incur \$43 million in annual costs, net of Federal reimbursements, attributable to the 2016 final rule.)

## II. Background on the AFCARS Final Rule: Data Elements and Decision Making

Prior to issuing the 2019 NPRM, we conducted an in-depth analysis of the 2018 ANPRM comments, held tribal consultation, consulted with HHS experts that use AFCARS data, consulted with representatives of the Department of Interior (DOI) regarding the ICWA-related data elements, and considered the concerns and interests of all stakeholders. We reviewed each data element in the 2016 final rule and evaluated whether it is needed for a specific purpose, such as a title IV-B or IV-E statutory requirement, program monitoring, Congressional reporting, or budgeting, and to specifically identify whether including the data element in AFCARS would improve the accuracy and reliability of the data. After careful consideration, we proposed in the 2019 NPRM to streamline the out-of-home care data elements to what we believe is a reasonable amount, while also reducing redundancies in the data elements. Additional details regarding this evaluative process and decision-making are available in the preamble of the 2019 NPRM (84 FR 16573 (/citation/84-FR-16573)).

We believe that the approach we took in determining the data elements to propose in the 2019 NPRM was comprehensive and inclusive of the purposes for which we will use the AFCARS data. We also understood that there have been several opportunities to comment on different iterations of AFCARS, so in the 2019 NPRM we provided specific guidance in section V. Public Participation on the type of comments that would be most useful to ACF in making decisions on the final rule. Specific considerations for commenters, included the following:□

- How reporting the data elements in the 2019 NPRM will specifically enhance work with children and families.
- Why AFCARS is the most effective vehicle for collecting the data proposed in the 2019 NPRM and why no other current method is feasible to collect the information.
- How AFCARS data, which is aggregated at the national level, would help specific work with title IV-E agencies, children, and families.

□ Start Printed  
Page 28411

## III. Overview of 2019 Notice of Proposed Rulemaking Comments

The comment period for the 2019 NPRM was open for 60 days and closed on June 18, 2019. We received 150 comments from 24 states and local child welfare agencies; 33 Indian tribes, tribal organizations or consortiums; 10 organizations representing tribal interests; 45 national advocacy groups and universities; one Member of Congress; and 37 anonymous or private citizens. The comments are available in the docket for this action on *Regulations.gov*.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Summary of State and Local Child Welfare Agency Comments:* The overwhelming majority of state and local agencies supported streamlining the data elements as proposed in the 2019 NPRM. Their cited reasons include that it balances the need for updated information with the burden of having to revise systems to report data and it keeps a focus on Federal compliance and continuous quality improvement rather than turning AFCARS data into a research tool by adding measures that do not or cannot accurately capture the realities of child welfare practice. They also believe that the proposal would enable caseworkers to spend more time working with families and engaging in case planning, rather than data entry. Half of the state and local child welfare agencies specifically commented on the proposal to remove the sexual orientation data elements for the child, foster parents, adoptive parents and legal guardians. Of those, the majority agreed with the proposal, expressing that AFCARS is not the appropriate vehicle to collect this information, that it was unclear how this information in a Federal Government database will result in support services for children, and that this information should be tracked separately from AFCARS. Eleven state and local child welfare agencies specifically commented on the proposal to simplify the ICWA-related data elements. Of those, the overwhelming majority were in favor of the proposal and agreed with our rationale to keep the data elements that are essential to understanding nationally the ICWA-applicable population of children in foster care, while removing those that were based on DOI regulations, qualitative in nature, or requirements of the courts. Further reduction in these data elements was also recommended due to an extremely low population of American Indian/Native Alaskan children in foster care in certain states.

*Summary of Comments from Indian Tribes, Tribal Organizations or Consortiums, and Organizations Representing Tribal Interests:* All Indian tribes, tribal organizations or consortiums, and organizations representing tribal interests opposed the proposal to reduce the ICWA-related data elements. In general, the commenters opposed streamlining primarily because they felt that all data elements in the 2016 final rule are needed to assess ICWA compliance, and that national information is important to address disparities, analyze outcomes, and help in working with Indian children and families. There were very few comments on the other data elements.

*Summary of Comments from National Advocacy Organizations and Other Entities:* The vast majority of the national advocacy organizations and other individuals or entities that commented expressed general opposition to the streamlining proposed in the 2019 NPRM. The commenters opposed streamlining for various reasons with the general sentiment being that the 2016 final rule would provide more insight into the foster care population, promote visibility for marginalized groups, and allow data-informed legislating, policy, and program decisions.

### **Comment Analysis**

We reviewed and analyzed all of the 2019 NPRM comments and estimates provided and considered them in finalizing this rule and as it related to meeting the statutory requirements in § 479 of the Act to avoid unnecessary diversion of child welfare agency resources and to ensure that data collected is reliable and consistent. Our conclusion is that we do not have a sufficient justification, or a rational basis, for retaining the data elements proposed for removal, thus we did not make substantive changes in finalizing this rule. We received no new information that was convincingly articulated to persuade us to add in data elements from the 2016 final rule that were not proposed in the 2019 NPRM. In finalizing this rule, we maintain that we will collect the most critical information on the out-of-home care population from a national perspective while avoiding the unnecessary diversion of resources from title IV-E agencies, consistent with the statute authorizing AFCARS.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

In drafting the 2019 NPRM, we balanced the commenters' desires for more information with the need to minimize burden pursuant to E.O. 13777 (/executive-order/13777) and to focus on improving quality of services and achieving positive outcomes for children and families. This final rule will provide ample data for analysis via a combination of information from the data elements and will provide more robust national information on children in foster care not available in the current AFCARS. Specific to ICWA, we maintain that the detailed ICWA-related information requirements promulgated in the 2016 final rule are not appropriate for AFCARS.

Lastly, our decision to not add data elements aligns with the statutory requirements in section 479 of the Act to avoid unnecessary diversion of agency resources and to ensure that the data collected is reliable and consistent. We address specific comments to the proposal in the beginning of V. Section-by-Section Discussion of Regulatory Provisions of this final rule.

#### **IV. Implementation Timeframe**

We are providing two fiscal years for title IV-E agencies to comply with §§ 1355.41 through 1355.47, which we believe is sufficient for title IV-E agencies to implement the changes necessary to comply with this final rule. State commenters to both the 2019 NPRM and the 2018 ANPRM indicated they would need sufficient time to make changes to their electronic case management systems to collect new information and train employees on new requirements, and suggested timeframes ranging from one to five fiscal years post publication of the final rule. A third of states that commented suggested two fiscal years post publication of the final rule would be acceptable. States also suggested that this final rule not be implemented until after the state has fully implemented a Comprehensive Child Welfare Information System (CCWIS). A few states recommended a phased-in approach to penalties and compliance with the AFCARS requirements, stating that penalties should not begin until after the implementation period ends.

During the implementation period, state and tribal title IV-E agencies must continue to report to ACF data related to children in foster care and those who have been adopted with title IV-E agency involvement in accordance with § 1355.40 and the appendices to part 1355. It is essential for agencies to continue to report AFCARS data to ACF without interruption because AFCARS data is used for various reports, planning, and monitoring, and to make the Adoption and Legal Guardianship Incentive awards.

Start Printed  
Page 28412

#### **V. Section-by-Section Discussion of Regulatory Provisions and Responses to Comments**

We respond to the comments we received in response to the 2019 NPRM in this section-by-section discussion. We also address in the section-by-section preamble whether we made any changes to our 2019 NPRM proposal. Before discussing each section of the final rule, we respond to the general comments we received in response to our 2019 NPRM proposal to streamline the data elements, reduce the ICWA-related data elements, and remove the data elements on the child/foster parent/adoptive parent/guardian's sexual orientation. Many comments we received iterated the same or similar information that fell into these broad categories and we believe that it is clearer for us to respond to similarly grouped comments in this way. Following these discussions is a discussion of specific sections of the 2019 NPRM.

##### **Response to Comments on Streamlining the Data Elements**

*Comment:* Indian tribes, commenters representing tribal interests, national advocacy organizations, and other commenters opposed streamlining the AFCARS data elements as proposed in the 2019 NPRM and requested that we re-institute the 2016 final rule in its entirety. Their common reasons for doing so were essentially the same as previously provided in response to the ANPRM and included that:

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

- The entire 2016 final rule will provide a comprehensive data set that will help us track outcomes, address disparities, and address a perceived need for research and legislation.
- ACF overstated the burden in the 2019 NPRM and did not consider that the information from additional data may lead to lower future costs because families would get the help they need.
- The 2016 final rule would promote visibility for marginalized groups and help us understand their particular experiences in foster care.
- Caseworkers should be collecting all of the information promulgated in the 2016 final rule as part of routine casework, so it should be in the case file and transmitted to ACF for AFCARS.

In contrast, the vast majority of state commenters supported the streamlined proposal and specified that a lower reporting burden will help their work with children and families by enabling caseworkers to spend less time on data entry.

*Response:* We considered the circumstances and capacity of all title IV-E agencies in setting the AFCARS requirements. The vast majority of commenters who opposed simplifying and reducing the data elements in the 2019 NPRM were not agencies responsible for reporting data to AFCARS. They reiterated similar justifications that they made in response to the 2018 ANPRM for including in this final rule all of the data elements promulgated in the 2016 final rule. The commenters did not provide additional evidence for collecting the data elements at a *Federal* level that we proposed to remove or simplify. The commenters that opposed streamlining did not elaborate on why AFCARS is the most effective vehicle for collecting the information required under the 2016 final rule that we proposed to remove, which in large part was qualitative data, describe work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS, or specify how the data we proposed to remove would help their specific work with children and families served by the title IV-E agency. The comments from non-title IV-E agencies, which opposed streamlining due to a perceived “need” for the data, lead us to believe that there is a misunderstanding of AFCARS and its functionality. The information that title IV-E agencies report to AFCARS is aggregated and de-identified at the national level, meaning it does not include names, numbers, or other information. This means that the data provides broad insight into the national population of children in foster care because AFCARS is designed to have a few response options that must be broad enough to capture a range of experiences across the country. The title IV-E agency extracts the information from electronic case files, via a programming code, and transmits it to ACF. Section 479 of the Act does not authorize us to collect *all* information from a title IV-E agency case file, nor would that be appropriate.

### **Response to Comments on Streamlining ICWA-Related Data Elements**

*Comment:* In general, Indian tribes, commenters representing tribal interests, national advocacy organizations, a member of congress, and private individuals opposed our proposal to streamline the ICWA-related data elements and requested that we re-institute all of the ICWA-related data elements from the 2016 final rule for essentially the same reasons previously provided in response to the 2018 ANPRM including that:

- The 2019 NPRM was too drastic in streamlining the ICWA-related data elements and the information is needed to assess compliance with ICWA;
- Section 422(b)(9) in title IV-B of the Act includes processes regarding ICWA; and
- Unlike DOI, ACF has established relationships with states and the Federal AFCARS system in place to receive data on Native American children in state foster care systems, and therefore is better positioned to collect ICWA-related data.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Response:* First, in this final rule, we are attempting to correct any confusion or misperception that we may have created by justifying the ICWA-related data elements in the 2016 final rule on the basis of consistency with DOI's final rule on ICWA (published on June 14, 2016, 81 FR 38778 (/citation/81-FR-38778)). DOI is the lead agency for ICWA compliance, statute, and regulations and HHS is not the cognizant authority over implementing, overseeing, or assessing compliance with ICWA. Retaining all of the 2016 final rule ICWA-related data elements would put HHS in the position of interpreting various ICWA requirements. We have authority only for the collection of data elements that are used for functions and oversight under HHS authority, namely the title IV-B and IV-E programs.

Second, we want to clarify that section 422(b)(9) of the Act does not provide the legal authority for HHS to collect ICWA-related data in AFCARS or for HHS to determine state compliance with ICWA. Rather, it simply requires a description of specific measures taken by the state to comply with ICWA. HHS is not authorized to determine compliance with ICWA and/or penalize states for failure to comply with ICWA through this requirement.

Third, sections 479(c)(3)(A) through (D) of the Act require the collection of comprehensive national information with respect to the demographic characteristics of, status of, and assistance provided to children in foster care and those who are adopted with state involvement along with their biological, foster, and adoptive parents. The AFCARS statute does not provide authority for ACF to require states to report specific details on ICWA's requirements in AFCARS to be used for ICWA compliance and this was mischaracterized in the 2016 final rule. The AFCARS authority allows us to  collect ICWA-related data elements in this final rule to inform us whether a child's connections with his or her family, heritage, and community are preserved and will provide context for other title IV-B and IV-E monitoring. Further, the data will provide supplemental information on whether states follow certain best practices with regard to Native American children in foster care. For example, while HHS reviews are not designed to measure states' conformity with specific ICWA provisions, information from the data elements in this final rule will provide contextual data such as whether the state made concerted efforts to preserve a child's connections to the child's tribe and how well the state engages in consultation with tribal representatives.

Start Printed  
Page 28413

Lastly, in the 2019 NPRM preamble (84 FR 16578 (/citation/84-FR-16578)), we reported that we will not release specific information regarding a child's tribal membership or ICWA applicability to requestors, except for the Indian tribe of which the child is or may be a member, due to the low numbers of children in the out-of-home care reporting population where ICWA applies in order to protect the confidentiality of these children. This means that the 2016 final rule ICWA-related data elements would not be available for ICWA compliance purposes because ACF is unable to release information to other entities that could use it for this purpose.

### **Response to Comments on Removing the Sexual Orientation Data Elements**

We did not propose data elements on the sexual orientation of children and their foster or adoptive parents and legal guardians in the 2019 NPRM, nor are we including them in this final rule. However, we would like to respond to the comments received.

*Comment:* Numerous private individuals, national advocacy organizations and other commenters suggested that we add the data elements requiring agencies to report the sexual orientation of children and their foster or adoptive parents and legal guardians in the final rule. The common reasons provided, which were the same or similar reasons provided by these commenters in response to the 2018 ANPRM, are that the data would (1) enhance recruitment of foster homes; (2) aid permanency and case decision-making; (3) promote

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

visibility for marginalized groups; (4) help to analyze youth outcomes; (5) address disparities; and (6) enable Congress to legislate appropriately at the national-level. Some of the national advocacy organizations provided information about a set of professional guidelines developed in 2013 to address the need to collect sexual orientation information for such purposes as developing case plans and tracking individual case outcomes in support of their recommendation. However, state and local child welfare agency commenters generally acknowledged that information about a youth's or provider's sexual orientation can be collected as part of the title IV-E agency's casework and should be documented in the case file, if it pertains to the circumstances of the child, and reporting it to a national database would not enhance their work with children and families.

*Response:* For the reasons set forth in the 2019 NPRM, we continue to disagree with the commenters that suggested this final rule should include this sexual orientation data and have made no changes. We have examined the 2013 professional guidelines which largely provide best practice guidelines related to *client/caseworker/agency interaction* in gathering and managing sexual orientation and gender identity (SOGI) information *from clients*. They are a practice guide, or set of professional standards, for *child welfare staff and child welfare agencies* on how they interact with clients, and gather and manage SOGI information at the case, local, and state level. We conclude that those guidelines are not relevant to collecting sexual orientation information through a Federal administrative data collection. We continue to rely on the 2016 Office of Management and Budget (OMB) guidance to ground our decision making because it provides direction for Federal agencies to consider before requiring SOGI information in surveys and administrative databases (84 FR 16576 (/citation/84-FR-16576)).

#### **Section 1355.40 Foster Care and Adoption Data Collection**

In this final rule, we modify the dates in § 1355.40 to require title IV-E agencies to submit AFCARS data in accordance with AFCARS regulations at § 1355.40 and the appendices to part 1355 until the dates listed in the **DATES** section of this rule. This means that title IV-E agencies must continue to report AFCARS data in the same manner they do currently until the implementation date of this final rule, which is October 1, 2022 (Fiscal Year (FY) 2023). We did not propose these changes in the 2019 NPRM, however these are technical conforming edits needed to implement this final rule.

#### **Section 1355.41 Scope of the Adoption and Foster Care Analysis and Reporting System**

This section sets forth the scope of AFCARS. In the 2019 NPRM, we proposed to make technical amendments to paragraph (c) to update citations. However, in this final rule, we make a technical revision to remove paragraph (c) which prescribed definitions, specifically citing to the ICWA statute and DOI regulations. We make this edit based on the comments we received as we described and responded to above, as we are concerned we may have unintentionally created misperceptions related to our authority over ICWA compliance. Accordingly, we are removing specific definitions because they relate to ICWA requirements and could create confusion for AFCARS reporting. Instead, in the description of the data element itself, we indicate if there is an applicable ICWA citation for reporting on a data element.

#### **Section 1355.43 Data Reporting Requirements**

This section contains the AFCARS data reporting requirements. In the 2019 NPRM, we proposed to amend paragraph (b)(3), which required that the title IV-E agency must report the date of removal, exit date, and exit reason for each child who had an out-of-home care episode prior to October 1, 2020. This means that title IV-E agencies do not need to report complete historical and current information for these children. We did not receive comments relevant to our proposal for this section. In this final rule, we change the date to October 1, 2022, to conform to the implementation date in the **DATES** section of this final rule.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

**Section 1355.44 Out-of-Home Care Data File Elements**

This section includes all of the data element descriptions for the out-of-home care data file.

**SECTION 1355.44(A) GENERAL INFORMATION**

In the 2019 NPRM, we proposed in paragraph (a) that the title IV-E agency must collect and report general information that identifies the reporting title IV-E agency as well as the child in out-of-home care. We did not receive comments relevant to the data elements proposed in § 1355.44(a), thus we finalize paragraph (a) as proposed:

*Title IV-E agency.* Under paragraph (a)(1), the title IV-E agency must indicate the name of the title IV-E agency responsible for submitting AFCARS data to ACF. A state title IV-E agency must indicate its state name. ACF will work with tribal title IV-E agencies to provide guidance during implementation.

□ Start Printed  
Page 28414

*Report date.* Under paragraph (a)(2), the title IV-E agency must indicate the report period date, which is the last month and year that corresponds with the end of the report period.

*Local agency.* Under paragraph (a)(3), the title IV-E agency must report the name of the local county, jurisdiction, or equivalent unit that has responsibility for the child. ACF will work with tribal title IV-E agencies to provide guidance during implementation.

*Child record number.* Under paragraph (a)(4), the title IV-E agency must report the child's record number, which is a unique person identification number, as an encrypted number as instructed.

**SECTION 1355.44(B) CHILD INFORMATION**

In the 2019 NPRM, we proposed in paragraph (b) that the title IV-E agency must report certain child-specific information for the identified child in out-of-home care. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Child's date of birth.* In the 2019 NPRM, we proposed in paragraph (b)(1) that the title IV-E agency must report the child's date of birth including the month, day, and year, as instructed. We did not receive comments relevant to our proposal for this paragraph, thus we finalize this data element as proposed.

*Child's sex.* In the 2019 NPRM, we proposed in paragraph (b)(2) that the title IV-E agency must report the child's sex from the response options of "male" and "female".

*Comment:* Two states suggested that we include a third gender option, such as "other", because other agencies within the state have this ability (e.g., motor vehicles), so it promotes consistency. Sixteen national advocacy organizations suggested we add data elements on gender identity.

*Response:* We do not adopt changes based on public comments to this data element nor do we provide additional response options in this final rule because we did not receive a significant number of comments from title IV-E agencies requesting changes. Further, we have no compelling reason to increase the agency's burden to require this information be reported to AFCARS as we have no need for it at the Federal level.

*Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.* In the 2019 NPRM, we proposed in paragraph (b)(3) that the state title IV-E agency must report whether it made inquiries to determine if the child is an Indian child as defined in the Indian Child Welfare Act of 1978 (ICWA) by

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

indicating “yes” or “no”. We did not receive comments specific to this data element, and finalize this data element as proposed.

*Child's tribal membership.* In the 2019 NPRM, we proposed in paragraph (b)(4) that the state title IV-E agency must report whether the child is a member of, or eligible for membership in, a federally recognized Indian tribe from the response options of “yes,” “no”, or “unknown”. If the state title IV-E agency indicated “yes”, it would have to indicate all federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s) in a format according to ACF's specifications. We did not receive comments specific to these data elements. We finalize these data elements as proposed, with a conforming change to paragraph (b)(4)(i) to specify a “federally recognized” Indian tribe, consistent with the language used in paragraph (b)(4)(ii).

*Application of ICWA.* In the 2019 NPRM, we proposed in paragraph (b)(5) that the state title IV-E agency must report whether ICWA applies for the child from the response options of “yes,” “no”, or “unknown”. If the state title IV-E agency indicated “yes”, it would be required to indicate the date that the Indian tribe or state or tribal court notified the state title IV-E agency that ICWA applies. We did not receive comments specific to this data element, and finalize this data element as proposed.

*Notification.* In the 2019 NPRM, we proposed in paragraph (b)(6) that the state title IV-E agency must report whether the child's Indian tribe was sent legal notice, if the state title IV-E agency indicated “yes” in the data element established in paragraph (b)(5)(i).

*Comment:* Commenters who opposed streamlining the data elements we proposed in the 2019 NPRM requested that we add data elements for reporting whether the state sent notice to the parent and Indian custodian and the date of the notice.

*Response:* As we explained earlier in the section-by-section discussion, we did not make revisions to the proposal because we are moving forward with requiring a streamlined set of data elements from states for identifying the number of children in out-of-home care nationally who should be afforded the protections of ICWA and we do not need more details in federally reported AFCARS data related to ICWA notifications. We finalize this data element as proposed.

*Child's race.* In the 2019 NPRM, we proposed in paragraph (b)(7) that the title IV-E agency must report the race of the child. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child's Hispanic or Latino ethnicity.* In the 2019 NPRM, we proposed in paragraph (b)(8) that the title IV-E agency must report the Hispanic or Latino ethnicity of the child. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Health assessment.* In the 2019 NPRM, we proposed in paragraph (b)(9) that the title IV-E agency must report whether the child had a health assessment during the current out-of-home care episode from the response options of “yes” or “no”.

*Comment:* Several states expressed support for streamlining this data element because they agreed that any further detail regarding health assessments should be part of a qualitative review. Eighteen national advocacy groups opposed the proposal to streamline reporting on health assessments, stating that more details on the dates of health assessments and whether they were timely are needed to provide insight into the health of children in foster care.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Response:* We did not make changes to include more details about the health assessment because we did not receive additional evidence to support the need for this data at a Federal level. Furthermore, we do not need additional details on health assessments reported to AFCARS to monitor compliance with section 422(b)(15) (A) of the Act. We finalize this data element as proposed.

*Health, behavioral or mental health conditions.* In the 2019 NPRM, we proposed in paragraph (b)(10) that the title IV-E agency must report whether the child was diagnosed by a qualified professional as having one or more health, behavioral, or mental health conditions from a list of eleven conditions prior to or during the child's current out-of-home care episode. If so, the agency must report whether it is an existing condition or a previous condition, and additional information as instructed on whether the child had an exam or assessment.

*Comment:* Six states and local agencies recommended streamlining this data element further, by either reducing the response options or reducing the health, behavioral, or mental health conditions. □

□ Start Printed  
Page 28415

*Response:* We did not make changes to this data element in response to comments because further streamlining will render the information not useful for informing the annual outcomes report to Congress. Additionally, the conditions are based on a combination of the Diagnostic and Statistical Manual of Mental Disorders and definitions from the National Institutes of Health, and the suggestion to further streamline by combining conditions was not overwhelmingly supported by commenters. We finalize this data element as proposed.

*School enrollment.* In the 2019 NPRM, we proposed in paragraph (b)(11) that the title IV-E agency must report whether or not the child is enrolled as a full-time student in elementary or secondary education, or is a full or part-time student enrolled in post-secondary education or training, or college.

*Comment:* Four states suggested removing this data element believing it is duplicative of paragraph (b)(12) *Educational level*.

*Response:* We retained this data element as proposed because we are specifically seeking information on school enrollment *and* the highest educational level a child has completed. We will use the combined information to assess, on a national basis, the well-being of children placed in out-of-home care as part of monitoring the title IV-B and IV-E programs through reviews. We finalize this data element as proposed.

*Educational level.* In the 2019 NPRM, we proposed in paragraph (b)(12) that the title IV-E agency must report the highest educational level from kindergarten to college or post-secondary education/training, as well as a general equivalency diploma (GED), completed by the child as of the last day of the report period.

*Comment:* One state asked for clarification as to when the child's highest educational level must be reported.

*Response:* The title IV-E agency must report the highest educational level the child completed as of the last day of the report period. We finalize this data element as proposed.

*Pregnant or parenting.* In the 2019 NPRM, we proposed in paragraph (b)(13)(i) that the title IV-E agency must report whether the child is pregnant as of the end of the report period from the response options of "yes" or "no". In the 2019 NPRM, we proposed in paragraph (b)(13)(ii) that the title IV-E agency must indicate whether the child has ever fathered or bore a child by indicating from the response options of "yes" or "no". In the 2019 NPRM, we proposed in paragraph (b)(13)(iii) that the title IV-E agency must indicate

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

whether the child and his/her child(ren) are placed together at any point during the report period, if the response in paragraph (b)(13)(ii) of this section is “yes”. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize these data elements as proposed.

*Special education.* In the 2019 NPRM, we proposed in paragraph (b)(14) that the title IV-E agency must report on the child's special education status by indicating if the child has an Individualized Education Program (IEP) or an Individualized Family Service Plan (IFSP). We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Prior adoption.* In the 2019 NPRM, we proposed in paragraph (b)(15) that the title IV-E agency must report whether the child experienced a prior legal adoption, prior to the current out-of-home care episode. If the title IV-E agency indicates “yes”, then the title IV-E agency must report the month and year of the most recent prior finalized adoption (in paragraph (b)(15)(i)) and whether the child's most recent prior adoption was an intercountry adoption (in paragraph (b)(15)(ii)).

*Comment:* Two states commented that reporting this information is discretionary and recommended we remove these data elements.

*Response:* We did not make changes based on comments because reporting on prior adoptions and intercountry adoptions is required by sections 479(c)(3)(C)(ii) and 479(d) of the Act. Currently, the information is reported via a narrative in the Child and Family Services Plan (CFSP) and annual updates. Quantitative reporting through AFCARS is preferred because the accuracy, reliability, and consistency of the data will improve. We finalize these data elements as proposed.

*Prior guardianship.* In the 2019 NPRM, we proposed in paragraph (b)(16)(i) that the title IV-E agency must report whether the child experienced any prior public, private or independent guardianship(s). If so, the title IV-E agency must report the month and year of the most recent prior finalized legal guardianship (in paragraph (b)(16)(ii)).

*Comment:* Three states commented that reporting on this information is discretionary and recommended these data elements be removed.

*Response:* We did not make changes to remove these data elements because reporting on prior guardianships is required by section 479(d) of the Act. We finalize these data elements as proposed.

*Child financial and medical assistance.* In the 2019 NPRM, we proposed in paragraph (b)(17) that the title IV-E agency must report whether the child received financial and medical assistance, other than title IV-E foster care maintenance payments, from a list of eight sources. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Title IV-E foster care during report period.* In the 2019 NPRM, we proposed in paragraph (b)(18) that the title IV-E agency must report whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period from the response options of “yes” or “no”. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Siblings.* In the 2019 NPRM, we proposed in paragraphs (b)(19) through (21) that the title IV-E agency must report the number of siblings that the child has, the number of siblings who are in foster care and the number of siblings who are in the same living arrangement as the child, on the last day of the report period.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Comment:* Two states suggested modifications to the sibling data elements to require agencies to report if siblings were living together at any time during the six-month report period and on the last day of the reporting period, and to not ask for numbers of siblings.

*Response:* We did not make changes based on the comments because these data elements as were proposed in the 2019 NPRM will meet our needs for monitoring the title IV-B and IV-E programs better than the states' proposal because they suggested to provide limited information on siblings of children in foster care and only whether siblings lived together during a report period. Their suggestion is not robust enough for us to understand the entire situation of a child in foster care and the child's siblings. We finalize these data elements as proposed.

#### **SECTION 1355.44(C) PARENT OR LEGAL GUARDIAN INFORMATION**

In the 2019 NPRM, we proposed in paragraph (c) that the title IV-E agency must report certain information on the child's parent(s) or legal guardian(s). Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Year of birth of parent(s) or legal guardian(s).* In the 2019 NPRM, we proposed in paragraphs (c)(1) and (2) that the title IV-E agency must report  the birth year of the child's parent(s) or legal guardian(s). We did not receive comments relevant to our proposal for this paragraph and we finalize these data elements as proposed.

Start Printed  
Page 28416

*Tribal membership mother and father.* In the 2019 NPRM, we proposed in paragraphs (c)(3) and (4) that the state title IV-E agency must report whether the biological or adoptive mother and father are members of an Indian tribe, if known. We did not receive comments specific to this data element and we finalize these data elements as proposed.

*Termination/modification of parental rights.* In the 2019 NPRM, we proposed in paragraph (c)(5) that the title IV-E agency must report whether the rights for each parent were terminated or modified on a voluntary or involuntary basis. In the 2019 NPRM, we proposed in paragraph (c)(5)(i) that the title IV-E agency must report each date a petition to terminate/modify parental rights was filed, if applicable. In the 2019 NPRM, we proposed in paragraph (c)(5)(ii) that the title IV-E agency must report the date parental rights were terminated/modified, if applicable.

*Comment:* One local agency asked how to report the information in paragraph (c)(5)(i) if a petition is not filed because the parent voluntarily relinquished the rights without a court order.

*Response:* The agency would report this to be a voluntary termination of parental rights and leave paragraph (c)(5)(i) blank as we instruct to only complete that paragraph "if applicable". However, to make this clearer, we modified the regulation to add an instruction in paragraph (c)(5)(i) that if a petition has not been filed, to leave the paragraph (c)(5)(i) data element blank. We finalize the data elements in paragraphs (c)(5)(ii) and (iii) as proposed.

#### **SECTION 1355.44(D) REMOVAL INFORMATION**

In the 2019 NPRM, we proposed in paragraph (d) that the title IV-E agency must report information on each of the child's removal(s). Below are the finalized data elements and a discussion of whether we received comments on each data element.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Date of child's removal.* In the 2019 NPRM, we proposed in paragraph (d)(1) that the title IV-E agency must report the date(s) on which the child was removed for each removal of a child who enters the placement and care responsibility of the title IV-E agency as instructed. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Removal transaction date.* In the 2019 NPRM, we proposed in paragraph (d)(2) that the title IV-E agency must report the transaction date for each of the child's removal dates reported in paragraph (d)(1) using a non-modifiable, computer-generated date which accurately indicates the month, day, and year each response to paragraph (d)(1) was entered into the information system. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Environment at removal.* In the 2019 NPRM, we proposed paragraph (d)(3) that the title IV-E agency must report the type of environment (household or facility) from a list of seven that the child was living in at the time of each of the child's removals reported in paragraph (d)(1). We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child and family circumstances at removal.* In the 2019 NPRM, we proposed in paragraph (d)(4) that the title IV-E agency must report on all of the circumstances surrounding the child and family at the time of each removal reported in paragraph (d)(1) from a list of 34 circumstances.

*Comment:* Two states and one local agency made suggestions to modify paragraph (d)(4) such as combining certain circumstances and rearranging the circumstances into ones that are "reasons" for removal and circumstances that "existed" at the time of removal.

*Response:* We did not make changes based on the comments because the data element as proposed in the 2019 NPRM will meet our needs, better than the states' proposal, for monitoring, and reporting on, the title IV-B and IV-E programs, and no concerns were raised by the vast majority of title IV-E agency commenters in response to the 2019 NPRM. Additionally, title IV-E agencies are required to report the full set of circumstances that surround the child at the time of removal and not just the "reason" for a child's removal, because, in almost every case, there is not only one reason for the child's removal. This has been an AFCARS requirement since 1993, described currently as "Actions or Conditions Associated With Child's Removal". Additionally, the circumstances in this data element inform program monitoring and budgeting, such as knowing nationally the number of children whose removal was impacted by a caretaker's substance abuse. For these reasons, we finalize these data elements as proposed.

*Victim of sex trafficking prior to entering foster care.* In the 2019 NPRM, we proposed in paragraph (d)(5) that the title IV-E agency must report whether the child had been a victim of sex trafficking before the current out-of-home care episode and if yes, the agency must indicate whether it reported each instance to law enforcement and the dates of each report. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Victim of sex trafficking while in foster care.* In the 2019 NPRM, we proposed in paragraph (d)(6) that the title IV-E agency must report whether the child was a victim of sex trafficking while in out-of-home care during the current episode and if yes, the agency must indicate whether it reported each instance to law enforcement and the dates of each report. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

#### **SECTION 1355.44(E) LIVING ARRANGEMENT AND PROVIDER INFORMATION**

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

In the 2019 NPRM, we proposed in paragraph (e) that the title IV-E agency must report information on each of the child's living arrangements for each out-of-home care episode. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Date of living arrangement.* In the 2019 NPRM, we proposed in paragraph (e)(1) that the title IV-E agency must report the date of each living arrangement. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Foster family home.* In the 2019 NPRM, we proposed in paragraph (e)(2) that the title IV-E agency must report whether or not a child resides in a foster family home for each living arrangement, and if yes, the agency must complete paragraph (e)(3). We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Foster family home type.* In the 2019 NPRM, we proposed in paragraph (e)(3) that the title IV-E agency must report the type of foster family home from a list of six. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Other living arrangement type.* In the 2019 NPRM, we proposed in paragraph (e)(4) that the title IV-E agency must  report whether a child who is not placed in a foster family home is placed in one of 14 mutually exclusive living arrangements.

Start Printed  
Page 28417

*Comment:* A national advocacy organization suggested adding “skilled nursing facility” as a living arrangement.

*Response:* We did not make changes to add another living arrangement as suggested because the living arrangements proposed cover the range of placement types necessary for our purposes and we do not need any additional level of detail. We finalize this data element as proposed.

*Location of living arrangement.* In the 2019 NPRM, we proposed in paragraph (e)(5) that the title IV-E agency must report whether the location of each of the child's living arrangement is within or outside of the reporting state or tribal service area or is outside of the country. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Jurisdiction or country where child is living.* In the 2019 NPRM, we proposed in paragraph (e)(6) that the title IV-E agency must report the jurisdiction or country where the child is living if it is outside of the reporting state or tribal service area or is outside of the country. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Marital status of the foster parent(s).* In the 2019 NPRM, we proposed in paragraph (e)(7) that the title IV-E agency must report the marital status of the foster parent(s). We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child's relationship to the foster parent(s).* In the 2019 NPRM, we proposed in paragraph (e)(8) that the title IV-E agency must report the child's relationship to the foster parent(s) from the following three response options: “relative(s)”, “nonrelative(s)”, and “kin”. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Year of birth for foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(9) and (14) that the title IV-E agency must report the year of birth of the foster parent(s). We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Foster parent(s) tribal membership.* In the 2019 NPRM, we proposed in paragraphs (e)(10) and (15) that the title IV-E agency must report the tribal membership of the foster parent(s). We did not receive comments specific to these data elements and we finalize these data elements as proposed.

*Race of foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(11) and (16) that the title IV-E agency must report the race of the foster parent(s). We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Hispanic or Latino ethnicity of foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(12) and (17) that the title IV-E agency must report the Hispanic or Latino ethnicity of the foster parent(s), as appropriate. We did not receive comments relevant to our proposal for this paragraph and we finalize these data elements as proposed.

*Sex of foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(13) and (18) that the title IV-E agency must report the sex of the foster parent(s).

*Comment:* Two states suggested that we include a third gender option, such as “other”, because other agencies within the state have this ability (*e.g.*, motor vehicles), so it promotes consistency. Sixteen national advocacy organizations suggested we add data elements on gender identity.

*Response:* We did not make changes to this data element and did not add data elements because we did not receive a significant enough number of comments from title IV-E agencies that identified reasons to revise the response options to include a third gender response option. Further, we have no compelling reason to increase the agency's burden to require this information be included in AFCARS as we have no need for it at the Federal level. We finalize these data elements as proposed.

#### **SECTION 1355.44(F) PERMANENCY PLANNING**

In the 2019 NPRM, we proposed in paragraph (f) that the title IV-E agency must report information related to permanency planning for children in out-of-home care, which includes permanency plans, hearings, and caseworker visits with the child. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Permanency plan and date.* In the 2019 NPRM, we proposed in paragraphs (f)(1) and (2) that the title IV-E agency must report each permanency plan established for the child. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Date of periodic review(s) and permanency hearing(s).* In the 2019 NPRM, we proposed in paragraph (f)(3) that the title IV-E agency must report the date of each periodic review. In the 2019 NPRM, we proposed in paragraph (f)(4) that the title IV-E agency must report the date of each permanency hearing. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Caseworker visit dates and locations.* In the 2019 NPRM, paragraph (f)(5) that the title IV-E agency must report the date of each in-person, face-to-face caseworker visit with the child. In the 2019 NPRM, we proposed in paragraph (f)(6) that the title IV-E agency must report each caseworker visit location from two response options.

*Comment:* Two states and one local agency suggested that caseworker visit information is better suited for a qualitative review and should not be reported in AFCARS.

*Response:* We continue to believe that reporting caseworker visit information in AFCARS instead of the CFSP will improve the accuracy of the data and alleviate the burden of agencies having to report on this as a narrative in the CFSP and annual updates. Thus, we finalize these data elements as proposed.

#### **SECTION 1355.44(G) GENERAL EXIT INFORMATION**

In the 2019 NPRM, we proposed in paragraph (g) that the title IV-E agency must report exit information for each out-of-home care episode when the title IV-E agency's placement and care responsibility for the child ends. We did not receive comments on our proposal for section 1355.44(g), thus we finalize paragraph (g) as proposed.

*Date of exit.* Under paragraph (g)(1), the title IV-E agency must report the date for each of the child's exits from out-of-home care.

*Exit transaction date.* Under paragraph (g)(2), the title IV-E agency must report a non-modifiable, computer-generated date which accurately indicates the date of each response to paragraph (g)(1) of this section.

*Exit reason.* Under paragraph (g)(3), the title IV-E agency must report the reason for each of the child's exits from out-of-home care from nine response options.

*Transfer to another agency.* Under paragraph (g)(4), the title IV-E agency must report the type of agency that  received placement and care responsibility for the child if the title IV-E agency indicated the child was transferred to another agency in paragraph (g)(3) from seven response options.

Start Printed  
Page 28418

#### **SECTION 1355.44(H) EXIT TO ADOPTION AND GUARDIANSHIP INFORMATION**

In the 2019 NPRM, we proposed in paragraph (h) that the title IV-E agency must report certain information only if the title IV-E agency indicated the child exited to adoption or legal guardianship in paragraph (g)(3) *Exit reason*. Otherwise, the title IV-E agency must leave paragraph (h) blank. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Marital status of the adoptive parent(s) or guardian(s).* In the 2019 NPRM, we proposed in paragraph (h) (1) that the title IV-E agency must report the marital status of the adoptive parent(s) or legal guardian(s). We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child's relationship to the adoptive parent(s) or guardian(s).* In the 2019 NPRM, we proposed in paragraph (h)(2) that the title IV-E agency must report the type of relationship between the child and the adoptive parent(s) or legal guardian(s) from four response options. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Date of birth of the adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(3) and (8), the title IV-E agency must report the date of the birth of the adoptive parent(s) or legal guardian(s). We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Adoptive parent or guardian tribal membership.* In the 2019 NPRM, we proposed in paragraphs (h)(4) and (9) that the title IV-E agency must report whether the adoptive parent(s) or legal guardian(s) is a member of an Indian tribe as instructed. We did not receive comments specific to these paragraphs and we finalize these data elements as proposed.

*Race of adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(5) and (10) that the title IV-E agency must report the adoptive parent(s) or legal guardian(s) race as instructed. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Hispanic or Latino ethnicity of adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(6) and (11) that the title IV-E agency must report whether the adoptive parent(s) or legal guardian(s) is of Hispanic or Latino ethnicity as instructed. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Sex of adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(7) and (12) that the title IV-E agency must report the sex of the adoptive parent(s) or legal guardian(s) as instructed.

*Comment:* Two states suggested that we include a third gender option, such as “other”, because other agencies within the state have this ability (*e.g.*, motor vehicles), so it promotes consistency. Sixteen national advocacy organizations suggested we add data elements on gender identity.

*Response:* We did not make changes to this data element and did not add data elements because we did not receive a significant enough number of comments from title IV-E agencies that identified reasons to revise the response options to include a third gender response option. Further, we have no compelling reason to increase the agency's burden to require this information be included in AFCARS as we have no need for it at the Federal level. Accordingly, we finalize these data elements as proposed.

*Inter/Intrajurisdictional adoption or guardianship.* In the 2019 NPRM, we proposed in paragraph (h)(13) that the title IV-E agency must report whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Assistance agreement type.* In the 2019 NPRM, we proposed in paragraph (h)(14) that the title IV-E agency must report the type of assistance agreement between the title IV-E agency and the adoptive parent(s) or legal guardian(s) as appropriate. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Siblings in adoptive or guardianship home.* In the 2019 NPRM, we proposed in paragraph (h)(15) that the title IV-E agency must report the number of siblings of the child who are in the same adoptive or legal guardianship home as the child. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

**Section 1355.45 Adoption and Guardianship Assistance Data File Elements**

This section contains the data elements for the adoption and guardianship assistance data file. We proposed in the 2019 NPRM conforming amendments only to paragraphs (b)(2) and (3) and (f). We did not receive comments on § 1355.45 and we finalize these data elements as proposed.

*Child's sex.* Under paragraph (b)(2), the title IV-E agency must report the sex of the child.

*Child's race.* Under paragraph (b)(3)(vi), for *Race-unknown*, we made edits to match edits in § 1355.44(b)(7)(vi), where we clarify the instructions for reporting the race of the child.

*Adoption or guardianship placing agency.* Under paragraph (f), the title IV-E agency must indicate the agency that placed the child for adoption or legal guardianship from three options.

**Section 1355.46 Compliance**

This section lists compliance requirements for AFCARS data including the type of assessments ACF will conduct to determine the accuracy of a title IV-E agency's data, the data that is subject to these assessments, the compliance standards, and the manner in which a title IV-E agency that is initially determined to be out of compliance can correct its data. In the 2019 NPRM, we proposed conforming amendments only to paragraph (c)(2) to update the cross references. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this paragraph as proposed.

**VI. Regulatory Impact Analysis****Executive Orders 12866, 13563, and 13771**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (/executive-order/13563) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with OMB, which determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review. □ ACF determined that the costs to title IV-E agencies as a result of this rule will not be economically significant as defined in E.O. 12866 (have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities). Because the rule is not economically significant as defined in E.O. 12866, a full cost-benefit analysis per OMB Circular A-4 does not need to be included in this rule. An abbreviated costs and benefits analysis is below.

□ Start Printed  
Page 28419

**COSTS AND BENEFITS**

AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in out-of-home care under the placement and care of the title IV-E agency or who are under a title IV-E adoption or guardianship assistance agreement. A regulated national data set on these children is required by section 479(c)(3) of the Act. Section 479(c)(1) of the Act requires that any data collection system developed and implemented under this section must avoid unnecessary diversion of resources from agencies. Section 479(c)(2) of the Act requires that data collected is reliable and consistent over time. This final rule streamlines the information required in the 2016 final rule for title IV-E agencies to report to AFCARS, which will avoid the unnecessary diversion of resources. We removed data elements that 2018 ANPRM and 2019

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

NPRM commenters identified would not meet the requirements for reliability and consistency, thus are ineffective at providing a national picture of children placed in out-of-home care. Not publishing this final rule, and in effect requiring title IV-E agencies to implement the vast requirements of the 2016 final rule, would not meet these statutory requirements, as demonstrated by the commenters that supported streamlining.

Federal reimbursement under title IV-E will be available for a portion of the costs that title IV-E agencies will incur as a result of the revisions in this final rule, depending on each title IV-E agency's cost allocation plan, information system, and other factors. Estimated burden and costs to the Federal Government are provided below in the Burden estimate section. We estimate the Federal portion of the overall information collection burden to be \$43,093,725. Additional costs to the Federal Government to design a system to collect the new AFCARS data are expected to be minimal.

### **ALTERNATIVES CONSIDERED**

ACF considered not streamlining the data elements, meaning that the 2016 final rule would go into effect. This would not be in line with the findings of the HHS Regulatory Reform Taskforce or the overwhelming majority of state and local agencies that supported streamlining the data elements as proposed in the 2019 NPRM.

Executive Order 13771, (/executive-order/13771) entitled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339 (/citation/82-FR-9339)), was issued on January 30, 2017. Annualizing these costs and cost savings in perpetuity and discounting at 7 percent back to 2016, we estimate that this rule would generate \$26.7 million in annualized cost savings discounted relative to 2016 at 7 percent over a perpetual time horizon, in 2016 dollars. Details on the estimated costs of this rule can be found in the Paperwork Reduction Act analysis. This rule is considered an E.O. 13771 (/executive-order/13771) deregulatory action. As described below, this rule will save approximately 588,094 burden hours over the 2016 final rule. After multiplying the burden hours by the average wage rate of affected individuals, this amounts to \$42,930,862 in savings each year, relative to the estimated costs and burden of the 2016 final rule, in the year this final rule will become effective, which is in FY 2023. As a result, we estimate that this rule generates \$26.7 million in annualized cost savings in 2016 dollars, discounted at 7 percent over a perpetual time horizon relative to year 2016.

### **REGULATORY FLEXIBILITY ANALYSIS**

The Secretary certifies, under 5 U.S.C. 605 (<https://www.govinfo.gov/link/uscode/5/605?type=usc&year=mostrecent&link-type=html>)(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this rule will not result in a significant impact on a substantial number of small entities. This rule does not affect small entities because it is applicable only to state and tribal title IV-E agencies, and those entities are not considered to be small entities for purposes of the Regulatory Flexibility Act.

### **UNFUNDED MANDATES REFORM ACT**

The Unfunded Mandates Reform Act (Pub. L. 104-4 (<https://www.govinfo.gov/link/plaw/104/public/4?link-type=html>)) requires agencies to prepare an assessment of anticipated costs and benefits before finalizing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). In 2019, that threshold is approximately \$154 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$150 million or more.

### **CONGRESSIONAL REVIEW**

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

This regulation is not a major rule as defined in 5 U.S.C. 8 (<https://www.govinfo.gov/link/uscode/5/8?type=usc&year=mostrecent&link-type=html>).

### ASSESSMENT OF FEDERAL REGULATIONS AND POLICIES ON FAMILIES

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106-58 (<https://www.govinfo.gov/link/plaw/106/public/58?link-type=html>)) requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This rule will not have an impact on family well-being as defined in the law.

### EXECUTIVE ORDER 13132 (/EXECUTIVE-ORDER/13132) ON FEDERALISM

E.O. 13132 (/executive-order/13132) requires that Federal agencies consult with state and local government officials in the development of regulatory policies with federalism implications. Consistent with E.O. 13132 (/executive-order/13132) and *Guidance for Implementing E.O. 13132 (/executive-order/13132)* issued on October 28, 1999, the Department must include in “a separately identified portion of the preamble to the regulation” a “federalism summary impact statement” (Secs. 6(b)(2)(B) & (c)(2)). The Department's federalism summary impact statement is as follows—

- “A description of the extent of the agency's prior consultation with state and local officials”—The public comment period for the 2019 NPRM was open for 60 days and closed on June 18, 2019. During this time, we solicited comments via *regulations.gov* and email. During this comment period, we held three informational calls on April 30, May 2, and 28, 2019 for states, Indian tribes, and the public. During these calls, we provided an overview of the 2019 NPRM provisions and where to submit comments. Prior to issuing the 2019 NPRM, we solicited comments via an ANPRM in 2018.
- “A summary of the nature of their concerns and the agency's position supporting the need to issue the regulation”—As we discussed in section III of the preamble to this final rule, state commenters supported the revisions proposed in the 2019 NPRM to streamline the AFCARS regulation because they believe it would reduce the burden of reporting on title IV-E agencies and that the proposal kept the data elements that are essential to understanding nationally the population

---

□ Start Printed Page 28420

of children in foster care. We continue to believe that, in order to reduce the burden on title IV-E agencies, which are required to submit the AFCARS data to ACF and will be held to penalties for non-compliant data submissions, we must finalize the proposed revisions to AFCARS in this rule.

- “A statement of the extent to which the concerns of state and local officials have been met” (Secs. 6(b)(2)(B) and 6(c)(2))—As we discussed in section III of the preamble to this final rule, this rule finalizes the 2019 NPRM proposal for fewer data elements than is in the 2016 final rule. We believe that the states sufficiently argued in both their comments to the 2018 ANPRM and the 2019 NPRM that the 2016 final rule had many data elements that can be streamlined while still providing critical information on the reporting population.

### PAPERWORK REDUCTION ACT

This final rule contains information collection requirements (ICRs) that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 (<https://www.govinfo.gov/link/uscode/44/3501?type=usc&year=mostrecent&link-type=html>)-3520. A description of these provisions is given in the following paragraphs with an estimate of the annual burden. In the PRA section for the 2019 NPRM on whether an information collection should be approved by OMB, the Department solicited comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden in the 2019 NPRM.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

OMB did not receive comments in response to the 2019 NPRM PRA.

The information collection for AFCARS is currently authorized under OMB number 0970-0422. This rule contains information collection requirements in § 1355.44, the out-of-home care data file, and § 1355.45, the adoption and guardianship assistance data file, that the Department submitted to OMB for its review.

Pursuant to this final rule:

- State and tribal title IV-E agencies must report information on children who are in the out-of-home care reporting population pursuant to § 1355.42(a),
- State and tribal title IV-E agencies must report information on children who are in the adoption and guardianship assistance reporting population pursuant to § 1355.42(b), and
- State title IV-E agencies must report ICWA-related information in the out-of-home care data file.

### **Burden Estimate**

In this section, we provide a burden estimate for this final rule and briefly explain how we calculated it, using the 2019 NPRM burden estimate since we did not make substantive changes in this final rule. Changes in the final rule estimate are attributed to updated input numbers, such as labor rate and number of children in foster care.

*2016 Final Rule:* In the 2016 final rule, we had estimated the total annual burden hours for both recordkeeping and reporting to be 970,226 hours at a total cost of \$81,499,084 (\$40,749,492 at 50 percent Federal Financial Participation (FFP)). As we discovered from analyzing the 2018 ANPRM comments, the 2016 final rule burden estimate was low and did not appropriately account for the time and resources required to collect and report the many and detailed ICWA-related data elements. Through the comments process of the 2018 ANPRM and 2019 NPRM, we are able to provide a more grounded burden estimate that is based on state estimated hours and costs.

*2019 NPRM:* Through the 2018 ANPRM, ACF asked the public to give specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the AFCARS requirements in 2016 final rule. As we explained in the 2019 NPRM (84 FR 16587 (/citation/84-FR-16587)), we analyzed the 2018 ANPRM comments from states on the burden to complete the 2016 final rule. States ranged considerably in estimating the work needed and length of time it would take to comply with the 2016 final rule, which is expected and appropriate because there is considerable variability across states in sophistication of information systems, availability of both staff and financial resources, and populations of children in care. Thus, we used the median of the states' estimates for the estimates related to training and developing or modifying procedures and systems. We used the average of the states' estimates for the estimates of gathering/entering information, reporting, and the labor rate. Based on the 2018 ANPRM comments, we updated our estimate for the total burden of the 2016 final rule to be 1,768,744 hours. To estimate the burden of the 2019 NPRM, we used a revised 2016 final rule estimate that was based on states' 2018 ANPRM comments and reduced the hours by approximately 33 percent, which represented the approximate workload reduction associated with reporting fewer data elements and the type of data elements that we removed, which specifically were qualitative in nature and required a significant amount of training and staff time to locate the information and ensure proper data entry.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

As we explained in the 2019 NPRM (84 FR 16589 (/citation/84-FR-16589)), adjustments to the recordkeeping burden estimates were based on the information provided by states in response to the 2018 ANPRM:

- For the out-of-home care data file, states provided estimates that ranged from 3 to 15 hours related to the tasks of searching data sources, gathering information, and entering the information into the system for the 2016 final rule. The range depended on whether the work was for the qualitative ICWA-related data elements or not. The average of the hours provided from the states that broke out this information in their 2018 ANPRM comments was 6 hours annually. We used the average because there were not significant outliers in the comments provided. Then we reduced the 6 hours by 33 percent since that represents the reduction in data elements to be reported.
- For the adoption and guardianship assistance data file, the data elements did not significantly change and we did not receive information from state estimates to determine that a change in these estimates was warranted. The only changes are attributable to updated numbers of children in adoption or guardianship assistance agreements, thus we estimated in the 2019 NPRM that updates or changes on an annual or biennial basis will take an average of 0.2 hours annually for records of children who have an adoption assistance agreement and 0.3 hours annually for children who have a guardianship assistance agreement.
- Developing or modifying standard operating procedures and systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements was estimated at 6,700 hours annually. States provided estimates in response to the 2018 ANPRM that ranged from 1,000 to 20,000 hours, which varied widely depending on the size of the state's out-of-home care population, type, sophistication, and age of systems. To estimate the annual hours, we chose to use the median of these estimates provided by the state commenters, rather than relying on the average of

---

☐ Start Printed Page 28421

those provided in the comments, because it would be distorted by the considerable hour range. The median hours from state's estimates was 10,000, and we reduced it by 33 percent since that represents the reduction in data elements to be reported.

- Administrative tasks associated with training personnel on the AFCARS requirements (*e.g.*, reviewing instructions, developing the training and manuals) and training personnel on AFCARS requirements we estimated would take on average 7,086 hours annually. In response to the 2018 ANPRM, states provided varying estimates for the hours and cost of training that were not broken out the same way. For example, one estimate was 40 hours to develop training materials and 2 hours of training per staff person. Other estimates were only totals of training hours that ranged between 42,712 to 102,000 hours encompassing initial and ongoing training to implement the 2016 final rule. Another estimate broke out ongoing training at 8,500 hours annually. To estimate the annual hours related to training tasks, we used the median of the hours provided from the 2018 ANPRM comments, rather than relying on the average, because it would be distorted by the considerable hour ranges and associated tasks. We understand that training hours will vary depending on the size of the agency's workforce needing training. The median hours from state's estimates was 10,576, and we reduced it by 33 percent since that represents the reduction in data elements to be reported.

For reporting, we explained in the 2019 NPRM (84 FR 16589 (/citation/84-FR-16589)) that very few states broke out reporting in their 2018 ANPRM comments and the average of the hours provided came to 26 hours. Since the 2019 NPRM reduces the data elements by 33 percent, we reduced the estimated burden related to reporting that amount arriving at 17 hours for this task.

For the labor rate, the 2018 ANPRM comments provided many job titles that would be involved in implementing, which included a mix of programming, management, caseworkers, and legal staff that varied depending on the size and functions of the state and local governments. The 2016 final rule included mostly computer analysts and social service managers which gave us an estimate of \$84. The 2019 NPRM included more positions, such as office and administrative support occupations, community and social service operations and gave us an estimate of \$72.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Comments in response to the 2019 NPRM:* We explained in the 2019 NPRM that since the 2018 ANPRM comments were very thorough and helpful to inform the burden estimates, we feel confident that the burden estimate provided in the 2019 NPRM more accurately reflects the burden of reporting AFCARS information. ACF asked the public to respond to the streamlined AFCARS proposed in the 2019 NPRM. States expressed that the burden of the 2019 NPRM will be less than the 2016 final rule, commenting that they supported the streamlined AFCARS because it will be less burdensome than the 2016 final rule. Nine states provided estimates in response to the 2019 NPRM for costs and burden hours to comply with the 2019 NPRM. These estimates ranged considerably depending on the tasks the state attributed the burden to and whether it was a total for all work needed to implement the rule. State estimates for burden hours ranged between 32,900 and 111,000 total hours for all work needed to implement the rule, which included developing/modifying procedures, systems changes, and training, but not all states included training in their estimates, leading to lower burden estimates. State cost estimates ranged from \$88,000 to over \$1 million, the variability due to either including all work over multiple years or only providing total costs for one task, such as systems changes. We did not make changes to the burden estimates in this final rule based on this additional information because there was not enough detailed information to draw any different conclusions than we did in calculating the burden estimates for the 2019 NPRM. Tribal title IV-E agencies did not provide burden estimates in their comments. In this section, we discuss our assumptions and calculations for the estimates.

*Respondents:* The 69 respondents comprise 52 state title IV-E agencies and 17 tribal title IV-E agencies, which are Indian tribes, tribal organizations or consortium with an approved title IV-E plan under section 479B of the Act. The estimates provided in the rule are spread across respondents for the purposes of the PRA estimates. However, we understand that actual burden hours and costs will vary due to sophistication and capacity of information systems, availability of staff and financial resources, and populations of children in care.

*Recordkeeping burden:* Searching data sources, gathering information, and entering the information into the system, developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements, administrative tasks associated with training personnel on the AFCARS requirements (*e.g.*, reviewing instructions, developing the training and manuals), and training personnel on AFCARS requirements.

*Reporting burden:* Extracting the information for AFCARS reporting and transmitting the information to ACF.

#### **ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

Federal reimbursement under title IV-E will be available for a portion of the costs that title IV-E agencies will incur as a result of the revisions proposed in this rule, depending on each agency's cost allocation plan, information system, and other factors. For this estimate, we used the 50 percent FFP rate.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

<b>Collection— AFCARS</b>	<b>Total annual burden hours</b>	<b>Average hourly labor rate</b>	<b>Total cost</b>	<b>Estimate Federal costs (50% FFP)</b>
Recordkeeping	1,178,304	\$73	\$86,016,192	\$43,008,096
Reporting	2,346	73	171,258	85,629
Total				43,093,725

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

Cost savings of this final rule over the 2016 final rule: 588,094 hours × \$73 labor rate = \$42,930,862.

## ASSUMPTIONS FOR ESTIMATES

We made a number of assumptions when calculating the burden and costs:

- *Number of children in out-of-home care:* To determine the number of children for which title IV-E agencies

---

Start Printed Page 28422

will have to report in the out-of-home care data file on average, ACF used the most recent FY 2018 AFCARS data available: 262,956 children entered foster care during FY 2018. Of those, 5,856 children had a reported race of American Indian/Alaska Native. We used the number of children who entered foster care rather than the entire population of children in foster care because agencies will not have to collect and report all data elements on all children in foster care; therefore, this accounts for the variances in burden. This is consistent with previous burden estimate and savings calculations in the 2016 final rule and the 2019 NPRM, which are what we use to estimate the relative savings of the 2019 NPRM and this final rule.

- *Out-of-home care data elements:* For the out-of-home care data file, the 2016 final rule required approximately 272 items on which we require title IV-E agencies to report information. In this final rule, we reduced these data points to approximately 183, representing 170 data points retained without change from the 2016 final rule and 13 modified data points. This represents approximately a 33 percent reduction in the total items that title IV-E agencies must report for this final rule compared to the 2016 final rule.
- *Number of children receiving adoption and guardianship assistance:* To determine the number of children for which title IV-E agencies must report in the adoption and guardianship assistance file, ACF used the most recent title IV-E Programs Quarterly Financial Report, CB-496, for FY 2018: 488,870 children received title IV-E adoption assistance and 32,204 children received guardianship assistance.
- *Adoption and guardianship assistance data elements:* There are approximately 20 items where we require title IV-E agencies report information for the adoption and guardianship assistance data file, which is not a significant change from the 2016 final rule.
- *Systems changes:* ACF assumed that the burden for title IV-E agencies to modify systems was based in part on the estimates states provided in response to the 2019 NPRM. Most title IV-E agencies will require revisions to electronic case management systems to meet the requirements in this final rule. However, ACF anticipates that a state's CCWIS will lead to more efficiency and less costs and burden associated with AFCARS reporting.
- *Labor rate:* ACF assumes that there will be a mix of the following positions working to meet both the one-time and annual requirements of this rule. We reviewed 2018 Bureau of Labor Statistics data and for this estimate we used the job roles of: Computer Information and Systems Managers (11-3021) with an average hourly wage of \$73.49; Computer and Mathematical Occupations (15-0000) (e.g. computer and information analysts, computer programmers, and database and systems administrators) with an average hourly wage of \$44.01; Office and Administrative Support Occupations (43-000) (e.g., administrative assistants, data entry, legal secretaries, government program eligibility interviewers, information and record clerks) with an average hourly wage of \$18.75; Social and Community Service Managers (11-9151) with an average hourly wage estimate of \$34.46; Community and Social Service Operations (21-0000) (e.g. Social Workers, Child and Family Social Workers, Counselors, Social Service Specialists) with an average hourly wage of \$23.69; and Paralegals and Legal Assistants (23-2011) with an average hourly wage estimate of \$26.20. ACF averaged these wages to come to an average labor rate of \$36.77. In order to ensure we took into account overhead costs associated with these labor costs, ACF doubled this rate (\$73).

## CALCULATIONS FOR ESTIMATES

For the 2019 NPRM estimates, we reduced the estimates that were in the 2016 final rule by 33 percent to represent the reduction in the workload associated with reporting the data proposed in the 2019 NPRM compared to the 2016 final rule. We carried forward this estimated reduction of 33 percent in this final rule because we did not make any substantive changes to the amount of data the title IV-E agency must report. Thus, the reduction in costs and burden hours from the 2016 final rule is reflected.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

*Recordkeeping:* We estimated a total of 1,178,304 record keeping hours annually, as summarized below. We are finalizing the data elements as proposed, and therefore, did not need to revise the estimates related to work in these bullets and only updated population numbers.

- For the out-of-home care data file, searching data sources, gathering information, and entering the information into the system would take on average 4.02 hours annually for all children who enter foster care, for a total of 1,057,083 hours annually. The reduction in the estimate from the 2019 NPRM is based on the reduced number of children who entered foster care. (4.02 hours × 262,956 children = 1,057,083 annual hours for this bullet)
- For the adoption and guardianship assistance data file, we estimated in the 2019 NPRM that updates or changes on an annual or biennial basis will take an average of 0.2 hours annually for records of children who have an adoption assistance agreement and 0.3 hours annually for children who have a guardianship assistance agreement. The number of children in adoption or guardianship assistance agreements increased, which reflects the most recent data available, FY 2018. The new total annual hours is estimated to be 107,435.2. (0.2 hours × 488,870 children = 97,774 hours. 0.3 hours × 32,204 children = 9,661.2 hours. 97,774 hours + 9,661.2 hours = 107,435 total annual burden hours for this bullet.)
- Developing or modifying standard operating procedures and systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements is estimated at 6,700 hours annually.
- Administrative tasks associated with training personnel on the AFCARS requirements (*e.g.* reviewing instructions, developing the training and manuals) and training personnel on AFCARS requirements we estimate will take on average 7,086 hours annually. We understand that training hours will vary depending on the size of the agency's workforce needing training.

*Reporting:* We estimate that extracting the information for AFCARS reporting and transmitting the information to ACF would take on average 17 hours annually. The estimate of 17 hours is from the 2019 NPRM. We did not change this estimate because we did not make substantive changes to this final rule and we did not receive any information from commenters to determine that a change in these estimates is warranted.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

<b>Collection— AFCARS</b>	<b>Number of respondents</b>	<b>Number of responses per respondent</b>	<b>Average burden hours per response</b>	<b>Total annual burden hours for NPRM</b>
Recordkeeping	69	2	8,538	1,178,304
Reporting	69	2	17	2,346
Total				1,180,650



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

Title IV-E agencies must comply with the current AFCARS requirements in 45 CFR 1355.40 (/select-citation/2020/05/12/45-CFR-1355.40) and the appendix to part 1355 until September 30, 2022 (45 CFR 1355.40 (/select-citation/2020/05/12/45-CFR-1355.40) and section IV of the preamble to this rule). On October 1, 2022 (FY 2023), title IV-E agencies must comply with §§ 1355.41 through 1355.47. The 2016 final rule was scheduled to become effective on October 1, 2020 (FY 2021). Because this final rule replaces the 2016 final rule, the year in which title IV-E agencies will experience savings from the 2016 final rule is FY 2023. We used fiscal years in this estimate because AFCARS data reporting periods are categorized by fiscal years. The savings is generated by the reductions finalized in this rule, which reduces the data that title IV-E agencies must report from the requirements established in the 2016 final rule. As discussed above, we estimated approximately a 33 percent reduction in the total items that title IV-E agencies must report in this final rule relative to the 2016 final rule; the numbers in the estimate for this final rule takes this into account. These charts represent the burden hour and cost savings we estimate that this final rule will have over the 2016 final rule's requirements. This final rule will save approximately 588,094 burden hours. After multiplying by the average wage rate of affected individuals, this amounts to \$42,930,862 in savings each year relative to the 2016 final rule, in the year this final rule will become effective, FY 2023.

Savings of 2020 Final Rule Relative to 2016 Final Rule

<b>Burden hour savings of this final rule</b>	<b>Total annual burden hours for 2016 final rule</b>	<b>Total annual burden hours for this final rule</b>	<b>Difference (hours)</b>
FY 2023	1,768,744	1,180,650	588,094

In the above estimates, ACF acknowledges: (1) ACF has used average figures for title IV-E agencies of very different sizes and some of which may have larger populations of children served than other agencies, and (2) these are rough estimates based on the 2019 NPRM comments which ranged in the level of detail provided regarding burden hours, costs, and work needing to be completed.

We have submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by OMB.

## VII. Tribal Consultation Statement

ACF is committed to consulting with Indian tribes and tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has tribal implications and within the requirements of E.O. 13175 (/executive-order/13175) *Consultation and Coordination with Indian Tribal Governments*. As we developed this final rule, ACF engaged in consultation with tribes and their leadership as described in further detail below.

### Description of Consultation

Prior to issuing the 2019 NPRM, we engaged in tribal consultation during the comment period of the ANPRM on May 15 and 16, 2018. During the 2019 NPRM comment period, we engaged in tribal consultation on June 3, 4, and 6, 2019.

*Consultation during the 2018 ANPRM comment period.* Prior to the May 2018 consultation, we ensured that adequate information and notice was provided to tribes about the 2018 ANPRM and AFCARS and was publicly available by posting this information on the CB website, emailing it to CB's tribal lists, and issuing an

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

Information Memorandum announcing publication of the 2018 ANPRM on March 16, 2018 (ACYF-CB-IM-18-01).

*Consultation during the 2019 NPRM comment period.* Prior to the June 2019 consultation, we ensured that adequate information about the 2019 NPRM and AFCARS was provided to tribes and was publicly available. Specifically, in April and May 2019, we emailed notices of the dates and times of tribal consultations to CB's tribal email lists, mailed the notices to tribal leaders and representatives, emailed notification of the publication of the 2019 NPRM to CB's tribal email lists, and issued an Information Memorandum announcing publication of the 2019 NPRM (ACYF-CB-IM-19-02). In preparation for the June 2019 consultations, CB officials held a webinar in May 2019 to provide the background and history of regulation development for AFCARS, the purpose of the 2019 NPRM including the Executive Order precipitating another look at AFCARS, and an overview of the 2019 NPRM. CB held in-person consultation on June 3, 2019 in New Mexico and tribal consultation via conference calls on June 4 and 6, 2019.

### Summary of Concerns and Response

During the 2018 consultation, tribal leaders, officials, and representatives identified the ICWA-related information they felt was important to retain in AFCARS because it was essential in determining whether ICWA applied to a child or it provided the basic following information on ICWA's requirements: Information on the tribal membership of children in foster care and their foster care/adoptive placements, whether ICWA applies to the child, and notification of proceedings. During the consultation sessions in June 2019, tribal leaders, officials, and representatives expressed a desire to retain all of the ICWA-related data elements from the 2016 final rule, including detailed information on ICWA's requirements that are tied to DOI's regulations, ICWA statute, and court actions and expressed opposition to a modification or reduction of any data elements. They stated that ICWA's importance outweighs the state's burden to report the information to AFCARS and the information would inform compliance with ICWA.

Start Printed  
Page 28424

As we explained earlier, we are retaining only the ICWA-related data elements identified in the 2019 NPRM:

- Inquiries made whether the child is an Indian child under ICWA,
- whether ICWA applies for the child and the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies,
- notification to the Indian tribe, and
- tribal membership of child, mother, father, foster parents, adoptive parents, and legal guardians.

We are committed to obtaining more information on Indian children who are in out-of-home care through appropriate and alternative methods that allow for a fuller understanding of ICWA's role in child welfare cases that AFCARS cannot provide. For example, as we noted in the 2019 NPRM (84 FR 16578 (/citation/84-FR-16578)), the next Court Improvement Program (CIP) program instruction will emphasize collecting and tracking ICWA-related data and will be coupled with technical assistance through the CB's technical assistance provider for CIP grantees and the courts to help address this historic and ongoing information gap.

However, as we described in the 2019 NPRM, there are significant barriers in obtaining timely and relevant data in a format that would be useful for the purpose of determining ICWA compliance. Further, HHS is not the cognizant authority over implementing, overseeing, or assessing compliance with ICWA; that agency is DOI.

### Agency Position on Need for Regulation

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

In section V of this final rule, we responded to comments on the ICWA-related data elements and explained our rationale for not making changes in this final rule. We also provided the parameters of our authority to require title IV-E agencies to report AFCARS data and clarified that the data is not appropriate for AFCARS reporting because the purpose relates to compliance with a law that is not under HHS's purview or authority. As we developed this final rule, our aim was to reduce burden on title IV-E agencies and clarify any misrepresentations of our statutory obligations under section 479 of the Act. We retain the data elements as proposed so that we can understand, on a national level, key information about Native American children in foster care under ACF's statutory authority, for example whether the connections to their communities are preserved. This authority in section 479(c)(3) of the Act does not permit ACF to require states to report specific details on ICWA's requirements in AFCARS to be used for ICWA compliance.

## List of Subjects in 45 CFR Part 1355 (/select-citation/2020/05/12/45-CFR-1355)

- Adoption and foster care
- Child welfare
- Grant programs—social programs

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants)

Dated: May 1, 2020.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: May 4, 2020.

Alex M. Azar II,

Secretary.

For the reasons set forth in the preamble, ACF amends 45 CFR part 1355 (/select-citation/2020/05/12/45-CFR-1355) as follows:

### PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

**Authority:** 42 U.S.C. 620 (<https://www.govinfo.gov/link/uscode/42/620?type=usc&year=mostrecent&link-type=html>) *et seq.*, 42 U.S.C. 670 (<https://www.govinfo.gov/link/uscode/42/670?type=usc&year=mostrecent&link-type=html>) *et seq.*; 42 U.S.C. 1302 (<https://www.govinfo.gov/link/uscode/42/1302?type=usc&year=mostrecent&link-type=html>).

2. Revise § 1355.40(a) to read as follows:

**§ 1355.40 Foster care and adoption data collection.**

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(a) *Scope.* State and tribal title IV-E agencies must follow the requirements of this section and appendices A through E of this part until September 30, 2022. As of October 1, 2022, state and tribal title IV-E agencies must comply with §§ 1355.41 through 1355.47.

★\*

★\*

★\*

★\*

★\*

§ 1355.41 [Amended]

3. Remove § 1355.41(c).

4. Revise § 1355.43(b)(3) to read as follows:

§ 1355.43 Data reporting requirements.

★\*

★\*

★\*

★\*

★\*

(b) \* \* \*

(3) For a child who had an out-of-home care episode(s) as defined in § 1355.42(a) prior to October 1, 2022, the title IV-E agency must report only the information for the data described in § 1355.44(d)(1) and (g)(1) and (3) for the out-of-home care episode(s) that occurred prior to October 1, 2022.

★\*

★\*

★\*

★\*

★\*

5. Revise § 1355.44 to read as follows:

§ 1355.44 Out-of-home care data file elements.

(a) *General information*— (1) *Title IV-E agency.* Indicate the title IV-E agency responsible for submitting the Adoption and Foster Care Analysis and Reporting System (AFCARS) data in a format according to ACF's specifications.

(2) *Report date.* The report date corresponds with the end of the report period. Indicate the last month and the year of the report period.

(3) *Local agency.* Indicate the local county, jurisdiction, or equivalent unit that has primary responsibility for the child in a format according to ACF's specifications.

(4) *Child record number.* Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the title IV-E agency in out-of-home care and across all report periods and episodes. The title IV-E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(b) *Child information*—(1) *Child's date of birth.* Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. "Abandoned" means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(2) *Child's sex.* Indicate whether the child is "male" or "female."

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(3) *Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act (ICWA).*

For state title IV-E agencies only: Indicate whether the state title IV-E agency made inquiries whether the child is an Indian child as defined in ICWA. Indicate "yes" or "no."

(4) *Child's tribal membership.* For state title IV-E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in a federally recognized Indian tribe. Indicate "yes," "no," or "unknown".

(ii) If the state title IV-E agency indicated "yes" in paragraph (b)(4)(i) of this section, indicate all federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s). The title IV-E agency must submit the information in a format according to ACF's specifications.

(5) *Application of ICWA.* For state title IV-E agencies only:

(i) Indicate whether ICWA applies for the child. Indicate "yes," "no," or "unknown".

(ii) If the state title IV-E agency indicated "yes" in paragraph (b)(5)(i) of  this section, indicate the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies.

Start Printed  
Page 28425

(6) *Notification.* For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (b)(5)(i) of this section, the state title IV-E agency must indicate whether the Indian child's tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912

(<https://www.govinfo.gov/link/uscode/25/1912?type=usc&year=mostrecent&link-type=html>)(a). Indicate "yes" or "no."

(7) *Child's race.* In general, a child's race is determined by the child, the child's parent(s) or legal guardian(s). Indicate whether each race category listed in paragraphs (b)(7)(i) through (viii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(vi) *Race—unknown.* The child or parent or legal guardian does not know, or is unable to communicate the race, or at least one race of the child. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

(vii) *Race—abandoned.* The child's race is unknown because the child has been abandoned. "Abandoned" means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—declined.* The child or parent(s) or legal guardian(s) has declined to identify a race.

(8) *Child's Hispanic or Latino ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent(s) or legal guardian(s) does not know or is unable to communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child is abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."

(9) *Health assessment.* Indicate whether the child had a health assessment during the current out-of-home care episode. This assessment could include an initial health screening or any follow-up health screening pursuant to section 422(b)(15)(A) of the Act. Indicate "yes" or "no."

(10) *Health, behavioral or mental health conditions.* Indicate whether the child was diagnosed by a qualified professional, as defined by the state or tribe, as having a health, behavioral or mental health condition, prior to or during the child's current out-of-home care episode as of the last day of the report period. Indicate "child has a diagnosed condition" if a qualified professional has made such a diagnosis and for each paragraph (b)(10)(i) through (xi) of this section, indicate "existing condition," "previous condition" or "does not apply," as applicable. "Previous condition" means a previous diagnoses that no longer exists as a current condition. Indicate "no exam or assessment conducted" if a qualified professional has not conducted a medical exam or assessment of the child and leave paragraphs (b)(10)(i) through (xi) of this section blank. Indicate "exam or assessment conducted and none of the conditions apply" if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed and leave paragraphs (b)(10)(i) through (xi) of this section blank. Indicate "exam or assessment conducted but results not received" if a qualified professional has conducted a medical exam or assessment but the title IV-E agency has not yet received the results of such an exam or assessment and leave paragraphs (b)(10)(i) through (xi) of this section blank.

(i) *Intellectual disability.* The child has, or had previously, significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect the child's socialization and learning.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(ii) *Autism spectrum disorder.* The child has, or had previously, a neurodevelopment disorder, characterized by social impairments, communication difficulties, and restricted, repetitive, and stereotyped patterns of behavior. This includes the range of disorders from autistic disorder, sometimes called autism or classical autism spectrum disorder, to milder forms known as Asperger syndrome and pervasive developmental disorder not otherwise specified.

(iii) *Visual impairment and blindness.* The child has, or had previously, a visual impairment that may adversely affect the day-to-day functioning or educational performance, such as blindness, amblyopia, or color blindness.

(iv) *Hearing impairment and deafness.* The child has, or had previously, an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's day-to-day functioning and educational performance.

(v) *Orthopedic impairment or other physical condition.* The child has, or had previously, a physical deformity, such as amputations and fractures or burns that cause contractures, or an orthopedic impairment, including impairments caused by a congenital anomalies or disease, such as cerebral palsy, spina bifida, multiple sclerosis, or muscular dystrophy.

(vi) *Mental/emotional disorders.* The child has, or had previously, one or more mood or personality disorders or conditions over a long period of time and to a marked degree, such as conduct disorder, oppositional defiant disorder, emotional disturbance, anxiety disorder, obsessive-compulsive disorder, or eating disorder.

(vii) *Attention deficit hyperactivity disorder.* The child has, or had previously, a diagnosis of the neurobehavioral disorders of attention deficit hyperactivity disorder (ADHD) or attention deficit disorder (ADD).

(viii) *Serious mental disorders.* The child has, or had previously, a diagnosis of a serious mental disorder or illness, such as bipolar disorder, depression, psychotic disorders, or schizophrenia.

(ix) *Developmental delay.* The child has been assessed by appropriate diagnostic instruments and procedures and is experiencing delays in one or  more of the following areas: Physical development or motor skills, cognitive development, communication, language, or speech development, social or emotional development, or adaptive development.

Start Printed  
Page 28426

(x) *Developmental disability.* The child has, or had previously been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402 (<https://www.govinfo.gov/link/plaw/106/public/402?link-type=html>)), section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely and results in substantial functional limitations in three or more areas of major life activity. Areas of major life activity include self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, economic self-sufficiency, and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of “developmental disability,” do not indicate the individual conditions that form the basis of this diagnosis separately in other data elements.

(xi) *Other diagnosed condition.* The child has, or had previously, a diagnosed condition or other health impairment other than those described in paragraphs (b)(10)(i) through (x) of this section, which requires special medical care, such as asthma, diabetes, chronic illnesses, a diagnosis as HIV positive or AIDS, epilepsy, traumatic brain injury, other neurological disorders, speech/language impairment, learning disability, or substance use issues.

(11) *School enrollment.* Indicate whether the child is a full-time student at, and enrolled in (or in the process of enrolling in), “elementary” or “secondary” education, or is a full or part-time student at and enrolled in a “post-secondary education or training” or “college,” as of the earlier of the last day of the report period or the day of exit for a child exiting out-of-home care prior to the end of the report period. A child is still considered enrolled in school if the child would otherwise be enrolled in a school that is currently out of session. An “elementary or secondary school student” is defined in section 471(a)(30) of the Act as a child that is enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the state or other jurisdiction in which the institution is located, instructed in elementary or secondary education at home in accordance with a home school law of the state or other jurisdiction in which the home is located, in an independent study elementary or secondary education program in accordance with the law of the state or other jurisdiction in which the program is located, which is administered by the local school or school district, or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by a regularly updated information in the case plan of the child. Enrollment in “post-secondary education or training” refers to full or part-time enrollment in any post-secondary education or training, other than an education pursued at a college or university. Enrollment in “college” refers to a child that is enrolled full or part-time at a college or university. If child has not reached compulsory school age, indicate “not school-age.” If the child has reached compulsory school-age, but is not enrolled or is in the process of enrolling in any school setting full-time, indicate “not enrolled.”

(12) *Educational level.* Indicate the highest educational level from kindergarten to college or post-secondary education/training completed by the child as of the last day of the report period. If child has not reached compulsory school-age, indicate “not school-age.” Indicate “kindergarten” if the child is currently in or about to begin 1st grade. Indicate “1st grade” if the child is currently in or about to begin 2nd grade. Indicate “2nd grade” if the child is currently in or about to begin 3rd grade. Indicate “3rd grade” if the child is currently in or about to begin 4th grade. Indicate “4th grade” if the child is currently in or about to begin 5th grade. Indicate “5th grade” if the child is currently in or about to begin 6th grade. Indicate “6th grade” if the child is currently in or about to begin 7th grade. Indicate “7th grade” if the child is currently in or about to begin 8th grade. Indicate “8th grade” if the child is currently in or about to begin 9th grade. Indicate “9th grade” if the child is currently in or about to begin 10th grade. Indicate “10th grade” if the child is currently in or about to begin 11th grade. Indicate “11th grade” if the child is currently in or about to begin 12th grade. Indicate “12th grade” if the child has graduated from high school. Indicate “GED” if the child has completed a general equivalency degree or other high school equivalent. Indicate “Post-secondary

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

education or training” if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Indicate “College” if the child has completed at least a semester of study at a college or university.

(13) *Pregnant or parenting.* (i) Indicate whether the child is pregnant as of the end of the report period. Indicate “yes” or “no.”

(ii) Indicate whether the child has ever fathered or bore a child. Indicate “yes” or “no.”

(iii) Indicate whether the child and his/her child(ren) are placed together at any point during the report period, if the response in paragraph (b)(13)(ii) of this section is “yes.” Indicate “yes,” “no,” or “not applicable” if the response in paragraph (b)(13)(ii) of this section is “no.”

(14) *Special education.* Indicate whether the child has an Individualized Education Program (IEP) as defined in section 614(d)(1) of Part B of Title I of the Individuals with Disabilities Education Act (IDEA) and implementing regulations, or an Individualized Family Service Program (IFSP) as defined in section 636 of Part C of Title I of IDEA and implementing regulations, as of the end of the report period. Indicate “yes” if the child has either an IEP or an IFSP or “no” if the child has neither.

(15) *Prior adoption.* Indicate whether the child experienced a prior legal adoption before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another country and tribal customary adoptions. Indicate “yes,” “no” or “abandoned” if the information is unknown because the child has been abandoned. “Abandoned” means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal adoption, the title IV-E agency must complete paragraphs (b) (15)(i) and (ii) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(i) *Prior adoption date.* Indicate the month and year that the most recent prior adoption was finalized. In the case of a prior intercountry adoption where the adoptive parent(s) readopted the child in the United States, the title IV-E agency must provide the date of the adoption (either the original adoption in  the home country or the re-adoption in the United States) that is considered final in accordance with applicable laws.

Start Printed  
Page 28427

(ii) *Prior adoption intercountry.* Indicate whether the child's most recent prior adoption was an intercountry adoption, meaning that the child's prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “yes” or “no.”

(16) *Prior guardianship general—(i) Prior guardianship.* Indicate whether the child experienced a prior legal guardianship before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(7) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining, as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making. Indicate “yes,” “no,” or “abandoned” if the information is unknown because the child has been abandoned. “Abandoned” means that the child was left alone or with others and

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child has experienced a prior legal guardianship, the title IV-E agency must complete paragraph (b)(16)(ii) of this section; otherwise the title IV-E agency must leave it blank.

(ii) *Prior guardianship date.* Indicate the month and year that the most recent prior guardianship became legalized.

(17) *Child financial and medical assistance.* Indicate whether the child received financial and medical assistance at any point during the six-month report period. Indicate "child has received support/assistance" if the child was the recipient of such assistance during the report period, and indicate which of the following sources of support described in paragraphs (b)(17)(i) through (viii) of this section "applies" or "does not apply." Indicate "no support/assistance received" if none of these apply.

(i) *State/Tribal adoption assistance.* The child is receiving an adoption subsidy or other adoption assistance paid for solely by the state or Indian tribe.

(ii) *State/Tribal foster care.* The child is receiving a foster care payment that is solely funded by the state or Indian tribe.

(iii) *Title IV-E adoption subsidy.* The child is determined eligible for a title IV-E adoption assistance subsidy.

(iv) *Title IV-E guardianship assistance.* The child is determined eligible for a title IV-E guardianship assistance subsidy.

(v) *Title IV-A TANF.* The child is living with relatives who are receiving a Temporary Assistance for Needy Families (TANF) cash assistance payment on behalf of the child.

(vi) *Title IV-B.* The child's living arrangement is supported by funds under title IV-B of the Act.

(vii) *Chafee Program.* The child is living independently and is supported by funds under the John H. Chafee Foster Care Program for Successful Transition to Adulthood.

(viii) *Other.* The child is receiving financial support from another source not previously listed in paragraphs (b)(17)(i) through (vii) of this section.

(18) *Title IV-E foster care during report period.* Indicate whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period that is claimed under title IV-E foster care with a "yes" or "no," as appropriate. Indicate "yes" if the child has met all eligibility requirements of section 472(a) of the Act and the title IV-E agency has claimed, or intends to claim, Federal reimbursement for foster care maintenance payments made on the child's behalf during the report period.

(19) *Total number of siblings.* Indicate the total number of siblings of the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

agency must indicate “o.” If the title IV-E agency indicates “o,” the title IV-E agency must leave paragraphs (b)(20) and (21) of this section blank.

(20) *Siblings in foster care.* Indicate the number of siblings of the child who are in foster care, as defined in § 1355.20. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must leave this paragraph (b)(20) blank. If the child has siblings, but they are not in foster care as defined in § 1355.20, the title IV-E agency must indicate “o.” If the title IV-E agency reported “o,” leave paragraph (b)(21) of this section blank.

(21) *Siblings in living arrangement.* Indicate the number of siblings of the child who are in the same living arrangement as the child, on the last day of the report period. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must leave this paragraph (b)(21) blank. If the child has siblings, but they are not in the same living arrangement as the child, the title IV-E agency must indicate “o.”

(c) *Parent or legal guardian information—(1) Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological, legal or adoptive) or legal guardian of the child. To the extent that a child has both a parent and a legal guardian, or two different sets of legal parents, the title IV-E agency must report on those who had legal responsibility for the child. We are not seeking information on putative parent(s) in this paragraph (c)(1). If there is only one parent or legal guardian of the child, that person's year of birth must be reported here. If the child was abandoned indicate “abandoned.” “Abandoned” means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(2) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological, legal or adoptive) or legal guardian of the child. We are not seeking information on putative parent(s) in this paragraph (c)(2). If the child was abandoned, indicate “abandoned.” “Abandoned” means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” Indicate “not applicable” if there is not another parent or legal guardian.

(3) *Tribal membership mother.* For state title IV-E agencies only: Indicate whether the biological or adoptive mother is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(4) *Tribal membership father.* For state title IV-E agencies only: Indicate whether the biological or adoptive father is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(5) *Termination/modification of parental rights.* Indicate whether the termination/modification of parental rights for each parent (biological, legal and/or putative) was voluntary or involuntary. “Voluntary” means the parent voluntarily relinquished their parental rights to the title IV-E agency,  with or without court involvement. Indicate “voluntary” or “involuntary.” Indicate “not applicable” if there was no termination/modification and leave paragraphs (c)(5)(i) and (ii) of this section blank.

Start Printed  
Page 28428

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(i) *Termination/modification of parental rights petition.* Indicate the month, day and year that each petition to terminate/modify the parental rights of a biological, legal and/or putative parent was filed in court, if applicable. Indicate “deceased” if the parent is deceased. If a petition has not been filed, leave this paragraph (c)(5)(i) blank.

(ii) *Termination/modification of parental rights.* Enter the month, day and year that the parental rights were voluntarily or involuntarily terminated/modified, for each biological, legal and/or putative parent, if applicable. If the parent is deceased, enter the date of death.

(d) *Removal information—(1) Date of child's removal.* Indicate the removal date(s) in month, day and year format for each removal of a child who enters the placement and care responsibility of the title IV-E agency. For a child who is removed and is placed initially in foster care, indicate the date that the title IV-E agency received placement and care responsibility. For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV-E agency, indicate the date that the title IV-E agency received placement and care responsibility. For a child who is removed and is placed initially in a non-foster care setting, indicate the date that the child enters foster care as the date of removal.

(2) *Removal transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) of this section was entered into the information system.

(3) *Environment at removal.* Indicate the type of environment (household or facility) the child was living in at the time of each removal for each removal reported in paragraph (d)(1) of this section. Indicate “parent household” if the child was living in a household that included one or both of the child's parents, whether biological, adoptive or legal. Indicate “relative household” if the child was living with a relative(s), the relative(s) is not the child's legal guardian and neither of the child's parents were living in the household. Indicate “legal guardian household” if the child was living with a legal guardian(s), the guardian(s) is not the child's relative and neither of the child's parents were living in the household. Indicate “relative legal guardian household” if the child was living with a relative(s) who is also the child's legal guardian. Indicate “justice facility” if the child was in a detention center, jail or other similar setting where the child was detained. Indicate “medical/mental health facility” if the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. Indicate “other” if the child was living in another situation not so described, such as living independently or homeless.

(4) *Child and family circumstances at removal.* Indicate all child and family circumstances that were present at the time of the child's removal and/or related to the child being placed into foster care for each removal reported in paragraph (d)(1) of this section. Indicate whether each circumstance described in paragraphs (d)(4)(i) through (xxxiv) of this section “applies” or “does not apply” for each removal indicated in paragraph (d)(1) of this section.

(i) *Runaway.* The child has left, without authorization, the home or facility where the child was residing.

(ii) *Whereabouts unknown.* The child's whereabouts are unknown and the title IV-E agency does not consider the child to have run away.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(iii) *Physical abuse*. Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.

(iv) *Sexual abuse*. Alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child's welfare.

(v) *Psychological or emotional abuse*. Alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child's welfare.

(vi) *Neglect*. Alleged or substantiated negligent treatment or maltreatment of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person who is responsible for the child's welfare.

(vii) *Medical neglect*. Alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so.

(viii) *Domestic violence*. Alleged or substantiated violent act(s), including any forceful detention of an individual that results in, threatens to result in, or attempts to cause physical injury or mental harm. This is committed by a person against another individual residing in the child's home and with whom such person is in an intimate relationship, dating relationship, is or was related by marriage, or has a child in common. This circumstance includes domestic violence between the child and his or her partner and applies to a child or youth of any age including those younger and older than the age of majority. This does not include alleged or substantiated maltreatment of the child by a person who is responsible for the child's welfare.

(ix) *Abandonment*. The child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. This does not include a child left at a "safe haven" as defined by the title IV-E agency. This category does not apply when the identity of the parent(s) or legal guardian(s) is known.

(x) *Failure to return*. The parent, legal guardian or caretaker did not or has not returned for the child or made his or her whereabouts known. This category does not apply when the identity of the parent, legal guardian or caretaker is unknown.

(xi) *Caretaker's alcohol use*. A parent, legal guardian or other caretaker responsible for the child uses alcohol compulsively that is not of a temporary nature.

(xii) *Caretaker's drug use*. A parent, legal guardian or other caretaker responsible for the child uses drugs compulsively that is not of a temporary nature.

(xiii) *Child alcohol use*. The child uses alcohol.

(xiv) *Child drug use*. The child uses drugs.

(xv) *Prenatal alcohol exposure*. The child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect, or fetal alcohol syndrome.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(xvi) *Prenatal drug exposure.* The child has been identified as prenatally exposed to drugs.

(xvii) *Diagnosed condition.* The child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition.

(xviii) *Inadequate access to mental health services.* The child and/or child's family has inadequate resources to access the necessary mental health services outside of the child's out-of-home care placement. □

□ Start Printed  
Page 28429

(xix) *Inadequate access to medical services.* The child and/or child's family has inadequate resources to access the necessary medical services outside of the child's out-of-home care placement.

(xx) *Child behavior problem.* The child's behavior in his or her school and/or community adversely affects his or her socialization, learning, growth and/or moral development. This includes all child behavior problems, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

(xxi) *Death of caretaker.* Existing family stress in caring for the child or an inability to care for the child due to the death of a parent, legal guardian or other caretaker.

(xxii) *Incarceration of caretaker.* The child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his or her ability to care for the child.

(xxiii) *Caretaker's significant impairment—physical/emotional.* A physical or emotional illness or disabling condition of the child's parent, legal guardian or caretaker that adversely limits his or her ability to care for the child.

(xxiv) *Caretaker's significant impairment—cognitive.* The child's parent, legal guardian or caretaker has cognitive limitations that impact his or her ability to function in areas of daily life, which adversely affect his or her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence.

(xxv) *Inadequate housing.* The child's or his or her family's housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the child to reside.

(xxvi) *Voluntary relinquishment for adoption.* The child's parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the title IV-E agency, in writing, for the purpose of having the child adopted. This includes a child left at a "safe haven" as defined by the title IV-E agency.

(xxvii) *Child requested placement.* The child, age 18 or older, has requested placement into foster care.

(xxviii) *Sex trafficking.* The child is a victim of sex trafficking at the time of removal.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(xxix) *Parental immigration detention or deportation.* The parent is or was detained or deported by immigration officials.

(xxx) *Family conflict related to child's sexual orientation, gender identity, or gender expression.* There is family conflict related to the child's expressed or perceived sexual orientation, gender identity, or gender expression. This includes any conflict related to the ways in which a child manifests masculinity or femininity.

(xxxix) *Educational neglect.* Alleged or substantiated failure of a parent or caregiver to enroll a child of mandatory school age in school or provide appropriate home schooling or needed special educational training, thus allowing the child or youth to engage in chronic truancy.

(xxxixii) *Public agency title IV-E agreement.* The child is in the placement and care responsibility of another public agency that has an agreement with the title IV-E agency pursuant to section 472(a)(2)(B) of the Act and on whose behalf title IV-E foster care maintenance payments are made.

(xxxixiii) *Tribal title IV-E agreement.* The child is in the placement and care responsibility of an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement and on whose behalf title IV-E foster care maintenance payments are made.

(xxxixiv) *Homelessness.* The child or his or her family has no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.

(5) *Victim of sex trafficking prior to entering foster care.* Indicate whether the child had been a victim of sex trafficking before the current out-of-home care episode. Indicate "yes" if the child was a victim or "no" if the child had not been a victim.

(i) *Report to law enforcement.* If the title IV-E agency indicated "yes" in paragraph (d)(5) of this section, indicate whether the title IV-E agency made a report to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate "yes" if the agency made a report to law enforcement and indicate "no" if the agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated "yes" in paragraph (d)(5)(i) of this section, indicate the date that the agency made the report to law enforcement.

(6) *Victim of sex trafficking while in foster care.* Indicate "yes" if the child was a victim of sex trafficking while in out-of-home care during the current out-of-home care episode. Indicate "no" if the child was not a victim of sex trafficking during the current out-of-home care episode.

(i) *Report to law enforcement.* If the title IV-E agency indicated "yes" in paragraph (d)(6) of this section, indicate whether the agency made a report to law enforcement for entry into the NCIC database. Indicate "yes" if the title IV-E agency made a report(s) to law enforcement and indicate "no" if the title IV-E agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated "yes" in paragraph (d)(6)(i) of this section, indicate the date(s) the agency made the report(s) to law enforcement.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(e) *Living arrangement and provider information*—(1) *Date of living arrangement*. Indicate the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. In the case of a child who has run away, whose whereabouts are unknown, or who is already in a living arrangement and remains there when the title IV-E agency receives placement and care responsibility, indicate the date of the Voluntary Placement Agreement or court order providing the title IV-E agency with placement and care responsibility for the child, rather than the date when the child was originally placed in the living arrangement.

(2) *Foster family home*. Indicate whether each of the child's living arrangements is a foster family home, with a “yes” or “no” as appropriate. If the child has run away or the child's whereabouts are unknown, indicate “no.” If the title IV-E agency indicates that the child is living in a foster family home, by indicating “yes,” the title IV-E agency must complete paragraph (e)(3) of this section. If the title IV-E agency indicates “no,” the title IV-E agency must complete paragraph (e)(4) of this section.

(3) *Foster family home type*. If the title IV-E agency indicated that the child is living in a foster family home in paragraph (e)(2) of this section, indicate whether each foster family home type listed in paragraphs (e)(3)(i) through (vi) of this section applies or does not apply; otherwise the title IV-E agency must leave paragraph (e)(3) blank.

(i) *Licensed home*. The child's living arrangement is licensed or approved by the state or tribal licensing/approval authority.

(ii) *Therapeutic foster family home*. The home provides specialized care and services.

(iii) *Shelter care foster family home*. The home is so designated by the state or tribal licensing/approval authority, and is designed to provide short-term or transitional care.

(iv) *Relative foster family home*. The foster parent(s) is related to the child by biological, legal or marital connection  and the relative foster parent(s) lives in the home as his or her primary residence.

Start Printed  
Page 28430

(v) *Pre-adoptive home*. The home is one in which the family and the title IV-E agency have agreed on a plan to adopt the child.

(vi) *Kin foster family home*. The home is one in which there is a kin relationship as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(4) *Other living arrangement type*. If the title IV-E agency indicated that the child's living arrangement is other than a foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise the title IV-E agency must leave this paragraph (e)(4) blank. Indicate “group home-family operated” if the child is in a group home that provides 24-hour care in a private family home where the family members are the primary caregivers. Indicate “group home-staff operated” if the child is in a group home that provides 24-hour care for children where the care-giving is provided by shift or rotating staff. Indicate “group home-shelter care” if the child is in a group

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

home that provides 24-hour care which is short-term or transitional in nature, and is designated by the state or tribal licensing/approval authority to provide shelter care. Indicate “residential treatment center” if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions or if the child is placed with a parent who is in a licensed residential family-based treatment facility for substance abuse pursuant to section 472(j) of the Act. This does not include a qualified residential treatment program defined in section 472(k)(4) of the Act. Indicate “qualified residential treatment program” if the child is in a placement that meets all of the requirements of section 472(k)(2)(A) and (4) of the Act. Indicate “child care institution” if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the state or tribal authority responsible for licensing or approving child care institutions. This includes a setting specializing in providing prenatal, post-partum, or parenting supports for youth pursuant to section 472(k)(2)(B) of the Act, and a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims pursuant to section 472(k)(2)(D) of the Act. This does not include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Indicate “child care institution-shelter care” if the child is in a child care institution and the institution is designated to provide shelter care by the state or tribal authority responsible for licensing or approving child care institutions and is short-term or transitional in nature. Indicate “supervised independent living” if the child is living independently in a supervised setting. Indicate “juvenile justice facility” if the child is in a secure facility or institution where alleged or adjudicated juvenile delinquents are housed. Indicate “medical or rehabilitative facility” if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate “psychiatric hospital” if the child is in a facility that provides emotional or psychological health care and is licensed or accredited as a hospital. Indicate “runaway” if the child has left, without authorization, the home or facility where the child was placed. Indicate “whereabouts unknown” if the child is not in the physical custody of the title IV-E agency or person or institution with whom the child has been placed, the child's whereabouts are unknown, and the title IV-E agency does not consider the child to have run away. Indicate “placed at home” if the child is home with the parent(s) or legal guardian(s) in preparation for the title IV-E agency to return the child home permanently.

(5) *Location of living arrangement.* Indicate whether each of the child's living arrangements reported in paragraph (e)(1) of this section is located within or outside of the reporting state or tribal service area or is outside of the country. Indicate “out-of-state or out-of-tribal service area” if the child's living arrangement is located outside of the reporting state or tribal service area but inside the United States. Indicate “in-state or in-tribal service area” if the child's living arrangement is located within the reporting state or tribal service area. Indicate “out-of-country” if the child's living arrangement is outside of the United States. Indicate “runaway or whereabouts unknown” if the child has run away from his or her living arrangement or the child's whereabouts are unknown. If the title IV-E agency indicates either “out-of-state or out-of-tribal service area” or “out-of-country” for the child's living arrangement, the title IV-E agency must complete paragraph (e)(6) of this section; otherwise the title IV-E agency must leave paragraph (e)(6) of this section blank.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(6) *Jurisdiction or country where child is living.* Indicate the state, tribal service area, Indian reservation, or country where the reporting title IV-E agency placed the child for each living arrangement, if the title IV-E agency indicated either “out-of-state” or “out-of-tribal service area” or “out-of-country” in paragraph (e)(5) of this section; otherwise the title IV-E agency must leave this paragraph (e)(6) blank. The title IV-E agency must report the information in a format according to ACF's specifications.

(7) *Marital status of the foster parent(s).* Indicate the marital status of the child's foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate “married couple” if the foster parents are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate “unmarried couple” if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. Indicate “separated” if the foster parent is legally separated or is living apart from his or her spouse. Indicate “single adult” if the foster parent is not married and is not living with another individual as part of a couple. If the response is either “married couple” or “unmarried couple,” the title IV-E agency must complete the paragraphs for the second foster parent in paragraphs (e)(14) through (18) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(8) *Child's relationship to the foster parent(s).* Indicate the type of relationship between the child and his or her foster parent(s), for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate “relative(s)” if the foster parent(s) is the child's relative (by biological, legal or marital connection). Indicate “non-relative(s)” if the foster parent(s) is not related to the child (by biological, legal or marital connection). Indicate “kin” if the foster parent(s) has kin relationship to the child as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s) and there is not a legal,  biological, or marital connection between the child and foster parent.

Start Printed  
Page 28431

(9) *Year of birth for first foster parent.* Indicate the year of birth for the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section.

(10) *First foster parent tribal membership.* For state title IV-E agencies only: Indicate whether the first foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(11) *Race of first foster parent.* Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (e)(11)(i) through (vii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The first foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The first foster parent has declined to identify a race.

(12) *Hispanic or Latino ethnicity of first foster parent.* Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the first foster parent does not know his or her ethnicity indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.”

(13) *Sex of first foster parent.* Indicate whether the first foster parent is “female” or “male.”

(14) *Year of birth for second foster parent.* Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. The title IV-E agency must leave this paragraph (e)(14) blank if there is no second foster parent according to paragraph (e)(7) of this section.

(15) *Second foster parent tribal membership.* For state title IV-E agencies only: Indicate whether the second foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(16) *Race of second foster parent.* Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (e)(16)(i) through (vii) of this section applies with a “yes” or “no.” The title IV-E agency must leave this paragraph (e)(16) blank if there is no second foster parent according to paragraph (e)(7) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The second foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(17) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the second foster parent does not know his or her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.” The title IV-E agency must leave this paragraph (e)(17) blank if there is no second foster parent according to paragraph (e)(7) of this section.

(18) *Sex of second foster parent.* Indicate whether the second foster parent is “female” or “male.”

(f) *Permanency planning—(1) Permanency plan.* Indicate each permanency plan established for the child. Indicate “reunify with parent(s) or legal guardian(s)” if the plan is to keep the child in out-of-home care for a limited time and the title IV-E agency is to work with the child's parent(s) or legal guardian(s) to establish a stable family environment. Indicate “live with other relatives” if the plan is for the child to live permanently with a relative(s) (by biological, legal or marital connection) who is not the child's parent(s) or legal guardian(s). Indicate “adoption” if the plan is to facilitate the child's adoption by relatives, foster parents, kin or other unrelated individuals. Indicate “guardianship” if the plan is to establish a new legal guardianship. Indicate “planned permanent living arrangement” if the plan is for the child to remain in foster care until the title IV-E agency's placement and care responsibility ends. The title IV-E agency must only select “planned permanent living arrangement” consistent with the requirements in section 475(5)(C)(i) of the Act. Indicate “permanency plan not established” if a permanency plan has not yet been established.

Start Printed  
Page 28432

(2) *Date of permanency plan.* Indicate the month, day and year that each permanency plan(s) was established during each out-of-home care episode.

(3) *Date of periodic review(s).* Enter the month, day and year of each periodic review, either by a court or by administrative review (as defined in section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(4) *Date of permanency hearing(s)*. Enter the month, day and year of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act.

(5) *Caseworker visit dates*. Enter each date in which a caseworker had an in-person, face-to-face visit with the child consistent with section 422(b)(17) of the Act. Indicate the month, day and year of each visit.

(6) *Caseworker visit locations*. Indicate the location of each in-person, face-to-face visit between the caseworker and the child. Indicate "child's residence" if the visit occurred at the location where the child is currently residing, such as the current foster care provider's home, child care institution or facility. Indicate "other location" if the visit occurred at any location other than where the child currently resides, such as the child's school, a court, a child welfare office or in the larger community.

(g) *General exit information*. Provide exit information for each out-of-home care episode. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends.

(1) *Date of exit*. Indicate the month, day and year for each of the child's exits from out-of-home care. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends. If the child has not exited out-of-home care the title IV-E agency must leave this paragraph (g)(1) blank. If this paragraph (g)(1) is applicable, paragraphs (g)(2) and (3) of this section must have a response.

(2) *Exit transaction date*. A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) of this section was entered into the information system.

(3) *Exit reason*. Indicate the reason for each of the child's exits from out-of-home care. Indicate "not applicable" if the child has not exited out-of-home care. Indicate "reunify with parent(s)/legal guardian(s)" if the child was returned to his or her parent(s) or legal guardian(s) and the title IV-E agency no longer has placement and care responsibility. Indicate "live with other relatives" if the child exited to live with a relative (related by a biological, legal or marital connection) other than his or her parent(s) or legal guardian(s). Indicate "adoption" if the child was legally adopted. Indicate "emancipation" if the child exited care due to age. Indicate "guardianship" if the child exited due to a legal guardianship of the child. Indicate "runaway or whereabouts unknown" if the child ran away or the child's whereabouts were unknown at the time that the title IV-E agency's placement and care responsibility ends. Indicate "death of child" if the child died while in out-of-home care. Indicate "transfer to another agency" if placement and care responsibility for the child was transferred to another agency, either within or outside of the reporting state or tribal service area.

(4) *Transfer to another agency*. If the title IV-E agency indicated the child was transferred to another agency in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility for the child from the following options: "State title IV-E agency," "Tribal title IV-E agency," "Indian tribe or tribal agency (non-IV-E)," "juvenile justice agency," "mental health agency," "other public agency" or "private agency."

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(h) *Exit to adoption and guardianship information.* Report information in this paragraph (h) only if the title IV-E agency indicated the child exited to adoption or legal guardianship in paragraph (g)(3) of this section. Otherwise the title IV-E agency must leave paragraphs (h)(1) through (15) of this section blank.

(1) *Marital status of the adoptive parent(s) or guardian(s).* Indicate the marital status of the adoptive parent(s) or legal guardian(s). Indicate “married couple” if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate “married but individually adopting or obtaining legal guardianship” if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws, but are individually adopting or obtaining legal guardianship. Indicate “separated” if the foster parent is legally separated or is living apart from his or her spouse. Indicate “unmarried couple” if the adoptive parents or guardians are living together as a couple, but are not united in matrimony according to applicable laws. Use this response option even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate “single adult” if the adoptive parent or legal guardian is not married and is not living with another individual as part of a couple. If the response is “married couple” or “unmarried couple,” the title IV-E agency also must complete paragraphs for the second adoptive parent or second legal guardian in paragraphs (h)(8) through (12) of this section; otherwise the title IV-E agency must leave those paragraphs blank.

(2) *Child's relationship to the adoptive parent(s) or guardian(s).* Indicate the type of relationship between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in paragraphs (h)(2)(i) through (iv) of this section “applies” or “does not apply.”

(i) *Relative(s).* The adoptive parent(s) or legal guardian(s) is the child's relative (by biological, legal or marital connection).

(ii) *Kin.* The adoptive parent(s) or legal guardian(s) has a kin relationship with the child, as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the adoptive parent(s) or legal guardian(s) and there is not a legal, biological, or marital connection between the child and foster parent.

(iii) *Non-relative(s).* The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.

(iv) *Foster parent(s).* The adoptive parent(s) or legal guardian(s) was the child's foster parent(s).

(3) *Date of birth of first adoptive parent or guardian.* Indicate the month, day and year of the birth of the first adoptive parent or legal guardian.

(4) *First adoptive parent or guardian tribal membership.* For state title IV-E agencies only: Indicate whether the first adoptive parent or guardian is a member of an Indian tribe. Indicate “yes,” “no” or “unknown.”

(5) *Race of first adoptive parent or guardian.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (h)(5)(i) through (vii) of this section applies with a “yes” or “no.”

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

□ Start Printed  
Page 28433

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The first adoptive parent or legal guardian does not know his or her race, or at least one race.

(vii) *Race—Declined.* The first adoptive parent, or legal guardian has declined to identify a race.

(6) *Hispanic or Latino ethnicity of first adoptive parent or guardian.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the first adoptive parent or legal guardian does not know his or her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.”

(7) *Sex of first adoptive parent or guardian.* Indicate whether the first adoptive parent is “female” or “male.”

(8) *Date of birth of second adoptive parent, guardian, or other member of the couple.* Indicate the month, day and year of the date of birth of the second adoptive parent, legal guardian, or other member of the couple. The title IV-E agency must leave this paragraph (h)(8) blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(9) *Second adoptive parent, guardian, or other member of the couple tribal membership.* For state title IV-E agencies only: Indicate whether the second adoptive parent or guardian is a member of an Indian tribe. Indicate “yes,” “no” or “unknown.”

(10) *Race of second adoptive parent, guardian, or other member of the couple.* In general, an individual's race is determined by the individual. Indicate whether each race category listed in paragraphs (h)(10)(i) through (vii) of this section applies with a “yes” or “no.” The title IV-E agency must leave this paragraph (h)(10) blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The second adoptive parent, legal guardian, or other member of the couple does not know his or her race, or at least one race.

(vii) *Race—Declined.* The second adoptive parent, legal guardian, or other member of the couple has declined to identify a race.

(11) *Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the second adoptive parent, legal guardian, or other member of the couple does not know his or her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.” The title IV-E agency must leave this paragraph (h)(11) blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(12) *Sex of second adoptive parent, guardian, or other member of the couple.* Indicate whether the second adoptive parent, guardian, or other member of the couple is “female” or “male.”

(13) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. Indicate “interjurisdictional adoption or guardianship” if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the state or tribal service area but within the United States. Indicate “intercountry adoption or guardianship” if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the United States. Indicate “intrajurisdictional adoption or guardianship” if the reporting title IV-E agency placed the child within the same state or tribal service area as the one with placing responsibility.



12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

(14) *Assistance agreement type.* Indicate the type of assistance agreement between the title IV-E agency and the adoptive parent(s) or legal guardian(s): “Title IV-E adoption assistance agreement”; “State/tribal adoption assistance agreement”; “Adoption-Title IV-E agreement non-recurring expenses only”; “Adoption-Title IV-E agreement Medicaid only”; “Title IV-E guardianship assistance agreement”; “State/tribal guardianship assistance agreement”; or “no agreement” if there is no assistance agreement.

(15) *Siblings in adoptive or guardianship home.* Indicate the number of siblings of the child who are in the same adoptive or guardianship home as the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must indicate “not applicable.” If the child has siblings, but they are not in the same adoptive or guardianship home as the child, the title IV-E agency must indicate “o.”

6. Amend § 1355.45 by revising paragraphs (b)(2) and (b)(3)(vi) and adding paragraph (f) to read as follows:

**§ 1355.45 Adoption and guardianship assistance data file elements.**

★\* ★\* ★\* ★\* ★\*

(b) \* \* \* □

□ Start Printed Page 28434

(2) *Child's sex.* Indicate “male” or “female.”

(3) \* \* \*

(vi) *Race—Unknown.* The child or parent or legal guardian does not know the race, or at least one race of the child. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

★\* ★\* ★\* ★\* ★\*

(f) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate “title IV-E agency” if the reporting title IV-E agency placed the child for adoption or legal guardianship. Indicate “private agency under agreement” if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV-E agency. Indicate “Indian tribe under contract/agreement” if an Indian tribe, tribal organization or consortia placed the child for adoption or legal guardianship through a contract or an agreement with the reporting title IV-E agency.

7. Amend § 1355.46(c)(2) by revising the second sentence to read as follows:

**§ 1355.46 Compliance.**

★\* ★\* ★\* ★\* ★\*

(c) \* \* \*

(2) \* \* \* In addition, each record subject to compliance standards within the data file must have the data elements described in §§ 1355.44(a) and (b)(1) and (2) and 1355.45(a) and (b)(1) and (2) be 100 percent free of missing data, invalid data, and internally inconsistent data (see paragraphs (b) (1) through (3) of this section). \* \* \*

12/21/2020

Federal Register :: Adoption and Foster Care Analysis and Reporting System

★\*

★\*

★\*

★\*

★\*

[FR Doc. 2020-09817 (/a/2020-09817) Filed 5-8-20; 4:15 pm]

BILLING CODE 4184-25-P

---

**PUBLISHED DOCUMENT**



## Presidential Documents

Executive Order 13771 of January 30, 2017

### Reducing Regulation and Controlling Regulatory Costs

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Budget and Accounting Act of 1921, as amended (31 U.S.C. 1101 *et seq.*), section 1105 of title 31, United States Code, and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. Purpose.** It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources. In addition to the management of the direct expenditure of taxpayer dollars through the budgeting process, it is essential to manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations. Toward that end, it is important that for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.

**Sec. 2. Regulatory Cap for Fiscal Year 2017.** (a) Unless prohibited by law, whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed.

(b) For fiscal year 2017, which is in progress, the heads of all agencies are directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized this year shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by the Director of the Office of Management and Budget (Director).

(c) In furtherance of the requirement of subsection (a) of this section, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations. Any agency eliminating existing costs associated with prior regulations under this subsection shall do so in accordance with the Administrative Procedure Act and other applicable law.

(d) The Director shall provide the heads of agencies with guidance on the implementation of this section. Such guidance shall address, among other things, processes for standardizing the measurement and estimation of regulatory costs; standards for determining what qualifies as new and offsetting regulations; standards for determining the costs of existing regulations that are considered for elimination; processes for accounting for costs in different fiscal years; methods to oversee the issuance of rules with costs offset by savings at different times or different agencies; and emergencies and other circumstances that might justify individual waivers of the requirements of this section. The Director shall consider phasing in and updating these requirements.

**Sec. 3. Annual Regulatory Cost Submissions to the Office of Management and Budget.** (a) Beginning with the Regulatory Plans (required under Executive Order 12866 of September 30, 1993, as amended, or any successor order) for fiscal year 2018, and for each fiscal year thereafter, the head of each agency shall identify, for each regulation that increases incremental cost, the offsetting regulations described in section 2(c) of this order, and provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation.

(b) Each regulation approved by the Director during the Presidential budget process shall be included in the Unified Regulatory Agenda required under Executive Order 12866, as amended, or any successor order.

(c) Unless otherwise required by law, no regulation shall be issued by an agency if it was not included on the most recent version or update of the published Unified Regulatory Agenda as required under Executive Order 12866, as amended, or any successor order, unless the issuance of such regulation was approved in advance in writing by the Director.

(d) During the Presidential budget process, the Director shall identify to agencies a total amount of incremental costs that will be allowed for each agency in issuing new regulations and repealing regulations for the next fiscal year. No regulations exceeding the agency's total incremental cost allowance will be permitted in that fiscal year, unless required by law or approved in writing by the Director. The total incremental cost allowance may allow an increase or require a reduction in total regulatory cost.

(e) The Director shall provide the heads of agencies with guidance on the implementation of the requirements in this section.

**Sec. 4. Definition.** For purposes of this order the term "regulation" or "rule" means an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, but does not include:

(a) regulations issued with respect to a military, national security, or foreign affairs function of the United States;

(b) regulations related to agency organization, management, or personnel; or

(c) any other category of regulations exempted by the Director.


**Sec. 5. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be the name of Donald Trump, written in a cursive style.

THE WHITE HOUSE,  
*January 30, 2017.*

[FR Doc. 2017-02451  
Filed 2-2-17; 11:15 am]  
Billing code 3295-F7-P



12285

Federal Register

## Presidential Documents

Vol. 82, No. 39

Wednesday, March 1, 2017

Title 3—

Executive Order 13777 of February 24, 2017

The President

### Enforcing the Regulatory Reform Agenda

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to lower regulatory burdens on the American people by implementing and enforcing regulatory reform, it is hereby ordered as follows:

**Section 1. Policy.** It is the policy of the United States to alleviate unnecessary regulatory burdens placed on the American people.

**Sec. 2. Regulatory Reform Officers.** (a) Within 60 days of the date of this order, the head of each agency, except the heads of agencies receiving waivers under section 5 of this order, shall designate an agency official as its Regulatory Reform Officer (RRO). Each RRO shall oversee the implementation of regulatory reform initiatives and policies to ensure that agencies effectively carry out regulatory reforms, consistent with applicable law. These initiatives and policies include:

(i) Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), regarding offsetting the number and cost of new regulations;

(ii) Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended, regarding regulatory planning and review;

(iii) section 6 of Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review), regarding retrospective review; and

(iv) the termination, consistent with applicable law, of programs and activities that derive from or implement Executive Orders, guidance documents, policy memoranda, rule interpretations, and similar documents, or relevant portions thereof, that have been rescinded.

(b) Each agency RRO shall periodically report to the agency head and regularly consult with agency leadership.

**Sec. 3. Regulatory Reform Task Forces.** (a) Each agency shall establish a Regulatory Reform Task Force composed of:

(i) the agency RRO;

(ii) the agency Regulatory Policy Officer designated under section 6(a)(2) of Executive Order 12866;

(iii) a representative from the agency's central policy office or equivalent central office; and

(iv) for agencies listed in section 901(b)(1) of title 31, United States Code, at least three additional senior agency officials as determined by the agency head.

(b) Unless otherwise designated by the agency head, the agency RRO shall chair the agency's Regulatory Reform Task Force.

(c) Each entity staffed by officials of multiple agencies, such as the Chief Acquisition Officers Council, shall form a joint Regulatory Reform Task Force composed of at least one official described in subsection (a) of this section from each constituent agency's Regulatory Reform Task Force. Joint Regulatory Reform Task Forces shall implement this order in coordination with the Regulatory Reform Task Forces of their members' respective agencies.

HHS000168



(d) Each Regulatory Reform Task Force shall evaluate existing regulations (as defined in section 4 of Executive Order 13771) and make recommendations to the agency head regarding their repeal, replacement, or modification, consistent with applicable law. At a minimum, each Regulatory Reform Task Force shall attempt to identify regulations that:

- (i) eliminate jobs, or inhibit job creation;
- (ii) are outdated, unnecessary, or ineffective;
- (iii) impose costs that exceed benefits;
- (iv) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
- (v) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note), or the guidance issued pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or
- (vi) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.

(e) In performing the evaluation described in subsection (d) of this section, each Regulatory Reform Task Force shall seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations.

(f) When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of this section.

(g) Within 90 days of the date of this order, and on a schedule determined by the agency head thereafter, each Regulatory Reform Task Force shall provide a report to the agency head detailing the agency's progress toward the following goals:

- (i) improving implementation of regulatory reform initiatives and policies pursuant to section 2 of this order; and
- (ii) identifying regulations for repeal, replacement, or modification.

**Sec. 4. Accountability.** Consistent with the policy set forth in section 1 of this order, each agency should measure its progress in performing the tasks outlined in section 3 of this order.

(a) Agencies listed in section 901(b)(1) of title 31, United States Code, shall incorporate in their annual performance plans (required under the Government Performance and Results Act, as amended (see 31 U.S.C. 1115(b))), performance indicators that measure progress toward the two goals listed in section 3(g) of this order. Within 60 days of the date of this order, the Director of the Office of Management and Budget (Director) shall issue guidance regarding the implementation of this subsection. Such guidance may also address how agencies not otherwise covered under this subsection should be held accountable for compliance with this order.

(b) The head of each agency shall consider the progress toward the two goals listed in section 3(g) of this order in assessing the performance of the Regulatory Reform Task Force and, to the extent permitted by law, those individuals responsible for developing and issuing agency regulations.

**Sec. 5. Waiver.** Upon the request of an agency head, the Director may waive compliance with this order if the Director determines that the agency generally issues very few or no regulations (as defined in section 4 of Executive Order 13771). The Director may revoke a waiver at any time. The Director shall publish, at least once every 3 months, a list of agencies with current waivers.

**Sec. 6. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to be the signature of Donald Trump, located on the right side of the page.

THE WHITE HOUSE,  
*February 24, 2017.*

[FR Doc. 2017-04107  
Filed 2-28-17; 11:15 am]  
Billing code 3295-F7-P

HHS000170

Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys

# Current Measures of Sexual Orientation and Gender Identity in Federal Surveys

August, 2016

## Contents

<b>I. Introduction and Purpose of the Working Paper</b>	3
<b>II. What to Measure: Concepts</b>	3
<b>a. Sex and Gender</b>	3
<b>b. Transgender</b>	4
<b>c. Sexual Orientation</b>	4
<b>d. Household Relationships</b>	5
<b>III. Current Measurement</b>	5
<b>a. Sexual Identity</b>	5
NCVS	8
(DOJ/BJA)	8
Years asked: July 2016-present	8
U.S. adult civilian, noninstitutionalized population aged 16 and older	8
NSOAAP	9
(DHHS/ACL)	9
Administration on Aging Title III service participants. Most respondents are aged 60 and older.	9
Respondents answering questions under the Caregiver module are adults age 18 and over.	9
<b>b. Sexual Attraction</b>	10
<b>c. Sexual Behavior</b>	12
<b>d. Gender Identity</b>	13
Years asked: July 2016-present	14
<b>e. Household Relationships</b>	15
<b>f. Administrative Records and Program Data</b>	16
<b>IV. Choosing a Measure</b>	17

*a. Selecting the Concept* ..... 17

*b. Considerations and Context* ..... 18

*c. Methods Considerations* ..... 20

*d. Post-Survey Analysis*..... 21

**V. Conclusion** ..... 22

**References** ..... 23

**Appendix A: Acronyms**..... 27

## I. Introduction and Purpose of the Working Paper

At a time when sexual and gender minority (SGM)<sup>1</sup> populations are becoming more visible in social and political life, there remains a lack of data on the characteristics and well-being of these groups. In order to understand the diverse needs of SGM populations, more representative and better quality data need to be collected. The U.S. Federal Government is taking several steps to coordinate data collection efforts across its many Departments. The Office of Management and Budget (OMB) convened the Federal Interagency Working Group on Measuring Sexual Orientation and Gender Identity (SOGI) to begin addressing the dearth of data for these populations and the issues surrounding methodological issues in collecting such data.

Although a few Federal agencies have collected information describing SGM populations for over a decade, some aspects of SOGI have been more routinely measured than others. Further, there are Federal agencies not currently collecting data on SOGI that have expressed interest in doing so. The purpose of this working paper is to describe how the concepts of SOGI are currently measured in U.S. Federal surveys.<sup>2</sup> This document is one of three working papers anticipated to be developed through the Interagency Working Group. A second working paper will review evaluations of questionnaire measurement, and a third will propose a research agenda to further improve sexual orientation and gender identity measures. Other working papers may be developed as research in this area further matures.

## II. What to Measure: Concepts

Several key concepts are central to discussions of SOGI. These include sex, gender, transgender, and sexual orientation. Terms related to these concepts, such as *lesbian, gay, bisexual, and transgender (LGBT)*, may have more than one meaning based on social context. For Federal surveys, both the purpose of the survey and the specific dimension of SOGI intended to be measured are important design and measurement considerations. A related measure is the identification of same-sex households. However, the identification of same-sex households is not a direct measure of SOGI for the individuals in those households.

### a. Sex and Gender

Sex and gender are foundational concepts in research on SOGI. Generally speaking, the term *sex* refers to the biological characteristics that are used to categorize individuals as *male, female, or intersex*. *Sex* refers to “the genetic, hormonal, anatomical and physiological characteristics on whose basis one is labeled at birth as either male or female” (IOM, 2011, p. 25). The term, *gender*, on the other hand, refers to “the socially constructed characteristics of women and men—such as norms, roles and relationships of and between groups of women and men” (WHO, 2016).

While *male* and *female* refer to sex, words like *masculine, feminine, man, and woman* all refer to gender.<sup>3</sup> Gender is a multidimensional construct that has psychological, social, and behavioral dimensions that include gender identity and gender expression. It refers to the “cultural meanings of patterns of behavior, experience, and personality that are labeled masculine or feminine” (IOM, 2011,

---

<sup>1</sup> This working paper refers to the population of interest as sexual and gender minority (SGM) rather than the more commonly used reference as lesbian, gay, bisexual, and transgender (LGBT). We believe that SGM is more inclusive as it would include persons not specifically referenced by LGBT such as genderqueer, among others.

<sup>2</sup> For the purposes of this working paper, non-federal SOGI measures, such as those included in the California Health Interview Survey (CHIS), are discussed solely in the context of our review of federal measures.

<sup>3</sup> Some argue that the concepts of *sex, male, and female* are also socially constructed (Kelly, 2016).

p.25). Gender identity refers to a person's internal sense of gender (e.g., being a man, a woman, or genderqueer) and potential affiliation with a gender community (e.g., women, trans women, genderqueer).

**b. Transgender**

The term *transgender* refers to a diverse population that departs significantly from gender norms ([IOM, 2011](#)). Often, a person's gender identity is consistent with their sex assigned at birth. A person whose gender identity and sex assigned at birth are consistent can be referred to as a *cis-gender* person (that is, a person who gender is "consistent in sex."). The term *transgender* describes anyone whose gender identity differs from their sex assigned at birth ([Spade, 2008](#)). Some transgender individuals use hormones or elect for gender-affirming surgery, but not all transgender individuals do this.

There are several dimensions of gender that can be measured: *gender identity*, *gender expression*, and *gender dysphoria*. Some surveys might aim to measure *gender identity*, or an individual's self-identified sense of gender. Others might be more interested in measuring *gender expression*, or an individual's external manifestation of gender. A survey may also aim to identify all individuals who experience *gender dysphoria*, the experience of a marked difference between self-identified gender and assigned gender for a period of at least six months associated with clinically significant distress caused by this incongruence ([APA, 2013](#)). Someone may be diagnosed with gender dysphoria whether or not that person has taken any steps to align their gender expression with their (inner) gender identity.<sup>4</sup>

**c. Sexual Orientation**

Sexual orientation has three main dimensions: *sexual attraction*, *sexual behavior*, and *sexual identity*. *Sexual attraction* refers to the relationship between a person's gender and the gender(s) of the individuals to whom that person is sexually attracted (for example, whether an individual is attracted to men, women, or both men and women). *Sexual behavior* refers to the relationship between a person's gender and the gender(s) of the individuals with whom that person engages in sexual activity (for example, whether an individual has sex partners who are of the same sex, the opposite sex, or both). *Sexual identity* refers to the way a person self-identifies with a given sexual orientation (for example, how an individual thinks of the individual's self) ([SMART, 2009](#)).

The most commonly used terms to describe different sexual orientations are *lesbian*, *gay*, *bisexual*, and *heterosexual/straight*.<sup>5</sup> In general, people who self-identify as *gay* or *lesbian* are primarily attracted to and/or have sex with people of the same-sex. However, the concepts of sexual identity, attraction, and behavior do not always follow these patterns, or individuals may not want to identify as *gay* or *lesbian* even if they are attracted to the same sex or only occasionally have different-sex relations. Therefore, although some surveys focus only on sexual identity, others measure all three components of sexual orientation.

---

<sup>4</sup> Gender dysphoria is classified as a mental disorder by the DSM-5. However the DSM-5 states that gender nonconformity is not itself a mental disorder. Rather it is the presence of clinically significant stress associated with the untreated condition. Nevertheless, there is some controversy around the categorization of the term, and especially its predecessor, *gender identity disorder*, as a mental illness ([Lev, 2016](#)).

<sup>5</sup> The term *homosexual* is sometimes used to describe individuals who are attracted to those of the same gender, engage in sexual activity with those of the same gender, and/or self-identify as *lesbian* and *gay*. The term *heterosexual* similarly corresponds to those with *straight* identities and/or different-sex attraction and/or partners. Because of its appearance as a mental disorder in the DSM-I and DSM-II, the term *homosexual* is sometimes seen as unfavorable. *Homosexuality* was declassified as a mental disorder beginning with the publication of the DSM-III in 1973.



Surveys should focus on accurate measurement of the dimension(s) in which they are interested for the purposes of the study ([SMART, 2009](#)). Asking the ‘right’ question for the purpose of the information collection can be challenging. Conceptual dimensions may be fluid over time and may not necessarily align for a given person. Academically, these distinctions are clear but the perceptions of the general public are often not. For example, while sex and gender can be defined as two different concepts, most people do not think of it that way. This disconnect often contributes to measurement and design issues.

#### **d. Household Relationships**

Many Federal surveys collect household relationship data for all individuals living in the same housing unit. Household relationship data can be used to provide an indirect estimate of the SGM population through the measurement of same-sex couples. This approach, however, does not provide a direct measure of sexual orientation, and yields an incomplete estimate, since persons not in a relationship or not living in the same household as their partner will not be identified ([MRFHS 2014](#)).

### **III. Current Measurement**

Currently, there are eleven Federal surveys and one Federal study that collect data on sexual orientation, including identity, attraction, and behavior, and gender identity. The eleven surveys include: Health Center Patient Survey (HCPS), National Adult Tobacco Survey (NATS), National Health and Nutrition Examination Survey (NHANES), National Health Interview Survey (NHIS), National Inmate Survey (NIS), National Crime Victimization Survey (NCVS), National Survey of Family Growth (NSFG), Youth Risk Behavior Surveillance System (YRBSS), National Survey on Drug Use and Health (NSDUH), National Survey of Older Americans Act Participants (NSOAAP), and Behavior Risk Factor Surveillance System (BRFSS). The one study includes Population Assessment of Tobacco and Health (PATH). Ten of the twelve surveys/study are collected by the Department of Health and Human Services. Two surveys, the NIS and the NCVS, are collected by the Department of Justice.<sup>6</sup>

All of these surveys/study collect data on sexual identity. Three of the surveys/study collect sexual attraction (PATH, NSFG, and NSDUH); four collect sexual behavior (NSFG, NHANES, NIS, YRBSS); and six collect gender identity (PATH, HCPS, NATS, NIS, NCVS, BRFSS).

#### **a. Sexual Identity**

Table III.a summarizes current measures of sexual identity. In brief, there are two main ways sexual identity is asked in Federal surveys /studies:

- *Which of the following best represents how you think of yourself?* (NHIS/NHANES, NCVS, NSOAAP)<sup>7</sup> and

---

<sup>6</sup> At the time of this writing, several Federal agencies have planned, field tested, or prepared additional, national information collections including measures of sexual orientation and/or gender identity. These include the High School Longitudinal Survey and the Medicare Current Beneficiary Study, among others.

<sup>7</sup> For the 2013 and 2014 NHIS, follow-up questions were asked for initial responses of “something else” and “I don’t know the answer” in an effort to reduce misreporting and to accommodate more inclusive terms. Upon analysis, NHIS found that the percentage of sample adult respondents who received these follow-up questions was quite low (~0.6% in both 2013 and 2014). Further, comparisons of sexual orientation estimates before and after back-coding of responses to account for follow-up question responses revealed no substantive differences. Hence, the follow up questions were removed starting with the 2015 survey. NHANES questions were changed in 2015-2016 to be consistent with the questions used in other surveys at NCHS.

- “Do you think of yourself as...” (NSFG/NSDUH/PATH/NATS/BRFSS)<sup>8</sup>.

<b>Table III.a Current Measures of Sexual Identity in Federal Surveys</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
NHIS (DHHS/CDC/ NCHS)  Topic asked: 2013-present  Current Question: 2015-present	<b>(ACISIM/F) Which of the following best represents how you think of yourself?</b> [If R is female then Lesbian or] Gay Straight, that is, not [If R is female then Lesbian or] Gay Bisexual Something else I don't know the answer (Refused)	CAPI, with some telephone follow-up	U.S. adult civilian, non- institutionali zed population aged 18+
NHANES (DHHS/CDC/ NCHS)  Topic asked: 2001-present  Current Question: 2015-present	<b>(SXQ.295/296) Which of the following best represents how you think of yourself?</b> [If R is female then Lesbian or] Gay Straight, that is, not [If R is female then Lesbian or] Gay Bisexual Something else I don't know the answer	ACASI	U.S. adult civilian, noninstitutio nalized population aged 18-59
NSFG (DHHS/CDC/ NCHS)  Years asked: 2002, 2006- 2010, 2011-13  Current Question: 2006-2013	<b>(ORIENT) Do you think of yourself as...</b> Heterosexual or straight Homosexual or Gay [If R is female then Lesbian] Bisexual Something else (Don't Know) (Refused)	ACASI	U.S. adult civilian, noninstitutio nalized population aged 15-44

<sup>8</sup> In 2002, NSFG featured different response options (that is, heterosexual, homosexual, bisexual, something else). NSFG has used the current response options starting in 2006. HCPS and NIS are variants on the NSFG question format. NSDUH has a modified response option, listing the most common response option first. It does not include a “something else” option. In 2013 PATH used the NSFG question (Do you think of yourself as) with modified NHIS follow-up. In 2014-2015, PATH moved to the single NSFG question format without the modified NHIS follow up question. The YRBSS uses a unique question format (that is, “which of the following best describes you?”).

<b>Table III.a Current Measures of Sexual Identity in Federal Surveys</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
NSDUH (DHHS/ SAMHSA/ CBHSQ)  Years asked: 2015-present	<b>(QD63) Which one of the following do you consider yourself to be?</b> Heterosexual, that is, straight [If R is female then Lesbian or] Gay Bisexual (Don't Know) (Refused)	ACASI	U.S. adult civilian, noninstitutionalized population aged 18 and older
PATH (DHHS/ NIH and DHHS/FDA)  Topic asked: 2013-present  Current Question: 2014	<b>(R02_AM0063/R03_AM0063) Do you consider yourself to be...</b> Straight Lesbian or Gay Bisexual Something else Don't know Refused	ACASI	U.S. civilian, noninstitutionalized population aged 14 and older
HCPS (DHHS/HRSA/ BPHC)  Year asked: 2014	<b>(DMO8a) Do you think of yourself as straight or heterosexual, as gay, lesbian or homosexual, or as bisexual?</b> Straight or heterosexual Gay, Lesbian, homosexual Bisexual Not sexual/celibate/none Other, please specify	CAPI	All health center patients, ages 15 and older
NATS (DHHS/CDC)  Years asked: 2012-2014	<b>(SEXUALORIENT1) Do you think of yourself as...?</b> [If R is female then Lesbian or] Gay Straight, that is, not [If R is female then Lesbian or] Gay Bisexual Something else (Don't Know) (Refused)  <b>[If R selects "Something else" in SEXUALORIENT1]</b> <b>(SEXUALORIENT2) By something else, do you mean that ...</b> You are not straight, but identify with another label such as queer, trisexual, omnisexual or pansexual	CATI	U.S. adult civilian, noninstitutionalized population aged 18 and older

<b>Table III.a Current Measures of Sexual Identity in Federal Surveys</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
	<p>You are transgender, transsexual or gender variant            You have not figured out your sexuality or are in the process of figuring it out            You do not think of yourself as having sexuality            You do not use labels to identify yourself            You made a mistake and did not mean to pick this answer            You mean something else.            (Don't Know)            (Refused)</p> <p><b>[If R selects "You mean something else" in SEXUALORIENT2]            (SEXUALORIENT3)You gave "Don't know" as an answer. Is that because ...</b>            You don't understand the words.            You understand the words, but you have not figured out your sexuality or you are in the process of figuring it out            You mean something else            (Don't Know)            (Refused)</p> <p><b>[If R selects "You mean something else" in SEXUALORIENT3]            Please tell me what you mean by "something else"?</b>            Open ended</p>		
<p>NIS            (DOJ/BJJ)</p> <p>Years asked:            2007, 2008-2009, 2011-2012</p>	<p><b>(D5) Do you consider yourself to be heterosexual or 'straight', bisexual, or homosexual or gay?</b>            'Straight,' which is also called Heterosexual            Bi-sexual            [If R is male] Homosexual or Gay            [If R is female, DK, Refused] Homosexual, Gay, or Lesbian            Other            (Don't Know)</p>	ACASI/PAPI	Prison and jail inmates, age 18 and older (except in 2011-12, which included inmates age 16 or older)
<p>NCVS            (DOJ/BJJ)</p> <p>Years asked:            July 2016-present</p>	<p><b>Which of the following best represents how you think of yourself?</b>            [If R is female then Lesbian or] Gay            Straight, that is, not [If R is female then Lesbian or] Gay            Bisexual            Something else            I don't know the answer</p>	Interviewer administered, CAPI, in-person and telephone interviewing	U.S. adult civilian, noninstitutionalized population aged 16 and older

<b>Table III.a Current Measures of Sexual Identity in Federal Surveys</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
	(Refused)		
NSOAAP (DHHS/ACL)  Years asked: 2014-2016	<p><b>(ACISIM/F) Which of the following best represents how you think of yourself?</b> [If R is female then Lesbian or] Gay Straight, that is, not [If R is female then Lesbian or] Gay Bisexual Something else Refused Don't Know</p> <p><i>If R answers "Something else" to ACISIM/F:</i> <b>(ACISMELS/FELS) What do you mean by something else?</b> You are not straight, but identify with another label such as queer, trisexual, omnisexual or pansexual You are transgender, transsexual or gender variant You have not figured out or are in the process of figuring out your sexuality You do not think of yourself as having sexuality You do not use labels to identify yourself You mean something else Refused Don't Know</p> <p><i>If R answers "Don't know" to ACISMELS/FELS:</i> <b>(ACISIMDK/FDK) What do you mean by don't know?</b> You don't understand the words You understand the words, but you have not figured out or are in the process of figuring out your sexuality You mean something else Refused Don't know</p> <p><i>If R answers "Something else" to ACISIMDK/FDK:</i> <b>(ACIMSESP/FSESP) What do you mean by something else? Open ended</b></p>	CATI	Administrati on on Aging Title III service participants. Most respondents are aged 60 and older. Respondents answering questions under the Caregiver module are adults age 18 and over.
YRBSS (DHHS/CDC)  Years asked: 2015	<p><b>(Q68) Which of the following best describes you?</b> Heterosexual (straight) Gay or Lesbian Bisexual Not sure</p>	School-based, self-administered PAPI	9 <sup>th</sup> – 12 <sup>th</sup> graders

Survey Name	Current Question	Mode	Population
BRFSS (DHHS/CDC)  Years asked: 2014	<b>(582) Do you consider yourself to be:</b> Straight Lesbian or Gay Bisexual	CATI (Optional module)	U.S. adult civilian, noninstitutionalized population aged 18 and older

#### *Location in Survey*

In the NHIS, the questions appear in the sample adult core module, where a sample adult responds on behalf of his/herself. The NCVS and the NSOAAP also include the questions in the demographic section. However, generally, sexual identity questions tend to be placed at the end of ACASI sections and not to be placed with other demographic questions. In NHANES, NSDUH, NSFG, and PATH, the sexual identity question appears in the ACASI module, often as the last question. In NATS, it is asked as the closing question in computer assisted interviewing, in the NIS, the sexual identity question is asked as the last question asked of all inmates. In the YRBSS and BRFSS, the sexual identity question appears in optional modules, not the core survey.

#### **b. Sexual Attraction**

Table III.b presents current measures of sexual attraction used by NSFG and NSDUH; and PATH.<sup>9</sup> The NSDUH question is slightly different from the NSFG question format.

Survey Name	Current Question	Mode	Population
NSFG (DHHS/CDC/NCHS)  Years asked: 2002, 2006-2010, 2011- 2013	<b>(ATTRACT) People are different in their sexual attraction to other people. Which best describes your feelings? Are you...</b> <b>[If R is male]</b> Only attracted to females Mostly attracted to females Equally attracted to females and males Mostly attracted to males Only attracted to males Not sure  <b>[If R is female]</b> Only attracted to males Mostly attracted to males Equally attracted to males and females Mostly attracted to females Only attracted to females	ACASI	U.S. adult civilian, non- institutionalized population aged 15-44

<sup>9</sup> In wave 1 of PATH, different response options were used for males and females; in waves 2 and 3, only one set of response options was provided.



<b>Table III.b. Sexual Attraction</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
	Not sure		
<p>NSDUH (DHHS/ SAMHSA/ CBHSQ)</p> <p>Years asked: 2015- present</p>	<p><b>(QD62) People are different in their sexual attraction to other people. Which best describes your feelings?</b> <b>[If R is male]</b> I am only attracted to females I am mostly attracted to females I am equally attracted to females and males I am mostly attracted to males I am only attracted to males I am not sure (Don't Know) (Refused)</p> <p><b>[If R is female]</b> I am only attracted to males I am mostly attracted to males I am equally attracted to males and females I am mostly attracted to females I am only attracted to females I am not sure (Don't know) (Refused)</p>	ACASI	U.S. adult civilian, noninstitutionalized population aged 18 and older
<p>PATH (DHHS/NIH and DHHS/FDA)</p> <p>Years asked: 2013- present</p> <p>Current Question: 2015</p>	<p><b>(R01_AM0021) The next question asks about your level of sexual attraction to BOTH males and females. Please consider the response choices carefully, as it is important that you understand them and are as honest as you can be in your answer.</b></p> <p><b>To whom have you felt sexually attracted, even if you did not take any action based on feeling attracted?</b> Only to females, never to males Mostly to females, and at least once to a male About equally often to females and to males Mostly to males, and at least once to a female Only to males, never to females I have never felt sexually attracted to anyone at all Don't Know Refused</p>	ACASI	U.S. civilian, noninstitutionalized population aged 12 and older

**c. Sexual Behavior**

Four federal surveys currently include questions on sexual behavior: NHANES, NSFG, NIS and YRBSS. These questions have different phrasing and have different populations of interest. See Table III.c.

<b>Table III.c Sexual Behavior</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
NHANES (DHHS/CDC/NCHS)  Years asked: 2001- Current	NHANES includes sexual behavior questions including age at first sexual intercourse, number of sexual partners, and history of sexually transmitted disease	ACASI	U.S. adult civilian, non-institutionalized population aged 18-59
NSFG (DHHS/CDC/NCHS)  Years asked: 2002, 2006-2010, 2011- 2013	NSFG includes questions on a wider range of sexual activities—including oral and anal sex with opposite-sex partners and sexual contact with same-sex partners  (See report for sexual behavior questions: <a href="http://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf">http://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf</a> )	ACASI	U.S. adult civilian, non-institutionalized population aged 15-44
NIS (DOJ/BJIS)  Years asked: 2007, 2008-2009, 2011- 2012	<b>[IF D3 “number of partners” NE 1 (no partners)] (D4) Before you entered this facility, had you had sex with men only, women only, or both men and women?</b> Men only Women only Both men and women	ACASI, PAPI	Prison and jail inmates, age 18 or older (except in 2011-12, which included inmates 16 or older)
YRBSS (DHHS/CDC)  Years asked: 2015	<b>(Q67) During your life, with whom have you had sexual contact?</b> I have never had sexual contact Females Males Females and males	School-based, self-administered PAPI	9 <sup>th</sup> – 12 <sup>th</sup> graders

**d. Gender Identity**

Six Federal surveys currently feature gender identity questions. PATH and BRFSS ask similar two-part questions. NATS and NCVS ask similar two-part questions: sex at birth and current gender. NCVS also includes a follow up question to confirm the questions were answered as intended. NIS and HCPS use a one question format, asking about gender and providing a response option for transgender in the question stem and among response options. See Table III.d. We note that the NATS location of the gender identity measure is different than the location it places its measure of sexual identity.

<b>Table III.d Gender Identity</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
PATH (DHHS/NIH and DHHS/FDA)  Years asked: 2013- present	<p><b>(R02_AM0061/R03_AM0061) Some people describe themselves as transgender when they experience a different gender identity from their sex at birth. For example, a person born into a male body, but who feels female or lives as a woman would be transgender. Do you consider yourself to be transgender?</b></p> Yes No Don't know Refused Not Sure	ACASI	U.S. civilian, noninstitutionalized population aged 14 and older
	<p>[If R answers yes to R02_AM0061/R03_AM0061]</p> <p><b>(R02_AM0062/R03_AM0062) Do you consider yourself to be male-to-female, female-to-male, or non-conforming?</b></p> Yes, Transgender, male to female Yes, Transgender, female to male Yes, Transgender, gender nonconforming No Not sure Don't know Refused Not Sure		
HCPS (DHHS/HRSA /BPHC)  Year asked: 2014	<p><b>(INT3) What is your gender?</b></p> Male Female <b>[If age &gt;13]:</b> Female to male transgender male/trans male/female to male Male to female transgender female/trans woman/male to female Gender queer OTHER, specify	CAPI	All health center patients  If respondent is less than 12 years old, parent/guardian response

<b>Table III.d Gender Identity</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
	<p><b>(INT3_SPEC) We have entered your gender as [INT3 RESPONSE: Genderqueer OR INT3_OTH RESPONSE: FILL]. In this interview, questions will appear based on gender. For example, we only ask questions about mammograms to females of a specific age. Since this is a research study collecting medical-related data, could you tell us your biological sex at birth?</b></p> <p>Male Female</p>		
<p>NATS (DHHS/CDC)</p> <p>Years asked: 2012-2014</p>	<p><b>90. What sex were you at birth?</b></p> <p>Male Female</p> <p><b>91. Do you currently consider yourself to be:</b></p> <p>Male Female</p>	CATI	U.S. adult civilian, noninstitutionalized population aged 18 and older
<p>NIS (DOJ/BJJ)</p> <p>Years asked: 2007, 2008-2009, 2011-2012</p>	<p><b>(D2) Are you male, female, or transgender?</b></p> <p>Male Female Transgender</p>	ACASI, PAPI	Prison and jail inmates, age 18 or older (except in 2011-12, which included inmates 16 or older)
<p>NCVS (DOJ/ BJS)</p> <p>Years asked: July 2016-present</p>	<p><b>What sex were you assigned at birth, on your original birth certificate?</b></p> <p>Male Female (Refused) (Don't know)</p> <p><b>Do you currently describe yourself as male, female or transgender?</b></p> <p>Male Female Transgender None of these</p>	Interviewer administered, CAPI, in-person and telephone interviewing	U.S. adult civilian, noninstitutionalized population aged 16 and older

<b>Table III.d Gender Identity</b>			
<b>Survey Name</b>	<b>Current Question</b>	<b>Mode</b>	<b>Population</b>
	<p><b>Just to confirm, you were assigned {FILL} at birth and now describe yourself as {FILL}. Is that correct?</b></p> <p>Yes No (Refused) (Don't know)</p>		
BRFSS (DHHS/CDC)  Years asked: 2014	<p><b>(583) Do you consider yourself to be transgender?</b></p> <p><b>If yes, ask “Do you consider yourself to be 1. Male-to-female, 2. Female-to-male, or 3. Gender nonconforming?”</b></p> <p>1. Yes, Transgender, male-to-female 2. Yes, Transgender, female to male 3. Yes, Transgender, gender nonconforming</p>	CATI (Optional module)	U.S. adult civilian, noninstitutionalized population aged 18 and older

**e. Household Relationships**

A previous working paper, [Improved Measurement of Household Relationships in Federal Surveys](#), focused on the measurement of same-sex co-residential relationships ([MRFHS, 2014](#)). Although not the main focus of the current working paper, below we provide a brief summary of Federal measurement of same sex households since 2010.

The 2010 Census was the first decennial census to provide estimates of same-sex married couples (Lofquist et al., 2012). Although estimates of same sex-couples were produced by researchers from earlier censuses, such estimates were subject to misreporting as well as the statistical challenges of obtaining estimates of a small group, such as the SGM population, because of a low rate of random error in a large group (Lewis et al., 2015; [Black et al., 2007](#)).

Of the 56 million different-sex married couple households reported in 2010, a small proportion of respondents mismarked their responses and indicated being same-sex married couples. When 2010 Census data were compared to the 2010 ACS, the number of same-sex couple households in the Census was 52 percent higher than the ACS estimate (O’Connell and Feliz, 2011). Investigation of this discrepancy found data capture errors in the sex item on the Census form that inflated the census counts of the numbers of same-sex spousal households. Although these cases represented a relatively small percentage of all households, the resulting error was still large enough to create a significant error in the estimate of same-sex married couple households.

After conducting focus groups and cognitive testing, the Census Bureau developed a revised relationship question. The revision sought to incorporate several goals—to list same-sex married couples specifically, to treat unmarried partners and spouses equivalently, and to minimize the identified statistical error. To address the statistical error specifically, the revised relationship question includes an automated check in electronic modes of data collection to help respondents accurately report their household

characteristics. The automated check pops up if respondents report sex values for spouses or unmarried partner couples that do not agree with the specific relationship category they chose.

The revised question and electronic checks were tested in the 2013 American Housing Survey (AHS), the 2014 and 2015 Census Tests, and the 2015 National Content Test. In addition, the Census Bureau is testing this question on the 2016 Census Test and 2016 American Community Survey (ACS) Content Test. This revised question has now been implemented in the AHS and the Survey of Income and Program Participation (SIPP).

Beginning in May 2015, the revised question was implemented in the Current Population Survey (CPS) for incoming rotation groups, so that by the time of the 2017 Annual Social and Economic Supplement, all cases will receive the revised question. ACS implementation is planned for 2019, after the content testing cycle is completed, and the Census Bureau plans to continue to test and work toward inclusion of the revised question in the 2020 Census.

***f. Administrative Records and Program Data***

*Administrative records* – Fielding a probability survey to obtain gender identity may not be feasible or affordable. A variety of administrative databases have been used to study alternative ways to identify some of the transgender population and to evaluate disparities and health concerns, when direct measurement of the SGM population is not possible.

Social Security Administration (SSA) records have been used to identify individuals likely to be transgender by examining name and sex-coding changes ([Cerf Harris, 2015](#)). These individuals were more likely to change their names than their sex-coding although some individuals changed both items. SSA records were linked to Census records and found that transgender individuals identified in the SSA files were more likely than non-transgender individuals to leave the Census question on sex blank or to check both “M” and “F” ([Cerf Harris, 2015](#)).

Medicare claims records can be used to identify transgender Medicare beneficiaries (Haffer, 2015). Diagnosis, procedure, prescription drug, and billing codes were used to identify beneficiaries who sought transgender-related services. This research was able to use other claims information to validate the classification of transgender in 87 percent of cases (Haffer, 2015).

Veterans Health Administration data were used to examine health issues among veterans with gender identity disorder (GID). Such veterans were identified from claims data using the GID diagnosis codes and older related codes such as transsexualism (Blosnich et al., 2013; Kauth et al., 2014). The GID identification could not be independently confirmed and is subject to misclassification bias from erroneous diagnosis codes in the patient claims files. In addition, using GID diagnosis codes to identify transgender status may miss veterans who self-identify as transgender but do not have a clinical diagnosis of GID, or may have included veterans with GID who do not self-identify as transgender (Blosnich et al., 2013; Kauth et al., 2014).

Although these studies demonstrate that identification of some of the transgender population is possible using administrative records, such an approach is not currently being routinely used in part due to the difficulty in generalizing the results to the entire transgender population. In particular, individuals who have not yet begun any transgender medical services or who have already fully transitioned may not be identified with these methods.



*Program Data* - Program data differs from the types of Federal survey and administrative data mentioned here but may provide a source of data on SGM. For example, the Uniform Data System (UDS) is a core system of information appropriate for reviewing the operation and performance of health centers. UDS is a reporting requirement for Health Resources and Services Administration (HRSA) grantees, including community health centers, migrant health centers, health care for the homeless grantees, and public housing primary care grantees. The data are used to improve health center performance and operation and to identify trends over time. UDS data are compared with national data to review differences between the U.S population at large and those individuals and families who rely on the health care safety net for primary care. Beginning in 2017, health centers will be asked to report patient's sex at birth as well as sexual orientation and gender identity information about the population served (see: 2016 Uniform Data System (UDS) Changes, <http://www.bphc.hrsa.gov/datareporting/reporting/index.html>). Similar data are collected by grantees of social service programs funded by the Administration for Community Living's (ACL) Aging and Disability Networks.

#### **IV. Choosing a Measure**

This section reviews and identifies issues for Federal agencies to consider when choosing SOGI questions for inclusion in Federal surveys and administrative databases. These issues will be explored in more detail in the forthcoming evaluations working paper. The term SOGI is used broadly to include the concepts covered in section II. More specific terms are discussed where necessary. Factors to consider when incorporating SOGI questions in data collection efforts include the selection of concept(s) related to the survey's purpose, pre-survey considerations and context, changes in the methods or administration of the survey, and post-survey analysis.

##### ***a. Selecting the Concept***

Before incorporating SOGI questions in surveys or administrative databases, Federal agencies need to consider the purpose and objectives of the survey or database and the reason to add SOGI questions. Several of the SOGI questions discussed in the Current Measures section have undergone extensive testing and validation ([Dahlhamer et al., 2014](#); Lombardi and Banik, 2016). Some surveys, like the NSFG, include a variety of concepts including sexual orientation, sexual behavior, and sexual attraction ([Chandra, et al., 2011](#)). If an agency chooses to develop a new question, it should be validated with qualitative techniques like cognitive testing, pre-testing, and split samples ([OMB, 2016](#)). Even if a validated SOGI question is used, additional testing during the design phase may be needed to evaluate how the question performs in a new setting with a different audience.

Cognitive testing is used to ensure data validity and to test question validity, how respondents understand the question and whether it measures what is intended (OMB, forthcoming). Although it is impossible for a cognitive testing study to include all social and demographic groups represented in each survey, having a variety of groups represented is preferred. Previous cognitive testing of SOGI questions found that in some cases the non-SOGI population misinterpreted the question and response categories ([Miller and Ryan, 2011](#); Ridolfo et al., 2012). Therefore, it is important that question validation efforts include both the SOGI and non-SOGI groups.

Some early efforts to measure SOGI included a question or series of questions intended to measure both sexual orientation and gender identity. For example, a sexual orientation question with a 'something else' response category led to a question on gender identification. Attempts to measure both sexual orientation and gender identity with one question or a series of questions tend to conflate the concepts and reduce resulting information quality. These two concepts are distinct and should be measured by

separate questions. In some cases, agencies may choose to measure only one of these concepts, depending on the goals of the survey and feasibility of measurement (Westbrook and Saperstein, 2015).

***b. Considerations and Context***

Additional considerations when incorporating SOGI questions include the context and characteristics of the respondent population.

*Age* – Teenagers may be in the midst of developing their sexual orientation, experiencing sexual attraction, and beginning to engage in sexual behavior, and therefore they may be unsure of how to respond to SOGI questions (IOM, 2011; Chandra et al., 2011; SMART, 2009; Saewyc et al., 2004). Adolescents may use different terms for SOGI concepts than adults use; therefore, questions developed and validated for adults should be reevaluated before being applied to adolescent populations. SOGI-related bullying, including the use of the terms “lesbian” and “gay” as slurs, is more common during adolescence. Such harassment may cause some teenagers to be reluctant to identify themselves with those terms and emphasizes the importance that respondents are confident that their responses are private, anonymous, and confidential (Saewyc et al., 2004; SMART, 2009).

Some surveys, such as NSFG, developed SOGI questions for young and middle-aged adults. These questions may not be suitable for other age groups (SMART, 2009). There has not been much research focused on measuring SOGI among older adults. Older adults may have a different understanding of the meaning of SOGI terms than younger adults, leading to more missing responses or misidentification (IOM, 2011; SMART, 2009). The Medicare Current Beneficiary Survey (MCBS) evaluated issues with adding SOGI questions (Reed-Gillette, 2015). One concern was the generational differences in terminology and self-identification; therefore, MCBS used cognitive testing to evaluate the appropriateness of SOGI questions.

*Cultural or racial/ethnic considerations* – SOGI questions should be culturally appropriate and compatible with the respondent’s understanding of the concept that is being measured (SMART, 2009; Ridolfo et al., 2012). Differences in SOGI concepts across racial and ethnic groups may affect the robustness of the questions. To improve SOGI measurement within racial and ethnic minority groups, additional response terms commonly used by these groups should be added (SMART, 2009). For example, some American Indian individuals may identify themselves as “two-spirit” rather than “gay” or “bisexual” as a way to reconnect with tribal customs and avoid using terms imposed on them (Simoni et al., 2006). However, including specific cultural terms in probability surveys of the U.S. population might be difficult due to the diversity of cultural and racial and ethnic groups.

*Geography* – There is some evidence that reported prevalence of SOGI populations is lower in Midwestern states and nonmetropolitan areas (IOM, 2011). There may also be regional differences in interviewers’ and respondents’ comfort with SOGI questions.

*Language* – Careful attention must be paid to the translation of SOGI questions because other languages may not have terms for the SOGI concepts or only have terms that are offensive. For example, Spanish does not have a comparable word for ‘straight’ (Miller and Ryan, 2011). In addition, nonresponse rates to the SOGI questions have been found to be higher among respondents to the Spanish-language surveys. In the course of the development of a SO question for NHIS, the NCHS Questionnaire Design Research Laboratory conducted cognitive interviews to assess several versions of the SO question, including the questions from the 2002 and 2006 NSFG. Some Spanish-language speakers reported confusion with the response category wording. While the inclusion of the term ‘heterosexual’ on the

English-language version of the survey was found to cause confusion among some respondents, the absence of this term in the Spanish-language survey caused confusion because the term 'gay' does not have a direct translation in Spanish. Therefore the decision was made to use different wording in the Spanish-language response categories. In particular, the response category 'Heterosexual, o sea no gay' ['Heterosexual, that is, not gay'] was used instead of 'Straight, that is, not gay' which is used for the English-language question. This change is believed to have reduced confusion and misclassification and improved measurement of sexual orientation ([Miller and Ryan, 2011](#); Ridolfo et al., 2012).

*Response categories* – The use of nonresponse categories (Don't Know/Refused/Other/Something else) may reduce the number of SOGI respondents who identify themselves as such, without yielding usable data ([SMART, 2009](#); Ridolfo et al., 2012; [NCHS, 2014](#); [Chandra et al., 2011](#); [Ward et al., 2014](#)). These response categories may be especially problematic for SOGI questions because there are many different terms for these concepts. These categories may also indicate confusion with the question or response category wording, rather than the SOGI status of respondents ([SMART, 2009](#)). In the case of adolescents, who may not yet be sure of their SOGI status, 'Don't know' or similar categories may be more fitting, although the response category 'I am not sure yet' is more informative ([SMART, 2009](#)). In addition to nonresponse categories, survey specialists should be cautious about the order of the response categories. For example, the NSDUH uses the same sexual orientation question and response categories as the NHIS, but the response categories are presented in a different order. This difference may affect responses, response rates, and the comparability between estimates from the two surveys.

*Terminology* – Non-SGM respondents may be confused by technical terms such as 'heterosexual' and 'bisexual' and either misidentify themselves or select a nonresponse category. For example, in the 2002 NSFG, 6.2 percent of respondents selected 'something else', 'don't know', or 'refused'. When the sexual orientation question added common terms to the response categories ('heterosexual or straight', 'homosexual or gay') in the 2006-2008 NSFG, the percentage selecting these nonresponse categories fell to 1.6 percent. The selection of these nonresponse categories was higher among respondents with lower educational attainment ([Miller and Ryan, 2011](#)). In addition to higher missing response rates with the technical terms, it is not possible to know the extent of misclassification due to confusion over the terms.

*Incarcerated populations* – Surveying the incarcerated population can be challenging. The incarcerated SGM population is at higher risk for victimization than the non-SGM population ([Beck et al., 2013](#)), making identification of the SOGI population to evaluate victimization rates and other factors vital. However, the higher victimization rates that the SGM incarcerated population experiences, both from other inmates and from the prison staff, may make members of the SGM population especially reluctant to reveal their sexual orientation or gender identity.

Other factors that influence the identification of the incarcerated SOGI population include their lower educational attainment and higher rates of illiteracy. The incarcerated population has poorer reading, writing, and oral communication skills than the general population, dimensions which must be considered when drafting SOGI-related questions ([Haigler et al., 1994](#); [Spangenberg, 2004](#); [Harlow, 2003](#)). The Bureau of Justice Statistics' National Inmate Survey (NIS) found a higher prevalence of gay/lesbian/bisexual persons among the incarcerated population ([Beck et al., 2013](#)). However, blacks and Hispanics are disproportionately represented in prison and jail populations; therefore, findings about the incarcerated SGM population are not generalizable to the U.S. noninstitutionalized population.

### ***c. Methods Considerations***

*Mode of interview* – Agencies interested in capturing SOGI data may consider changing the mode of administration used for data collection efforts for SOGI-related items. ACASI (audio computer-assisted self-interviewing) allows respondent to hear questions through headphones or read them from laptop screens and enter answers directly into a computer. ACASI is considered the preferred mode of administration for questions which may be considered sensitive and/or personal. The Bureau of Justice Statistics uses ACASI for the SOGI questions in its surveys of the incarcerated population to afford more privacy. NSFG has used ACASI for sensitive questions about sexual behavior and activity; the SO question was incorporated into the ACASI portion of the survey ([Chandra et al., 2011](#)). NHIS tested the use of ACASI for the collection of SO data, compared to CAPI (computer-assisted personal interviewing) and found similar results ([Dahlhamer et al., 2014](#)). There were no significant differences in the percentage of adults identifying as gay/lesbian or bisexual (ACASI = 2.2 percent, CAPI = 2.4 percent) by mode; item nonresponse to the sexual orientation question also did not differ significantly by mode (ACASI = 2.7 percent, CAPI = 2.3 percent). Therefore, NHIS has chosen not to add an ACASI component to its survey and instead will continue to ask the SO question using CAPI ([Dahlhamer et al., 2014](#)).

*Placement of the question* – The location of SOGI questions may affect responses and therefore should be carefully considered and evaluated in the design phase of any survey. SOGI questions are considered sensitive and generally items that are sensitive should not be included in the beginning or end of a survey. If SOGI questions are going to be asked using a certain mode (such as ACASI) in a multi-mode survey, then they will be placed in that section of the questionnaire. In some surveys, SOGI questions may be considered demographic indicators and therefore are included amidst other demographic questions ([Ward et al., 2014](#)). SOGI questions should not be placed near questions on abuse to avoid implying a connection between these concepts ([SMART, 2009](#)).

*Proxy measurement* – Many surveys ask one person to provide basic demographic information for other members of the household. This approach is commonly used to reduce respondent burden and cost of surveys. However, agreement between proxy and self-report varies based on the indicator and relationship between the proxy and individual (Kojetin and Mullin, 1995). In the case of a sensitive topic such as SOGI, using a proxy is of concern because of both data quality and privacy protection. Surveys in New Zealand and the United Kingdom do not permit proxy reporting for SOGI items because of concerns about accuracy and confidentiality (Joloza et al., 2010). Due to similar concerns, some surveys do not ask SOGI questions of a respondent receiving assistance from a family member acting as an interpreter. The Bureau of Labor Statistics has begun work to evaluate proxy response on the CPS (See Pascale, 2016). Census is sponsoring the 2016 JPSM Practicum, which will be testing proxy response in an internet survey (Bates and Ortman, 2016). Surveys with both proxy and self-report portions may choose to place SOGI questions in the self-reported portion to avoid proxy responses.

Some surveys may have the interviewer enter responses based on observation for items, such as sex, that are considered obvious. This indirect assessment may result in errors, especially in the case of gender identity (Westbrook and Saperstein, 2015).

*Sample size* – Because of the small size of SGM populations, it is labor-intensive and costly to recruit a large enough sample in general population surveys for meaningful analysis of these populations and their subgroups ([IOM, 2011](#); [Devers et al., 2013](#)). SOGI questions may not be feasible in all Federal surveys, particularly smaller ones. Surveys generally have established rules about estimate reliability and population thresholds to release the data. For example, ACS releases 1-year estimates for groups of

65,000 or more, 3-year estimates for groups of 20,000 or more, and 5-year estimates for groups less than 20,000 ([Census, 2014](#)).

Small errors among very large populations lead to big errors among small populations. As noted in section III.e. Household Relationships, even a very small percentage of false positive errors can have a significant impact on the overall estimate of same-sex couples. An estimated 28 percent of all same-sex couple households in 2010 Census tabulations were likely to be different-sex couple households (O’Connell and Feliz, 2011).

#### **d. Post-Survey Analysis**

*Cross-survey comparisons* – Post-survey analysis includes comparing estimates to the findings from other analyses and previous rounds of the survey of interest ([OMB, 2016](#); [Chandra et al., 2011](#)). In addition to comparing overall estimates, estimates by subgroups (such as gender, age, education level) can help evaluate if the estimates are biased. Table IV.A presents a variety of national probability estimates of the LGB population.

**Table IV.a. Prevalence of Sexual Orientation among Adults in Selected National Federal Surveys**

Survey	Age	Data Collection Year	Percent gay or lesbian	Percent bisexual	Percent gay (men)	Percent lesbian (women)
National Health Interview Survey	18 and over	2013	1.6	0.7	1.8	1.4
National Survey on Drug Use and Health	18-44	2013	1.9	3.4	1.9	1.9
National Adult Tobacco Survey	18 and over	2012-2013	2.0	1.7	2.7	1.3
National Health and Nutrition Examination Survey	18-59	2009-2012	1.8	2.6	2.3	1.3
National Survey of Family Growth	18-44	2006-2010	1.5	2.6	1.8	1.2

There are few national estimates of the prevalence of the transgender population. Several published estimates are from convenience samples and therefore are not generalizable to the U.S. population (Conron et al., 2012). Some earlier efforts to measure the transgender population in probability samples conflated sexual orientation and gender identity in one question with a ‘something else’ response category to the sexual orientation question which led to a question on transgender ([Dahlhamer et al., 2014](#)). Other probability surveys, like NATS, do not yield reliable estimates of the transgender population due to the small size of this population. The 2007-2009 Massachusetts Behavioral Risk Factor Surveillance System (MA-BRFSS) asked adults aged 18-64 if they were transgender and estimated that 0.5 percent of the noninstitutionalized Massachusetts adult population was transgender (Conron et al., 2012). One review which evaluated a variety of sub-national survey estimates of the transgender population, including the MA-BRFSS and the California Health Interview Survey, concluded that the U.S. transgender population was approximately 0.3 percent ([Gates, 2011](#)).

*Item non-response* – The proportion of respondents who did not know the answer or refused to answer should be evaluated and compared to other questions (OMB, forthcoming; [Dahlhamer et al., 2014](#); NRC, 2013). High nonresponse levels (that is, higher than other sensitive questions) may indicate respondent confusion about the meaning of the question. Variation in nonresponse by other characteristics (such as

education level) may indicate bias. Most surveys incorporating SOGI items have not found higher nonresponse rates than other 'sensitive' questions, such as personal or household income ([Dahlhamer et al., 2014](#); Joloza et al., 2010). In addition to examining item non-response rates, evaluation of longer response times to SOGI questions may reveal respondent confusion or uncertainty. Longer response times or pauses are evaluated during qualitative testing prior to fielding the survey but also can reveal issues post survey.

*Unit nonresponse* – Not all potential respondents will participate in a given survey. Low response rates are of concern, especially if the nonrespondents differ in their characteristics, because the findings may no longer be representative of the target population. If unit response rates indicate potential bias, nonresponse bias analyses should be conducted and weighting adjustments and other techniques used as needed ([OMB, 2016](#); [NRC, 2013](#)).

*Data checks* – Comparing responses for consistency can identify errors. For example, marital status and the sex of the couple could be compared to sexual orientation responses for consistency. Same-sex couples would be likely to identify as gay, lesbian, or bisexual on sexual orientation questions. If not, then additional investigation to check whether there are response errors should be undertaken. When feasible, surveys should incorporate data checks into the interview process to capture and correct data errors at the time of collection (O'Connell and Feliz, 2011).

## **V. Conclusion**

Federal agencies have expressed interest and enthusiasm for improving the measurement of sexual orientation and gender identity (SOGI). The U.S. Federal Government is interested in better understanding the sexual and gender minority community in order to better serve their needs. This cannot be accomplished without better data on the population. This working paper describes the key concepts, current data measures being utilized, as well as important considerations when choosing a measure for inclusion in a survey. A forthcoming working paper will describe what is known about the reliability and validity of the currently available measures and highlight the methodological questions that remain to be answered.



## References

- American Psychiatric Association (APA). 2013. Diagnostic and Statistical Manual of Mental Disorders 5<sup>th</sup> ed. Washington, DC: APA. Available from: <http://www.dsm5.org/about/pages/default.aspx>.
- Bates, N. & Ortman, J. 2016. *Optimizing Self and Proxy Response to Survey Questions on Sexual Orientation and Gender Identity (SOGI)*. 2016 JPSM Practicum Proposal Submitted by the Census Bureau.
- Beck, A. J., Berzofsky, M., Caspar, R., & Krebs, C. 2013. *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12: National Inmate Survey, 2011–12*. Washington, DC: Department of Justice, Bureau of Justice Statistics, NCJ 241399. Available from: <http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.
- Black, D., Gates, G. J., Sanders, S. G. & Taylor, L. 2007. *The Measurement Error of Same-Sex Unmarried Partner Couples in the U.S.* Census, s.l.: California Center for Population Research. Available from: <http://papers.ccpr.ucla.edu/papers/PWP-CCPR-2007-023/PWP-CCPR-2007-023.pdf>.
- Blosnich J. R., Brown G. R., Shipherd J. C., Kauth M., Piegari R. I., & Bossarte R. M. 2013. Prevalence of Gender Identity Disorder and Suicide Risk among Transgender Veterans utilizing Veterans Health Administration Care. *American Journal of Public Health*. 103(10):e27-32.
- Census Bureau. 2014. *American Community Survey Design and Methodology (January 2014)*. Available from: [http://www2.census.gov/programs-surveys/acs/methodology/design\\_and\\_methodology/acs\\_design\\_methodology\\_report\\_2014.pdf](http://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/acs_design_methodology_report_2014.pdf).
- Cerf Harris, B. 2015. *Likely Transgender Individuals in U.S. Federal Administrative Records and the 2010 Census*. Center for Administrative Records Research and Applications (CARRA) Working Paper Series. Working Paper #2015-03. Available from: [https://www.census.gov/srd/carra/15\\_03\\_Likely\\_Transgender\\_Individuals\\_in\\_ARs\\_and\\_2010Census.pdf](https://www.census.gov/srd/carra/15_03_Likely_Transgender_Individuals_in_ARs_and_2010Census.pdf).
- Chandra, A., Mosher, W. D., Copen, C., & Sionean, C. 2011. *Sexual Behavior, Sexual Attraction, and Sexual Identity in the United States: Data from the 2006–2008 National Survey of Family Growth*. Hyattsville, MD: NCHS, National Health Statistics Report, no. 36. Available from: <http://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf>.
- Conron, K. J., Scott, G., Stowell, G. S., & Landers, S. J. 2012. Transgender Health in Massachusetts: Results from a Household Probability Sample of Adults. *American Journal of Public Health*. 102(1):118-22.
- Dahlhamer, J. M., Galinsky, A. M., Joestl, S. S., & Ward, B. W. 2014. *Sexual Orientation in the 2013 National Health Interview Survey: A Quality Assessment*. Hyattsville, MD: NCHS, Vital Health Stat 2(169). Available from: [http://www.cdc.gov/nchs/data/series/sr\\_02/sr02\\_169.pdf](http://www.cdc.gov/nchs/data/series/sr_02/sr02_169.pdf).
- Devers, K., Gray, B., Ramos, C., Shah, A., Blavin, F., & Waidmann, T. 2013. *The Feasibility of Using Electronic Health Records (EHRs) and Other Electronic Health Data for Research on Small Populations*. Washington, DC: The Urban Institute, Submitted to the Assistant Secretary for Planning and Evaluation. Available from: [https://aspe.hhs.gov/sites/default/files/pdf/107231/rpt\\_ehealthdata.pdf](https://aspe.hhs.gov/sites/default/files/pdf/107231/rpt_ehealthdata.pdf).



Gates, G.J. 2011. *How Many People are Lesbian, Gay, Bisexual and Transgender?* Los Angeles, CA: The Williams Institute, UCLA School of Law. Available from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

Haffer, S. C. 2015. *Using Health Care Claims Data to Identify the Transgender Population in the Medicare Program*. Hollywood, FL, Presented at the Annual Conference of the American Association for Public Opinion Research.

Haigler, K. O., Harlow, C., O'Connor, P., & Campbell, A. 1994. *Literacy behind Prison Walls: Profiles of the Prison Population from the National Adult Literacy Survey*. Washington, DC: Department of Education, National Center for Education Statistics, NCES 1994-102. Available from: <http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=94102>.

Harlow, C. W. 2003. *Education and Correctional Populations*. Washington, DC: Department of Justice, Bureau of Justice Statistics Special Report, NCJ 195670. Available from: <http://www.bjs.gov/content/pub/pdf/ecp.pdf>.

Interagency Working Group on Measuring Relationships in Federal Household Surveys (MRFHS). 2014. *Improved Measurement of Household Relationships in Federal Surveys*. Washington, DC. Available from: [http://fcsmsites.usa.gov/files/2014/04/MRFHS\\_StatisticalPolicyWorkingPaper201408.pdf](http://fcsmsites.usa.gov/files/2014/04/MRFHS_StatisticalPolicyWorkingPaper201408.pdf).

Institute of Medicine (IOM). 2011. *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*. Washington, DC: The National Academies Press. Available from: <http://www.nationalacademies.org/hmd/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>.

Joloza, T., Evans, J., O'Brien, R., & Potter-Collins, A. 2010. *Measuring Sexual Identity: An Evaluation Report*. Office of National Statistics. United Kingdom.

Kauth, M. R., Shipherd, J. C., Lindsay, J., Blossnich, J. R., Brown, G. R., & Jones, K. T. 2014. Access to Care for Transgender Veterans in the Veterans Health Administration: 2006–2013. *American Journal of Public Health*. 104(Suppl 4):S532–S534.

Kelly, M. 2016. Sex versus Gender Categorization. In N. Naples (Ed.). *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*.

Kojetin, B. A., Mullin, P. 1995. *The Quality of Proxy Reports in the Current Population Survey (CPS)*. Fort Lauderdale, FL, Presented at the Annual Conference of the American Association for Public Opinion Research.

Lev, A. 2016. Gender Dysphoria. In N. Naples (Ed.). *The Wiley Blackwell Encyclopedia of Gender and Sexuality Studies*.

Lewis, J. M., Bates, N., & Streeter, M. 2015. *Measuring Same-Sex Couples: The What and Who of Misreporting on Relationships and Sex*. Washington, DC: Census Bureau, Social, Economic, & Housing Statistics Division Working Paper. Available from: <https://www.census.gov/content/dam/Census/library/working-papers/2015/demo/SEHSD-WP2015-12.pdf>.

Lombardi, E., & Banik, S. 2016. The Utility of the Two-Step Gender Measure within Trans and Cis Populations. *Sexuality Research and Social Policy*. 13(1):288-96.

Lofquist, D., Lugaila, T., O'Connell, M., & Feliz, S. 2012. *Households and Families: 2010*. Washington, DC: Census Bureau, 2010 Census Briefs No. C2010BR-14. Available from: <https://www.census.gov/prod/cen2010/briefs/c2010br-14.pdf>.

Miller, K., & Ryan, J. M. 2011. *Design, Development and Testing of the NHIS Sexual Identity Question*. Hyattsville, MD: NCHS, Questionnaire Design Research Laboratory, Office of Research and Methodology. Available from: [http://www.cdc.gov/qbank/report/Miller\\_NCHS\\_2011\\_NHIS%20Sexual%20Identity.pdf](http://www.cdc.gov/qbank/report/Miller_NCHS_2011_NHIS%20Sexual%20Identity.pdf).

National Research Council. *Nonresponse in Social Science Surveys: A Research Agenda*. Roger Tourangeau and Thomas J. Plewes, (Eds.). 2013. Panel on a Research Agenda for the Future of Social Science Data Collection, Committee on National Statistics. Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. Available from: <http://www.nap.edu/catalog/18293/nonresponse-in-social-science-surveys-a-research-agenda>.

National Center for Health Statistics (NCHS). 2014. *A Brief Quality Assessment of the NHIS Sexual Orientation Data*. Hyattsville, MD: NCHS. Available from: <https://www.cdc.gov/nchs/data/nhis/qualityso2013508.pdf>.

O'Connell, M. & Feliz S. 2011. *Same-Sex Couple Household Statistics from the 2010 Census*. Washington, DC: Census Bureau. SEHSD Working Paper Number 2011-26.

Office of Management and Budget. 2016. *Evaluating Survey Questions: An Inventory of Methods*. Washington, DC: OMB, Statistical Policy Working Paper 47, Statistical and Science Policy Office, Office of Information and Regulatory Affairs. Prepared by Subcommittee on Questionnaire Evaluation Methods. Available from: <http://fcs.m.sites.usa.gov/files/2014/04/spwp47.pdf>.

Office of Management and Budget. forthcoming. *Statistical Policy Directive No. 2: Standards and Guidelines for Statistical Surveys. Addendum*. Washington, DC: OMB, Statistical and Science Policy Office, Office of Information and Regulatory Affairs. Will be available from: [https://www.whitehouse.gov/omb/infoereg\\_statpolicy](https://www.whitehouse.gov/omb/infoereg_statpolicy).

Pascale, J. 2016. Modernizing a Major Federal Government Survey: A Review of the Redesign of the Current Population Survey Health Insurance Questions. *Journal of Official Statistics*. 32(2):461-86.

Reed-Gillette, D. S. 2015. *Testing Sexual Orientation & Gender Identity Items in the Medicare Current Beneficiary Survey*. Washington, DC, Presented at the Interagency Working Group on the Measurement of Sexual Orientation and Gender Identity.

Ridolfo, H., Miller, K., & Maitland, A. 2012. Measuring Sexual Identity Using Survey Questionnaires: How Valid Are Our Measures? *Sexuality Research and Social Policy*. 9(2):113-24.

Saewyc, E. M., Bauer, G. R., Skay, C. L., Bearinger, L. H., Resnick, M. D., Reis, E., & Murphy, A. 2004. Measuring Sexual Orientation in Adolescent Health Surveys: Evaluation of Eight School-Based Surveys. *Journal of Adolescent Health*. 35(4):e1-e15.

Sexual Minority Assessment Research Team (SMART). 2009. *Best Practices for Asking Questions about Sexual Orientation on Surveys*. Los Angeles, CA: The Williams Institute, UCLA School of Law. Available from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf>.

Simoni, J. M., Walters, K. L., Balsam, K. F., & Meyers, S. B. 2006. Victimization, Substance Use, and HIV Risk Behaviors among Gay/Bisexual/Two-Spirit and Heterosexual American Indian Men in New York City. *American Journal of Public Health*. 96(12):2240–5.

Spade D. 2008. Documenting Gender. *Hastings Law Journal*. 59:731-842. Available from: <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Spade-Documenting-Gender-Apr-2008.pdf>

Spangenberg, G. 2004. Current Issues in Correctional Education: A Compilation & Discussion. New York, NY: Council for Advancement of Adult Literacy. Available from: [http://www.caalusa.org/correct\\_ed\\_paper.pdf](http://www.caalusa.org/correct_ed_paper.pdf).

Ward, B. W., Dahlhamer, J. M., Galinsky, A. M., & Joestl, S. S. 2014. *Sexual Orientation and Health among U.S. Adults: National Health Interview Survey, 2013*. Hyattsville, MD: NCHS, National Health Statistics Report, no. 77. Available from: <http://www.cdc.gov/nchs/data/nhsr/nhsr077.pdf>.

Westbrook, L., & Saperstein, A. 2015. New Categories Are Not Enough: Rethinking the Measurement of Sex and Gender in Social Surveys. *Gender & Society*. 29(4):534-60.

World Health Organization (WHO). 2014. *What Do We Mean by “Sex” And “Gender”?* Available from: <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/>.

**Appendix A: Acronyms**

Acronym	Term
ACL	Administration for Community Living
ACS	American Community Survey
AHS	American Housing Survey
ACASI	Audio computer-assisted self-interviewing
BRFSS	Behavioral Risk Factor Surveillance System
BJS	Bureau of Justice Statistics
BLS	Bureau of Labor Statistics
BPHC	Bureau of Primary Health Care
CHIS	California Health Interview Survey
CBHSQ	Center for Behavioral Health Statistics and Quality
CDC	Centers for Disease Control and Prevention
CAPI	Computer-assisted personal interview
CATI	Computer-assisted telephone interview
CPS	Current Population Survey
DHHS	Department of Health and Human Services
DOJ	Department of Justice
FDA	Food and Drug Administration
GI	Gender identity
GID	Gender identity disorder
HCPS	Health Center Patient Survey
HRSA	Health Resources and Services Administration
JPSM	Joint Program in Survey Methodology
LGB	Lesbian, gay, bisexual
LGBT	Lesbian, gay, bisexual, and transgender
MCBS	Medicare Current Beneficiary Survey
NATS	National Adult Tobacco Survey
NCHS	National Center for Health Statistics
NHANES	National Health and Nutrition Examination Survey
NHIS	National Health Interview Survey
NIS	National Inmate Survey
NIH	National Institutes of Health
NSFG	National Survey of Family Growth
NSOAAP	National Survey of Older Americans Act Participants
NSDUH	National Survey on Drug Use and Health
OMB	Office of Management and Budget
PAPI	Paper and pencil interview
PATH	Population Assessment of Tobacco and Health
SGM	Sexual and gender minority
SO	Sexual orientation
SOGI	Sexual orientation and gender identity
SSA	Social Security Administration
SAMHSA	Substance Abuse and Mental Health Services Administration
SIPP	Survey of Income and Program Participation

UDS	Uniform Data System
YRBSS	Youth Risk Behavior Surveillance System

# **An Overview of the Adoption and Foster Care Analysis and Reporting System Notice of Proposed Rulemaking**

---

Presented By:



**Children's Bureau**

An Office of the Administration for Children & Families



## AGENDA

---

During this call we will review:

- AFCARS Background and History of Regulation Development
- 2019 Notice of Proposed Rulemaking (NPRM) Overview
- Next Steps and Resources





## **AFCARS NPRM**

---

# **AFCARS BACKGROUND AND HISTORY OF REGULATION DEVELOPMENT**

## BACKGROUND AND HISTORY OF REG. DEVELOPMENT

---

### Where we are now:

- Issuing 2019 NPRM in response to [Executive Order \(E.O.\) 13777](#) and HHS Regulatory Reform Task Force that identified the AFCARS Dec. 2016 final rule ([81 FR 90524](#)) as one in which the reporting burden may impose costs that exceed benefits.
- CB solicited specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the 2016 final rule ([83 FR 11449](#)).
- 36 states convincingly argued for streamlining the rule by providing detailed work and cost estimates associated with the burden of the rule that had not been provided in earlier comment periods.
- HHS subject matter experts with an interest in AFCARS data identified a number of data elements that are not needed to meet a title IV-B/IV-E statutory requirement and program monitoring, Congressional reporting, or budgeting.

## **BACKGROUND AND HISTORY OF REG. DEVELOPMENT**

---

### **NPRM Purpose**

- NPRM drafting: Balance desires for increased reporting and data with the need to minimize burden per the E.O. We examined each data element asking why are we collecting this information and how are we going to use this information. NPRM proposed only those data elements for which we can answer these questions.
- The out-of-home care data file in the 2016 final rule requires title IV-E agencies to report information on approximately 272 items.
- We propose to reduce these items to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify.
- We propose a simplification of certain data elements to require that title IV-E agencies report only essential information on children.

## **BACKGROUND: INDIAN CHILD WELFARE ACT (ICWA)- RELATED DATA ELEMENTS**

---

- We propose to maintain:
  - Whether state inquired whether the child is an Indian child,
  - Child's tribal membership and all potential tribes,
  - Whether ICWA applies and whether the Indian child's tribe(s) was sent legal notice, and
  - Tribal membership of parents (biological, foster, or adoptive) and legal guardians.
- We propose to remove data elements tied to the Department of Interior's regulations, the ICWA statute, and court actions such as:
  - Identification of specific entities the state inquired with regarding the child being an Indian child,
  - Good cause findings and qualified expert witness testimony, and
  - Whether active efforts were made prior to the termination/modification.

## BACKGROUND: SEXUAL ORIENTATION DATA ELEMENTS

---

- We propose to remove sexual orientation of child, foster/adoptive parents, and legal guardians based on:
  - Office of Management and Budget (OMB) paper advising new questions should be validated with specific techniques and emphasizes the importance that respondents are confident that their responses are private, anonymous, and confidential.
  - State comments that collecting this information should be tied to case planning needs, not as a routine matter.
- We maintained circumstance at removal “Family conflict related to child’s sexual orientation, gender identity, or gender expression.” This will tell us whether the child’s sexual orientation or gender identity was a circumstance at removal.



**AFCARS NPRM**

---

# **2019 NPRM OVERVIEW**

# NPRM OVERVIEW

---

- The AFCARS regulations are located at [45 CFR 1355.41-47](#). We propose changes to most but not all of the 2016 final rule, which we will address.
- In the Scope ( § 1355.41), we propose conforming changes only.



## **NPRM OVERVIEW**

---

### **§ 1355.42(a) Reporting population**

- We are not proposing changes. Out-of-Home Care reporting population includes:
  - Children who are under the title IV-E agency's responsibility for placement and care who are placed in a foster care setting
  - Children who are eligible for title IV-E under an interagency agreement between the title IV-E agency and another public agency (an Indian tribe or Juvenile Justice agency)

### **§ 1355.43 Data Reporting Requirements**

- Propose conforming changes only.

## **NPRM OVERVIEW**

---

### **§ 1355.44(a) General Information**

- We are not proposing any changes to:
  - Title IV-E agency name (submitter of the data file)
  - Report date
  - Local agency
  - Child record number

## **NPRM OVERVIEW**

---

### **§ 1355.44(b) Child Information**

- Proposal: Report characteristics of child in out-of-home care: demographics, health assessment, health, behavioral or mental health conditions, school enrollment, educational level, special education, pregnant or parenting, prior adoption or guardianship, and siblings.
- Data elements modified:
  - Sex of child
  - Reason to know a child is an “Indian Child” as defined in ICWA
  - Child’s tribal membership
  - Application of ICWA and Notification (regarding ICWA)
  - Child financial and medical assistance
- Data elements removed:
  - Child sexual orientation
  - Court determination that ICWA applies
  - Request to transfer to tribal court and denial of transfers
  - Date and timely health assessment
  - Educational stability

## **NPRM OVERVIEW**

---

### **§ 1355.44(c) Parent or Legal Guardian Information**

- Proposal: Report characteristics of child's parents or legal guardians including year of birth, tribal membership, and termination/modification of parental rights.
- Data elements modified: none
- Data elements removed:
  - Involuntary termination/modification of parental rights under ICWA
  - Voluntary termination/modification of parental rights under ICWA

## **NPRM OVERVIEW**

---

### **§ 1355.44(d) Removal Information**

- Proposal: Report information on each of the child's removals including date of each removal, environment at removal, circumstances at removal, and whether the child was a victim of sex trafficking prior to entering, or while in, foster care.
- Data elements modified:
  - Minor revisions to 3 circumstances at removal
- Data elements removed:
  - Removals under ICWA
  - Authority for placement and care responsibility

## **NPRM OVERVIEW**

---

### **§ 1355.44(e) Living Arrangement and Provider Information**

- Proposal: Report information on each of the child's living arrangements for each out-of-home care episode including dates of each placement, whether placements are foster family homes or other living arrangements, location of living arrangements, and demographics about the foster parents (e.g., marital status and tribal membership).
- Data elements modified:
  - Other living arrangement type
  - Child's relationships to the foster parents
  - Sex of foster parents
- Data elements removed:
  - Private agency living arrangement
  - Sexual orientation of foster parents
  - Available ICWA foster care and pre-adoptive placement preferences
  - Foster care and pre-adoptive placement preferences under ICWA
  - Good cause under ICWA and Basis for good cause

## **NPRM OVERVIEW**

---

### **§ 1355.44(f) Permanency Planning**

- Proposal: Report information on permanency planning for children in out-of-home care including permanency plans and dates, dates of permanency hearings and periodic reviews, and caseworker visit dates and locations.
- Data elements modified: none
- Data elements removed:
  - Juvenile justice
  - Transition plan and date
  - Active efforts (related to ICWA)



## **NPRM OVERVIEW**

---

### **§ 1355.44(g) General Exit Information**

- Proposal: Report information on each of the child's exits from out-of-home care (when the title IV-E agency's placement and care ends) including date of exit and reason.
- Data elements modified: none
- Data elements removed: none

## **NPRM OVERVIEW**

---

### **§ 1355.44(h) Exit to Adoption and Guardianship Information**

- Proposal: Report information only if child exited to adoption or legal guardianship including demographics on adoptive parents or legal guardians (e.g., marital status and tribal membership), siblings, and whether the child was placed within or outside of the state or tribal service area or into another country for adoption or guardianship.
- Data elements modified:
  - Child's relationship to the adoptive parents or guardians
  - Sex of adoptive parents or guardians
- Data elements removed:
  - Sexual orientation of adoptive parents or guardians
  - Jurisdiction name where child was placed for adoption/guardianship
  - Available ICWA adoptive placements
  - Adoptive placement preferences under ICWA
  - Good cause under ICWA and Basis for good cause

## **NPRM OVERVIEW**

---

### **§ 1355.45 Adoption and Guardianship Assistance Data File**

- We proposed conforming changes only in this section.

### **§ 1355.46 Compliance**

- We proposed minor conforming changes only in this section.

### **§ 1355.47 Penalties**

- We do not propose to revise this section.



## **AFCARS NPRM**

---

# **NEXT STEPS AND RESOURCES**

## AFCARS NPRM NEXT STEPS

---

- The NPRM was published on **April 19, 2019**.
- Comment period is open for **60 days** and ends on **June 18, 2019**.
- Please submit comments via: [Regulations.gov](https://www.regulations.gov)
- Link to NPRM in: [Federal Register](#)
- CB will review and analyze all comments received, the Administration will decide what changes, if any, to make to the proposal, and issue a final rule after OMB approval.
- Implementation of changes to AFCARS described in this NPRM will be dependent on the issuance of a final rule.
- Expect provisions in eventual final rule to be effective no sooner than the start of the second federal fiscal year following the publication of the final rule.

# RESOURCES

---

## Tips for Comments

- Section V of the NPRM preamble offers tips for providing useful comments to the AFCARS NPRM:
  - Consider how this proposed iteration of AFCARS will impact your work and budgets.
  - Note whether the information is readily available or collected as part of the title IV-E agency's casework.
  - Be specific on data elements, costs, and burden hours.
  - Provide an estimate for annual burden hours to adjust existing ways to comply, gather and enter information into the electronic case management system, and associated training.
  - Estimate timeframes for implementing.
  - How reporting the data elements in this NPRM will enhance your work with children and families.

## RESOURCES

---

### **Tips for Comments, cont.**

- For entities that do not report AFCARS (non-title IV-E agencies):
  - Provide specific reasons as to why you feel AFCARS is most effective for collecting the data proposed in this NPRM and why no other current method is feasible to collect information.
  - Describe any work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS.
  - Describe how this AFCARS data, which is aggregated at the national level, will help your specific work with title IV-E agencies, children, and families.



## RESOURCES

---

**Link to AFCARS NPRM to submit comments:**

[https://www.regulations.gov/document?D=ACF\\_FRDOC\\_0001-0087](https://www.regulations.gov/document?D=ACF_FRDOC_0001-0087)

**CB Website, What's New in Laws and Policies:**

<https://www.acf.hhs.gov/cb/laws-policies/whats-new>

**CB Website, General info on AFCARS:**

<https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/afcars>

**Code of Federal Regulations, AFCARS:**

- § [1355.40](#) and [appendix to part 1355](#)
- § [1355.41-1355.47](#)

## **Questions and Answers – AFCARS NPRM**



### **AFCARS Q&As**

**Topic:** The Children’s Bureau (CB) at the Department for Health and Human Services (HHS), Administration for Children and Families published a Notice of Proposed Rulemaking (NPRM) today, April 19, 2019 on revising the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements ([84 FR 16572](#)).

#### **What is AFCARS?**

- Title IV-E agencies currently report to AFCARS case level information on all children in foster care and children adopted with the involvement of the state/tribal Title IV-E agency.
- Title IV-E agencies report data to AFCARS two times per year, in May and November.
- The data reflects the child’s experience as of the end of the report period.
- While there is a record in the file for each child in foster care, the individual child is not personally identified. Each record has an encrypted record number that represents the person number used by the Title IV-E agency. There are no names, addresses, or social security numbers reported to AFCARS.

#### **Who is reported to AFCARS?**

- Children who are under state and tribal child welfare (Title IV-E) agencies responsibility for placement and care who are placed in a foster care setting and children adopted with the involvement of the Title IV-E agency.
- Children who are eligible for Title IV-E foster care under an interagency agreement between the IV-E agency and another public agency, such as an Indian tribe or Juvenile Justice agency.

#### **How is AFCARS data used?**

- Determine the allotment of funds for different programs, develop budgets, prepare congressional reports, and conduct Title IV-B and IV-E program monitoring.
- Prepare the [Child Welfare Outcomes](#) report, [Trends in Foster Care and Adoption](#) report and [AFCARS](#) reports.
- Conduct the [Child and Family Services Reviews](#) and [Title IV-E foster care eligibility reviews](#).

## **Questions and Answers – AFCARS NPRM**

### **What is the 2016 AFCARS final rule?**

- On December 14, 2016, CB published a final rule revising the AFCARS requirements ([81 FR 90524](#)). This was a month before the end of the previous administration. It was the first revision to AFCARS since 1993.
- It significantly expanded the data elements required to be reported by state and tribal Title IV-E agencies and for the first time, required state Title IV-E agencies to report to AFCARS information on the Indian Child Welfare Act of 1978 (ICWA).

### **What happened after the 2016 final rule was published?**

- [Executive Order \(E.O.\) 13777](#) was issued February 24, 2017 and it directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification.
- The HHS Regulatory Reform Task Force identified the 2016 AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

### **What did CB do in response to E.O. 13777?**

- In response to E.O. 13777, CB published an Advance NPRM (ANPRM) on March 15, 2018 ([83 FR 11449](#)) that solicited comments on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the 2016 final rule.

### **Why is the AFCARS NPRM being issued?**

- In response to the ANPRM, 36 states convincingly argued for streamlining the 2016 final rule by providing detailed work and cost estimates associated with the burden of the 2016 final rule that had not been provided in earlier comment periods.
- The NPRM was published in the Federal Register to propose streamlining the AFCARS data elements in the 2016 final rule, thus reducing the reporting burdens for state and tribal child welfare Title IV-E agencies.
- The proposed revisions would streamline the AFCARS data points related to a child's experience in foster care and adoption or legal guardianship to those with a specific purpose such as statutory requirements and program monitoring, congressional reporting or budgeting. This proposal continues to be responsive to stakeholders by retaining key data in which they are interested and noted in their comments to the ANPRM.

### **What was CB's process in determining what to propose in the 2019 NPRM?**

- CB analyzed the comments received in response to the March 2018 solicitation, in which 36 states responded that the 2016 final rule was overly burdensome and could be streamlined.
- Additionally, CB reviewed each data element in the 2016 final rule and evaluated whether it is needed for the purposes of a Title IV-B/IV-E statutory requirement, program monitoring, congressional reporting or budgeting.

## **Questions and Answers – AFCARS NPRM**

### **What changes are proposed in the 2019 NPRM?**

- The 2016 final rule required Title IV-E agencies to report information in the out-of-home care data file for approximately 272 items, 153 of which are new. We propose to reduce these items to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify. We propose a simplification of certain data elements to require that Title IV-E agencies report only essential information on children that meets the threshold for a specific purpose, as stated above.
- **Data elements retained from the 2016 final rule:** CB proposes to retain data elements on the child, placements, and parents, including the child's health, behavioral or mental health conditions, circumstances present at removal, prior adoption and guardianship, youth who are pregnant or parenting, youth who may be victims of sex trafficking, permanency plans, and caseworker visits.
- **Data elements modified from the 2016 final rule:** CB proposes to retain and simplify data elements on the child and placements including the child's health assessments, child financial and medical assistance, educational information, and special education to keep only essential information as identified by ANPRM commenters. CB also proposes to reduce the ICWA-related data elements to information that is essential for identifying nationally the population of children to whom ICWA applies.
- **Data elements removed from the 2016 final rule:** CB proposes to remove data elements related to sexual orientation for the child, adoptive parents, foster parents, and legal guardians; educational stability; private agency placement; juvenile justice involvement; and transition planning because we do not use the information for the reasons cited above. CB proposes to remove data elements that required states to report detailed information on ICWA's requirements and are tied to the Department of Interior's regulations, the ICWA statute, and court actions, including court findings related to involuntary and voluntary termination of parental rights; good cause findings; qualified expert witness testimony; and information on active efforts.

### **What changed in the 2019 NPRM regarding the health assessment and educational data points?**

- The 2016 final rule required Title IV-E agencies to report whether the child had a timely health assessment and the date. Per ANPRM comments that these data points were too detailed, CB proposed in the 2019 NPRM to only ask whether the child had a health assessment during the current out-of-home care episode.
- The 2016 final rule required Title IV-E agencies to report the child's educational level and school enrollment which CB proposes to keep in the 2019 NPRM. The 2016 final rule also required reporting on whether the child is enrolled or is in the process of enrolling in a new school at the initial placement into foster care and when there was a placement change. CB did not propose those data points in the NPRM for several reasons, including that the information is qualitative, too detailed for a national data set, and CB does not have a specific purpose for the information.

## **Questions and Answers – AFCARS NPRM**

### **How can the public submit comments?**

- The comment period closes on **June 18, 2019**.
- The public may submit comments, identified by RIN number 0970-AC72, by one of the following methods:
  - Federal eRulemaking Portal: [Regulations.gov](https://www.regulations.gov). Follow the instructions for sending comments. We recommend this method.
  - Email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include RIN number 0970-AC72 in subject line of the message.

### **What is the status of the 2016 final rule?**

- On August 21, 2018, CB published a final rule to delay implementation of the 2016 final rule for **one** additional fiscal year, until October 1, 2020 ([83 FR 42225](#)).
- In the meantime, Title IV-E agencies will continue to submit AFCARS data per the requirements in [45 CFR 1355.40](#) and the [appendix to part 1355](#), as they have been since 1995.
- The delay allows us to complete the regulatory process of this NPRM (see [ACYF-CB-IM-18-03](#)).

### **What happens if a Title IV-E agency does not report AFCARS data or reports poor quality data?**

- The data must meet the data quality standards set in regulation, such as the information must be complete, submitted on time, and internally consistent.
- If a Title IV-E agency fails to meet the standards, we provide technical assistance and give an opportunity to correct and resubmit the data.
- We will implement the statutory penalty structure included in the law at section 474(f) of the Act. If the agency does not resubmit or correct its data, we will apply the penalty provisions as outlined in [45 CFR 1355.47](#).
- CB cannot waive the penalty because there is no flexibility in applying the penalty structure to all Title IV-E agencies, which has been in law since 2003.

### **What happens after the comment period ends?**

- CB will review and analyze all comments received, the administration will decide what changes, if any, to make to the proposal, and issue a final rule after OMB reviews and approves it.

**From:** [Keplinger, Steve](#)  
**To:** [Bertucci, Jana \(ACF\)](#)  
**Subject:** FYI: Information Session on the AFCARS 2019 NPRM  
**Date:** Thursday, April 25, 2019 10:58:15 AM

---

**FYI: Your message has posted to the listservs.**

---

**From:** Keplinger, Steve  
**Sent:** Thursday, April 25, 2019 1:55 PM  
**To:** 'aia@lists.childwelfare.gov' <aia@lists.childwelfare.gov>; 'cbdgfpo@lists.childwelfare.gov' <cbdgfpo@lists.childwelfare.gov>; 'child-welfare@lists.childwelfare.gov' <child-welfare@lists.childwelfare.gov>; 'cip-grantees@lists.childwelfare.gov' <cip-grantees@lists.childwelfare.gov>; 'cja@lists.childwelfare.gov' <cja@lists.childwelfare.gov>; 'cw-directors@lists.childwelfare.gov' <cw-directors@lists.childwelfare.gov>; 'cws-net@lists.childwelfare.gov' <cws-net@lists.childwelfare.gov>; 'cw-train@lists.childwelfare.gov' <cw-train@lists.childwelfare.gov>; 'pssf@lists.childwelfare.gov' <pssf@lists.childwelfare.gov>; 'rpg3@lists.childwelfare.gov' <rpg3@lists.childwelfare.gov>; 'rpg4@lists.childwelfare.gov' <rpg4@lists.childwelfare.gov>; 'rpg5@lists.childwelfare.gov' <rpg5@lists.childwelfare.gov>; 'slo@lists.childwelfare.gov' <slo@lists.childwelfare.gov>; 'tanf-cw@lists.childwelfare.gov' <tanf-cw@lists.childwelfare.gov>; 'capacity-building@lists.childwelfare.gov' <capacity-building@lists.childwelfare.gov>; 'tta@lists.childwelfare.gov' <tta@lists.childwelfare.gov>; 'cqicfsr-cbcs@lists.childwelfare.gov' <cqicfsr-cbcs@lists.childwelfare.gov>; 'cwstd-cbcs@lists.childwelfare.gov' <cwstd-cbcs@lists.childwelfare.gov>; 'data-cbcs@lists.childwelfare.gov' <data-cbcs@lists.childwelfare.gov>; 'efc-cbcs@lists.childwelfare.gov' <efc-cbcs@lists.childwelfare.gov>; 'fcmgr-cbcs@lists.childwelfare.gov' <fcmgr-cbcs@lists.childwelfare.gov>; 'ilcstv-cbcs@lists.childwelfare.gov' <ilcstv-cbcs@lists.childwelfare.gov>; 'inhome-cbcs@lists.childwelfare.gov' <inhome-cbcs@lists.childwelfare.gov>; 'nytd-cbcs@lists.childwelfare.gov' <nytd-cbcs@lists.childwelfare.gov>; 'cwpm@lists.childwelfare.gov' <cwpm@lists.childwelfare.gov>  
**Subject:** Information Session on the AFCARS 2019 NPRM

The Children's Bureau will hold two (2) public information sessions to provide an overview of the Notice of Proposed Rulemaking (NPRM) on the Adoption and Foster Care Analysis and Reporting System (AFCARS) published in the *Federal Register* on April 19, 2019 ([84 FR 16572](#)). This NPRM proposes to streamline the AFCARS data elements from the 2016 AFCARS final rule.

The content of the calls will be the same, so you need only attend one. The lines will be closed.

The information session dates and times:  
Tuesday, April 30, 2019 from 1:30 – 2:30 pm (Eastern)  
Thursday, May 2, 2019 from 1:30 – 2:30 pm (Eastern)

The call-in information for each date is below:

HHS000227

**April 30<sup>th</sup>**

**PARTICIPANTS:**

Click the link below to Register for this Event:

<https://acf.adobeconnect.com/ez6s1wy689y3/event/registration.html>

**Audio Connection:**

888-233-7142 // Participants Pass Code: 1588042

**CONTACTS:**

Contact Cheryl Speed, ([Cheryl.Speed@acf.hhs.gov](mailto:Cheryl.Speed@acf.hhs.gov)) for more information about this webinar.

**May 2<sup>nd</sup>**

**PARTICIPANTS:**

Click the link below to Register for this Event:

<https://acf.adobeconnect.com/eave9x1scpxw/event/registration.html>

**Audio Connection:**

888-233-7142 //Participants Pass Code: 1588042

**CONTACTS:**

Contact Cheryl Speed, ([Cheryl.Speed@acf.hhs.gov](mailto:Cheryl.Speed@acf.hhs.gov)) for more information about this webinar.

We will send details on a tribal-specific information session and tribal consultation separately.

More information on the AFCARS 2019 NPRM may be found on the Children's Bureau website at [What's New in Laws & Policies](#).

**COMMENTS:** Please submit comments on the 2019 NPRM to [Regulations.gov](https://www.regulations.gov) on or before June 18, 2019.



**From:** [Keplinger, Steve](#)  
**To:** [Bertucci, Jana \(ACF\)](#)  
**Subject:** FYI: Reminder: Information Session on the AFCARS 2019 NPRM  
**Date:** Tuesday, April 30, 2019 7:43:30 AM

---

FYI: Your message has posted.

---

**From:** Keplinger, Steve  
**Sent:** Tuesday, April 30, 2019 10:41 AM  
**To:** 'cwpm@lists.childwelfare.gov' <cwpm@lists.childwelfare.gov>; 'child-welfare@lists.childwelfare.gov' <child-welfare@lists.childwelfare.gov>; 'cip-grantees@lists.childwelfare.gov' <cip-grantees@lists.childwelfare.gov>; 'cja@lists.childwelfare.gov' <cja@lists.childwelfare.gov>; 'cw-directors@lists.childwelfare.gov' <cw-directors@lists.childwelfare.gov>; 'cws-net@lists.childwelfare.gov' <cws-net@lists.childwelfare.gov>; 'cw-train@lists.childwelfare.gov' <cw-train@lists.childwelfare.gov>; 'pssf@lists.childwelfare.gov' <pssf@lists.childwelfare.gov>; 'rpg4@lists.childwelfare.gov' <rpg4@lists.childwelfare.gov>; 'rpg5@lists.childwelfare.gov' <rpg5@lists.childwelfare.gov>; 'rpg-eval4@lists.childwelfare.gov' <rpg-eval4@lists.childwelfare.gov>; 'slo@lists.childwelfare.gov' <slo@lists.childwelfare.gov>; 'tanf-cw@lists.childwelfare.gov' <tanf-cw@lists.childwelfare.gov>; 'tribal-grantees@lists.childwelfare.gov' <tribal-grantees@lists.childwelfare.gov>; 'capacity-building@lists.childwelfare.gov' <capacity-building@lists.childwelfare.gov>; 'tta@lists.childwelfare.gov' <tta@lists.childwelfare.gov>; 'cbcs-consultants@lists.childwelfare.gov' <cbcs-consultants@lists.childwelfare.gov>; 'cqicfsr-cbcs@lists.childwelfare.gov' <cqicfsr-cbcs@lists.childwelfare.gov>; 'cwali-cbcs@lists.childwelfare.gov' <cwali-cbcs@lists.childwelfare.gov>; 'cwstd-cbcs@lists.childwelfare.gov' <cwstd-cbcs@lists.childwelfare.gov>; 'data-cbcs@lists.childwelfare.gov' <data-cbcs@lists.childwelfare.gov>; 'fcmgr-cbcs@lists.childwelfare.gov' <fcmgr-cbcs@lists.childwelfare.gov>; 'ilcstv-cbcs@lists.childwelfare.gov' <ilcstv-cbcs@lists.childwelfare.gov>; 'inhome-cbcs@lists.childwelfare.gov' <inhome-cbcs@lists.childwelfare.gov>; 'nytd-cbcs@lists.childwelfare.gov' <nytd-cbcs@lists.childwelfare.gov>  
**Subject:** Reminder: Information Session on the AFCARS 2019 NPRM

This is a reminder that today the Children's Bureau will hold a public information session to provide an overview of the Notice of Proposed Rulemaking (NPRM) on the Adoption and Foster Care Analysis and Reporting System (AFCARS) published in the *Federal Register* on April 19, 2019 ([84 FR 16572](#)). Call-in information is below.

\*Reminder: Another public information session will be held on May 2<sup>nd</sup>. The content of the calls will be the same, so you need only attend one. The lines will be closed.

**April 30, 2019, 1:30-2:30 pm EDT**

**PARTICIPANTS:**

Click the link below to Register for this Event:

<https://acf.adobeconnect.com/ez6s1wy689y3/event/registration.html>

HHS000229

**Audio Connection:**

888-233-7142 // Participants Pass Code: 1588042

**CONTACTS:**

Contact Cheryl Speed, ([Cheryl.Speed@acf.hhs.gov](mailto:Cheryl.Speed@acf.hhs.gov)) for more information about this webinar.

**May 2, 2019, 1:30-2:30 pm EDT**

**PARTICIPANTS:**

Click the link below to Register for this Event:

<https://acf.adobeconnect.com/eave9x1scpxw/event/registration.html>

**Audio Connection:**

888-233-7142 //Participants Pass Code: 1588042

**CONTACTS:**

Contact Cheryl Speed, ([Cheryl.Speed@acf.hhs.gov](mailto:Cheryl.Speed@acf.hhs.gov)) for more information about this webinar.

More information on the AFCARS 2019 NPRM may be found on the Children's Bureau website at [What's New in Laws & Policies](#).

**COMMENTS:** Please submit comments on the 2019 NPRM to [Regulations.gov](https://www.regulations.gov) on or before June 18, 2019.

**From:** [Bock, Joe \(ACF\)](#)  
**To:** [McHugh, Kathleen \(ACF\)](#); [Bertucci, Jana \(ACF\)](#)  
**Subject:** RE: NPRM PowerPoint  
**Date:** Thursday, April 25, 2019 12:57:31 PM

---

I thought he had – I just couldn't find the email –I'll let him know.

---

**From:** McHugh, Kathleen (ACF) <kathleen.mchugh@acf.hhs.gov>  
**Sent:** Thursday, April 25, 2019 3:56 PM  
**To:** Bertucci, Jana (ACF) <Jana.Bertucci@ACF.hhs.gov>; Bock, Joe (ACF) <Joe.Bock@acf.hhs.gov>  
**Subject:** RE: NPRM PowerPoint

**FYI-Jerry approved the word version.**

---

**From:** Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>  
**Sent:** Friday, April 12, 2019 10:54 AM  
**To:** McHugh, Kathleen (ACF) <[kathleen.mchugh@acf.hhs.gov](mailto:kathleen.mchugh@acf.hhs.gov)>; Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>; Horshaw, Cindi (ACF) <[Cindi.Horshaw@acf.hhs.gov](mailto:Cindi.Horshaw@acf.hhs.gov)>  
**Subject:** FW: NPRM PowerPoint

FYI – approved – you can go ahead and load it in to powerpoint and then we can send it forward - thanks.

---

**From:** Milner, Jerry (ACF) <[Jerry.Milner@acf.hhs.gov](mailto:Jerry.Milner@acf.hhs.gov)>  
**Sent:** Friday, April 12, 2019 10:48 AM  
**To:** Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>  
**Subject:** RE: NPRM PowerPoint

Looks fine Joe. When you talk to Anna about the rollout, if you don't mind, please let her know that we do have a PPT. She asked me about it yesterday, and I said we did not have one. When it's ready, we should also send it upstairs (and to Anna) as part of the rollout package. Thanks.

---

**From:** Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>  
**Sent:** Friday, April 12, 2019 10:37 AM  
**To:** Milner, Jerry (ACF) <[Jerry.Milner@acf.hhs.gov](mailto:Jerry.Milner@acf.hhs.gov)>  
**Subject:** FW: NPRM PowerPoint

Hey Jerry,

If I sent this to you already – I apologize – it's been one of those weeks. Here is word version of the powerpoint Policy is planning to use to brief the field on the AFCARS NPRM for your review and approval. Thanks

Joe

**From:** [Steve Keplinger <skeplinger@childwelfare.gov>](mailto:skeplinger@childwelfare.gov)  
**To:** [Child Welfare \(State Foster Care and Adoption Managers\)](#)  
**Cc:** [IV-EPARTNERS@LISTSERV.UGA.EDU](mailto:IV-EPARTNERS@LISTSERV.UGA.EDU); [TEXAS-TITLE-IV-E@LISTSERV.UH.EDU](mailto:TEXAS-TITLE-IV-E@LISTSERV.UH.EDU)  
**Subject:** [child-welfare] Reminder: Info Session on AFCARS ANPRM and NPRM on implementation delay  
**Date:** Wednesday, April 4, 2018 8:21:02 AM

---

This is a Child Welfare listserv message

---

This is a reminder that the Children's Bureau is holding an information session for the public to provide an overview of the two notices that were published in the Federal Register on March 15, 2018 on the Adoption and Foster Care Analysis and Reporting System (AFCARS): an [Advance Notice of Proposed Rulemaking](#) (ANPRM) seeking public suggestions for streamlining the AFCARS data elements and a [Notice of Proposed Rulemaking](#) (NPRM) proposing to provide an additional two fiscal years to comply with the AFCARS December 2016 final rule.

**The information session will be on Thursday, April 5, 2018 from 3:00 – 4:00 pm Eastern.**

**The call-in information is:**

To connect via Adobe Connect:

<https://acf.adobeconnect.com/childrensbureau2/>

**Audio Connection**

**AUDIO ONLY:** Dial 888 233-7142 // Participants 6229257

We will hold a tribal-specific information session and tribal consultation at a later date.

Additionally, the Children's Bureau issued an Information Memorandum on the two AFCARS notices and it is available on the Children's Bureau website [here](#).

---

You are currently subscribed to child-welfare as: [jana.bertucci@acf.hhs.gov](mailto:jana.bertucci@acf.hhs.gov).

---

To unsubscribe send an email, with the subject line "Leave child-welfare" to [skeplinger@childwelfare.gov](mailto:skeplinger@childwelfare.gov)

**AFCARS Foster Care Data Element Names Only**  
**Published in the [Appendix to 45 CFR part 1355](#)**

**(Note: Title IV-E agencies are required to report these data elements in the manner they do currently.)**

1. Title IV-E Agency
2. Report period ending date
3. Local agency FIPS code or other ACF assigned code
4. Record number

**General Information**

- 
5. Most recent periodic review date
  6. Date of birth
  7. Sex
  8. Race
  9. Hispanic origin
  10. Child diagnosed with disabilities
  11. Mental retardation
  12. Visually or hearing impaired
  13. Physically disabled
  14. Emotionally disturbed
  15. Other diagnosed conditions
  16. Has child ever been adopted
  17. Age of child when adopted

**Child's Demographic Information**

- 
18. Date of first removal from home
  19. Total number of removals
  20. Discharge date from last episode
  21. Date of latest removal
  22. Computer-generated date
  23. Placement date in current setting
  24. Number of previous settings in episode

**Removal / Placement  
Setting Indicators**

- 
25. Manner of removal for episode
  26. Physical abuse
  27. Sexual abuse
  28. Neglect
  29. Parent alcohol abuse
  30. Parent drug abuse
  31. Child alcohol abuse
  32. Child drug abuse
  33. Child disability
  34. Child's behavior problem
  35. Death of parent
  36. Incarceration of parent
  37. Caretaker inability to cope
  38. Abandonment
  39. Relinquishment
  40. Inadequate housing

**Circumstances Associated  
with Removal**

**AFCARS Foster Care Data Element Names Only  
Published in the [Appendix to 45 CFR part 1355](#)**

**(Note: Title IV-E agencies are required to report these data elements in the manner they do currently.)**

41. Current placement setting	<b>Current Placement Settings</b>
42. Out-of- State/Tribal service area placement	
43. Most recent case plan goal	<b>Most Recent Case Plan Goal</b>
<hr/>	
44. Caretaker family structure	<b>Principal Caretaker Information</b>
45. 1 <sup>st</sup> principal caretaker birth year	
46. 2 <sup>nd</sup> principal caretaker birth year	
<hr/>	
47. Date of mother's TPR	<b>Parental Rights Termination</b>
48. Date of father's TPR	
<hr/>	
49. Foster family structure	<b>Foster Parent Data</b>
50. 1 <sup>st</sup> foster caretaker's year of birth	
51. 2 <sup>nd</sup> foster caretaker's year of birth	
52. 1 <sup>st</sup> foster caretaker's race	
53. 1 <sup>st</sup> foster caretaker's Hispanic origin	
54. 2 <sup>nd</sup> foster caretaker's race	
55. 2 <sup>nd</sup> foster caretaker's Hispanic origin	
<hr/>	
56. Date of discharge from foster care	<b>Discharge Data</b>
57. Computer generated date	
58. Reasons for discharge	
<hr/>	
59. Title IV-E (foster care)	<b>Sources of Federal Financial Support / Assistance for Child</b>
60. Title IV-E (adoption assistance)	
61. Title IV-A (AFDC)	
62. Title IV-D (Child Support)	
63. Title XIX (Medicaid)	
64. SSI or other social security	
65. None of the above	
66. Amount of monthly payment	
<hr/>	

**AFCARS Adoption Data Elements  
Published in the Appendix to 45 CFR part 1355**

**(Note: Title IV-E agencies are required to report these data elements in the manner they do currently.)**

1. Title IV-E Agency Code
2. Report period ending date
3. Record number
4. Title IV-E Agency involvement

**General Information**

- 
5. Child's date of birth
  6. Sex
  7. Race
  8. Hispanic origin

**Child's Demographic Information**

- 
9. Special needs – agency determined
  10. Special needs - primary basis
  11. Mental retardation
  12. Visually/hearing impaired
  13. Physically disabled
  14. Emotionally disturbed
  15. Other diagnosed condition

**Special Needs Status**

- 
16. Mother's year of birth
  17. Father's year of birth
  18. Mother married at time of child's birth

**Birth Parents**

- 
19. Date of mother's TPR
  20. Date of father's TPR
  21. Date adoption legalized

**Court Actions**

- 
22. Adoptive family structure
  23. Mother's year of birth
  24. Father's year of birth
  25. Adoptive mother's race
  26. Hispanic origin - mother
  27. Adoptive father's race
  28. Hispanic origin - father
  29. Relationship - stepparent
  30. Relationship - other relative
  31. Relationship - foster parent
  32. Relationship - other non-relative

**Adoptive Parent Data**

- 
33. Child was placed from
  34. Child was placed by

**Placement Information**

- 
35. Monthly subsidy
  36. Monthly amount
  37. Title IV-E Adoption assistance

**Financial Adoption Support**



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

**Out-of-Home Care Data Elements – 45 CFR 1355.44**

Category	Element	Reponses Options	Section Citation
General information	Title IV-E agency	Name	1355.44(a)(1)
	Report date	Date	1355.44(a)(2)
	Local agency	Name	1355.44(a)(3)
	Child record number	Number	1355.44(a)(4)
Child information	Child's date of birth	Date	1355.44(b)(1)
	Child's gender	Male Female	1355.44(b)(2)(i)
	Child's sexual orientation	Straight or heterosexual Gay or lesbian Bisexual Don't know Something else Decline Not applicable	1355.44(b)(2)(ii)
	Reason to know a child is an "Indian child" as defined in the Indian Child Welfare Act		1355.44(b)(3)
	Inquired with the child's biological or adoptive mother	Yes No The biological or adoptive mother is deceased	1355.44(b)(3)(i)
	Inquired with the child's biological or adoptive father	Yes No The biological or adoptive father is deceased	1355.44(b)(3)(ii)
	Inquired with the child's Indian custodian.	Yes No Child does not have an Indian custodian	1355.44(b)(3)(iii)
	Inquired with the child's extended family.	Yes No	1355.44(b)(3)(iv)
	Inquired with the child.	Yes No	1355.44(b)(3)(v)
	Child is a member or eligible for membership in an Indian tribe.	Yes No unknown	1355.44(b)(3)(vi)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village.	Yes No Unknown	1355.44(b)(3)(vii)
	Application of ICWA	Yes No	1355.44(b)(4)
	The date that the state title IV-E agency first discovered information indicating the child is or may be an Indian child as defined in ICWA	Date	1355.44(b)(4)(i)
	All federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s)	Name(s)	1355.44(b)(4)(ii)
	Court determination that ICWA applies	Yes, ICWA applies No, ICWA does not apply No court determination	1355.44(b)(5)
	Date court determined that ICWA applies	Date	1355.44(b)(5)(i)
	Indian tribe that the court determined is the Indian child's tribe for ICWA purposes	Name	1355.44(b)(5)(ii)
	Notification		1355.44(b)(6)
	Whether the Indian child's parent or Indian custodian was sent legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a)	Yes No	1355.44(b)(6)(i)
	Whether the Indian child's tribe(s) was sent legal notice more than 10 days prior to the first child custody proceedings	Yes No	1355.44(b)(6)(ii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	in accordance with 25 U.S.C. 1912(a)  The Indian tribe(s) that were sent notice for a child custody proceeding as required in ICWA at 25 U.S.C. 1912(a)	Name(s)	1355.44(b)(6)(iii)
	Request to transfer to tribal court	Yes No	1355.44(b)(7)
	Denial of transfer  Either of the parents objected to transferring the case to tribal court  The tribal court declined the transfer to the tribal court  The state court determined good cause exists for denying the transfer to tribal court	Yes No  Applies Does not apply  Applies Does not apply  Applies Does not apply	1355.44(b)(8)  1355.44(b)(8)(i)  1355.44(b)(8)(ii)  1355.44(b)(8)(iii)
	Child's race  Race—American Indian or Alaska Native Race—Asian  Race—Black or African America Race—Native Hawaiian or Other Pacific Islander Race—White  Race--Unknown  Race—Abandoned  Race—Declined	Yes No Yes No Yes No Yes No Yes No Yes No Yes No Yes No	1355.44(b)(9)  1355.44(b)(9)(i)  1355.44(b)(9)(ii)  1355.44(b)(9)(iii)  1355.44(b)(9)(iv)  1355.44(b)(9)(v)  1355.44(b)(9)(vi)  1355.44(b)(9)(vii)  1355.44(b)(9)(viii)
	Child's Hispanic or Latino ethnicity	Yes No Unknown Abandoned Declined	1355.44(b)(10)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Health assessment	Yes No	1355.44(b)(11)(i)
	Date of health assessment	Date	1355.44(b)(11)(ii)
	Timely health assessment	Yes No	1355.44(b)(12)
	Health, behavioral or mental health conditions	Child has a diagnosed condition No exam or assessment conducted Exam or assessment conducted and none of the conditions apply Exam or assessment conducted but results not received	1355.44(b)(13)
	Intellectual disability	Existing condition Previous condition Does not apply	1355.44(b)(13)(i)
	Autism spectrum disorder	Existing condition Previous condition Does not apply	1355.44(b)(13)(ii)
	Visual impairment and blindness	Existing condition Previous condition Does not apply	1355.44(b)(13)(iii)
	Hearing impairment and deafness	Existing condition Previous condition Does not apply	1355.44(b)(13)(iv)
	Orthopedic impairment or other physical condition	Existing condition Previous condition Does not apply	1355.44(b)(13)(v)
	Mental/emotional disorders	Existing condition Previous condition Does not apply	1355.44(b)(13)(vi)
	Attention deficit hyperactivity disorder	Existing condition Previous condition Does not apply	1355.44(b)(13)(vii)
	Serious mental disorders	Existing condition Previous condition Does not apply	1355.44(b)(13)(viii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Developmental delay	Existing condition Previous condition Does not apply	1355.44(b)(13)(ix)
	Developmental disability	Existing condition Previous condition Does not apply	1355.44(b)(13)(x)
	Other diagnosed condition	Existing condition Previous condition Does not apply	1355.44(b)(13)(xi)
	School enrollment	Elementary Secondary Post-secondary education or training College Not school-age Not enrolled	1355.44(b)(14)
	Educational level	Not school-age Kindergarten 1st grade 2nd grade 3rd grade 4th grade 5th grade 6th grade 7th grade 8th grade 9th grade 10th grade 11th grade 12th grade GED Post-secondary education or training College	1355.44(b)(15)
	Educational stability	Yes No	1355.44(b)(16)
	Proximity	Applies Does not apply	1355.44(b)(16)(i)
	District/zoning rules	Applies Does not apply	1355.44(b)(16)(ii)
	Residential facility	Applies Does not apply	1355.44(b)(16)(iii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Services/programs	Applies Does not apply	1355.44(b)(16)(iv)
	Child request	Applies Does not apply	1355.44(b)(16)(v)
	Parent/Legal guardian request	Applies Does not apply	1355.44(b)(16)(vi)
	Other	Applies Does not apply	1355.44(b)(16)(vii)
	Pregnant or parenting		1355.44(b)(17)
	Child is pregnant as of end of report period	Yes No	1355.44(b)(17)(i)
	Child has ever fathered or bore a child	Yes No	1355.44(b)(17)(ii)
	Child and his/her child(re) are placed together at any point during the report period	Yes No Not applicable	1355.44(b)(17)(iii)
	Special education	Yes No	1355.44(b)(18)
	Prior adoption	Yes No abandoned	1355.44(b)(19)
	Prior adoption date	Date	1355.44(b)(19)(i)
	Prior adoption intercountry	Yes No	1355.44(b)(19)(ii)
	Prior guardianship	Yes No Abandoned	1355.44(b)(20)(i)
	Prior guardianship date	Date	1355.44(b)(20)(ii)
	Child financial and medical assistance	Child has received support/assistance No support/assistance received	1355.44(b)(21)
	SSI or Social Security benefits	Applies Does not apply	1355.44(b)(21)(i)
	Title XIX Medicaid	Applies Does not apply	1355.44(b)(21)(ii)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Title XXI SCHIP	Applies Does not apply	1355.44(b)(21)(iii)
	State/Tribal adoption assistance	Applies Does not apply	1355.44(b)(21)(iv)
	State/Tribal foster care	Applies Does not apply	1355.44(b)(21)(v)
	Child support	Applies Does not apply	1355.44(b)(21)(vi)
	Title IV-E adoption subsidy	Applies Does not apply	1355.44(b)(21)(vii)
	Title IV-E guardianship assistance	Applies Does not apply	1355.44(b)(21)(viii)
	Title IV-A TANF	Applies Does not apply	1355.44(b)(21)(ix)
	Title IV-B	Applies Does not apply	1355.44(b)(21)(x)
	SSBG	Applies Does not apply	1355.44(b)(21)(xi)
	Chafee Foster Care Independence Program	Applies Does not apply	1355.44(b)(xii)
	Other	Applies Does not apply	1355.44(b)(xiii)
	Title IV-E foster care during report period	Yes No	1355.44(b)(22)
	Total number of siblings	Number	1355.44(b)(23)
	Siblings in foster care	Number	1355.44(b)(24)
	Siblings in living arrangement	Number	1355.44(b)(25)
Parent or legal guardian information	Year of birth of first parent or legal guardian	Date	1355.44(c)(1)
	Year of birth of second parent or legal guardian	Date	1355.44(c)(2)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Tribal membership mother	Yes No Unknown	1355.44(c)(3)
	Tribal membership father	Yes No Unknown	1355.44(c)(4)
	Termination/modification of parental rights	Voluntary Involuntary Not applicable	1355.44(c)(5)
	Termination/modification of parental rights petition	Date	1355.44(c)(5)(i)
	Termination/modification of parental rights	Date	1355.44(c)(5)(ii)
	Involuntary termination/modification of parental rights under ICWA		1355.44(c)(6)
	State court found beyond reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f)	Yes No	1355.44(c)(6)(i)
	Court decision to involuntary terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f)	Yes No	1355.44(c)(6)(ii)
	Prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in	Yes No	1355.44(c)(6)(iii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	accordance with 25 U.S.C. 1912(d)		
	Voluntary termination/modification of parental rights under ICWA	Yes No	1355.44(c)(7)
Removal information	Date of child's removal	Date	1355.44(d)(1)
	Removal transaction date	Date	1355.44(d)(2)
	Removals under ICWA		1355.44(d)(3)
	Court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a)	Yes No	1355.44(d)(3)(i)
	Evidence presented for foster care placement as indicated in paragraph (d)(3)(i) included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a)	Yes No	1355.44(d)(3)(ii)
	Evidence presented for foster care placement as indicated in paragraph (d)(3)(i) indicates that prior to each removal reported in paragraph (d)(1) that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in	Yes No	1355.44(d)(3)(iii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	accordance with 25 U.S.C. 1912(d)		
	Environment at removal	Parent household Relative household Legal guardian household Relative legal guardian household Justice facility Medical/mental health facility Other	1355.44(d)(4)
	Authority for placement and care responsibility	Court ordered Voluntary placement agreement Not yet determined	1355.44(d)(5)
	Child and family circumstances at removal		1355.44(d)(6)
	Runaway	Applies Does not apply	1355.44(d)(6)(i)
	Whereabouts unknown	Applies Does not apply	1355.44(d)(6)(ii)
	Physical abuse	Applies Does not apply	1355.44(d)(6)(iii)
	Sexual abuse	Applies Does not apply	1355.44(d)(6)(iv)
	Psychological or emotional abuse	Applies Does not apply	1355.44(d)(6)(v)
	Neglect	Applies Does not apply	1355.44(d)(6)(vi)
	Medical neglect	Applies Does not apply	1355.44(d)(6)(vii)
	Domestic violence	Applies Does not apply	1355.44(d)(6)(viii)
	Abandonment	Applies Does not apply	1355.44(d)(6)(ix)
	Failure to return	Applies Does not apply	1355.44(d)(6)(x)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Caretaker's alcohol use	Applies Does not apply	1355.44(d)(6)(xi)
	Caretaker's drug use	Applies Does not apply	1355.44(d)(6)(xii)
	Child alcohol use	Applies Does not apply	1355.44(d)(6)(xiii)
	Child drug use	Applies Does not apply	1355.44(d)(6)(xiv)
	Prenatal alcohol exposure	Applies Does not apply	1355.44(d)(6)(xv)
	Prenatal drug exposure	Applies Does not apply	1355.44(d)(6)(xvi)
	Diagnosed condition	Applies Does not apply	1355.44(d)(6)(xvii)
	Inadequate access to mental health services	Applies Does not apply	1355.44(d)(6)(xviii)
	Inadequate access to medical services	Applies Does not apply	1355.44(d)(6)(xix)
	Child behavior problem	Applies Does not apply	1355.44(d)(6)(xx)
	Death of caretaker	Applies Does not apply	1355.44(d)(6)(xxi)
	Incarceration of caretaker	Applies Does not apply	1355.44(d)(6)(xxii)
	Caretaker's significant impairment—physical/emotional	Applies Does not apply	1355.44(d)(6)(xxiii)
	Caretaker's significant impairment—cognitive	Applies Does not apply	1355.44(d)(6)(xxiv)
	Inadequate housing	Applies Does not apply	1355.44(d)(6)(xxv)
	Voluntary relinquishment for adoption	Applies Does not apply	1355.44(d)(6)(xxvi)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Child requested placement	Applies Does not apply	1355.44(d)(6)(xxvii)
	Sex trafficking	Applies Does not apply	1355.44(d)(6)(xxviii)
	Parental immigration detention or deportation	Applies Does not apply	1355.44(d)(6)(xxix)
	Family conflict related to child's sexual orientation, gender identity, or gender expression	Applies Does not apply	1355.44(d)(6)(xxx)
	Educational neglect	Applies Does not apply	1355.44(d)(6)(xxxii)
	Public agency title IV-E agreement	Applies Does not apply	1355.44(d)(6)(xxxiii)
	Tribal title IV-E agreement	Applies Does not apply	1355.44(d)(6)(xxxiv)
	Homelessness	Applies Does not apply	1355.44(d)(6)(xxxv)
	Victim of sex trafficking prior to entering foster care	Yes No	1355.44(d)(7)
	Report to law enforcement	Yes No	1355.44(d)(7)(i)
	Date	Date	1355.44(d)(7)(ii)
	Victim of sex trafficking while in foster care	Yes No	1355.44(d)(8)
	Report to law enforcement	Yes No	1355.44(d)(8)(i)
	Date	Date	1355.44(d)(8)(ii)
Living arrangement and provider information	Date of living arrangement	Date	1355.44(e)(1)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Foster family home	Yes No	1355.44(e)(2)
	Foster family home type		1355.44(e)(3)
	Licensed home	Applies Does not apply	1355.44(e)(3)(i)
	Therapeutic foster family home	Applies Does not apply	1355.44(e)(3)(ii)
	Shelter care foster family home	Applies Does not apply	1355.44(e)(3)(iii)
	Relative foster family home	Applies Does not apply	1355.44(e)(3)(iv)
	Pre-adoptive home	Applies Does not apply	1355.44(e)(3)(v)
	Kin foster family home	Applies Does not apply	1355.44(e)(3)(vi)
	Other living arrangement type	Group home-family operated Group home-staff operated Group home-shelter care Residential treatment center Child care institution Child care institution-shelter care Supervised independent living Juvenile justice facility Medical or rehabilitative facility Psychiatric hospital Runaway Whereabouts unknown Placed at home	1355.44(e)(4)
	Private agency living arrangement	Private agency involvement No private agency involvement	1355.44(e)(5)
	Location of living arrangement	Out-of-state or out-of-tribal service area	1355.44(e)(6)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		In-state or in-tribal service area Out-of-country Runaway or whereabouts Unknown	
	Jurisdiction or country where child is living	Name	1355.44(e)(7)
	Available ICWA foster care and pre-adoptive placement preferences		1355.44(e)(8)
	A member of the Indian's extended family	Yes No	1355.44(e)(8)(i)
	A foster home licensed, approved, or specified by the Indian child's tribe	Yes No	1355.44(e)(8)(ii)
	An Indian foster home licensed or approved by an authorized non-Indian licensing authority	Yes No	1355.44(e)(8)(iii)
	An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs	Yes No	1355.44(e)(8)(iv)
	A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)	Yes No	1355.44(e)(8)(v)
	Foster care and pre-adoptive placements preferences under ICWA	A member of the Indian child's extended family A foster home licensed, approved, or specified by the Indian child's tribe An Indian foster home licensed or approved by an	1355.44(e)(9)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		<p>authorized non-Indian licensing authority</p> <p>An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs</p> <p>A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)</p> <p>Placement does not meet ICWA placement preferences</p>	
	Good cause under ICWA	Yes No	1355.44(e)(10)
	Basis for good cause		1355.44(e)(11)
	Request of one or both of the Indian child's parents	Yes No	1355.44(e)(11)(i)
	Request of the Indian child	Yes No	1355.44(e)(11)(ii)
	Unavailability of suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA art 25 U.S.C. 1915 but none has been located	Yes No	1355.44(e)(11)(iii)
	Extraordinary physical, mental or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the	Yes No	1355.44(e)(11)(iv)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	community where families who meet the placement preferences live  Presence of a sibling attachment that can be maintained only through a particular placement	Yes No	1355.44(e)(11)(v)
	Marital status of the foster parents	Married couple Unmarried couple Separated Single adult	1355.44(e)(12)
	Child's relationships to the foster parents	Paternal grandparent(s) Maternal grandparent(s) Other paternal relative(s) Other maternal relative(s) Sibling(s) Non-relative(s) Kin	1355.44(e)(13)
	Year of birth for first foster parent	Date	1355.44(e)(14)
	First foster parent tribal membership	Yes No Unknown	1355.44(e)(15)
	Race of first foster parent  Race—American Indian or Alaska Native Race—Asian  Race—Black or African America Race—Native Hawaiian or Other Pacific Islander Race—White  Race--Unknown  Race—Declined	Yes No Yes No Yes No Yes No Yes No Yes No Yes No	1355.44(e)(16)  1355.44(e)(16)(i) 1355.44(e)(16)(ii)  1355.44(e)(16)(iii) 1355.44(e)(16)(iv) 1355.44(e)(16)(v)  1355.44(e)(16)(vi)  1355.44(e)(16)(vii)
	Hispanic or Latino ethnicity of first foster parent	Yes No Unknown	1355.44(e)(17)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		Declined	
	Gender of first foster parent	Female Male	1355.44(e)(18)
	First foster parent sexual orientation	Straight or heterosexual Gay or lesbian Bisexual Don't know Something else Declined	1355.44(e)(19)
	Yes of birth for second foster parent	Date	1355.44(e)(20)
	Second foster parent tribal membership	Yes No Unknown	1355.44(e)(21)
	Race of second foster parent		1355.44(e)(22)
	Race—American Indian or Alaska Native	Yes No	1355.44(e)(22)(i)
	Race—Asian	Yes No	1355.44(e)(22)(ii)
	Race—Black or African America	Yes No	1355.44(e)(22)(iii)
	Race—Native Hawaiian or Other Pacific Islander	Yes No	1355.44(e)(22)(iv)
	Race—White	Yes No	1355.44(e)(22)(v)
	Race--Unknown	Yes No	1355.44(e)(22)(vi)
	Race—Declined	Yes No	1355.44(e)(22)(vii)
	Hispanic or Latino ethnicity of second foster parent	Yes No Unknown Declined	1355.44(e)(23)
	Gender of second foster parent	Female Male	1355.44(e)(24)
	Second foster parent sexual orientation	Straight or heterosexual Gay or lesbian	1355.44(e)(25)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		Bisexual Don't know Something else Declined	
Permanency planning	Permanency plan	Reunify with parent(s) or legal guardian(s) Live with other relatives Adoption Guardianship Planned permanent living arrangement Permanency plan not established	1355.44(f)(1)
	Date of permanency plan	Date	1355.44(f)(2)
	Date of periodic review	Date	1355.44(f)(3)
	Date of permanency hearing	Date	1355.44(f)(4)
	Juvenile justice	Yes No	1355.44(f)(5)
	Caseworker visit dates	Date	1355.44(f)(6)
	Caseworker visit location	Child's residence Other location	1355.44(f)(7)
	Transition plan	Yes No Not applicable	1355.44(f)(8)
	Date of transition plan	Date	1355.44(f)(9)
	Active efforts		1355.44(f)(10)
	Assist the parent(s) or Indian custodian through the steps of a case plan and with developing the resources necessary to satisfy the case plan	Applies Does not apply	1355.44(f)(10)(i)
	Conduct a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal	Applies Does not apply	1355.44(f)(10)(ii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Identify appropriate services and to help the parent overcome barriers, including actively assisting the parents in obtaining such services	Applies Does not apply	1355.44(f)(10)(iii)
	Identify, notify and invite representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning and resolution of placement issues	Applies Does not apply	1355.44(f)(10)(iv)
	Conduct or cause to be conducted a diligent search for the Indian child's expended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents	Applies Does not apply	1355.44(f)(10)(v)
	Offer and employ all available and culturally appropriate family preservation strategies and facilitate the use of remedial and rehabilitative services provide by the child's tribe	Applies Does not apply	1355.44(f)(10)(vi)
	Take steps to keep siblings together whenever possible	Applies Does not apply	1355.44(f)(10)(vii)
	Support regular visits with parents or Indian custodians in the most natural setting possible as	Applies Does not apply	1355.44(f)(10)(viii)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child		
	Identify community resources including housing, financial, transportation, mental health, substance use and peer support services and actively assisting the Indian child's parents or when appropriate, the child's family in utilizing and accessing those resources	Applies Does not apply	1355.44(f)(10)(ix)
	Monitor progress and participation in services	Applies Does not apply	1355.44(f)(10)(x)
	Consider alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available	Applies Does not apply	1355.44(f)(10)(xi)
	Provide post-reunification services and monitoring	Applies Does not apply	1355.44(f)(10)(xii)
	Other active efforts tailored to the facts and circumstances of the case	Applies Does not apply	1355.44(f)(10)(xiii)
General exit information	Date of exit	Date	1355.44(g)(1)
	Exit transaction date	Date	1355.44(g)(2)
	Exit reason	Not applicable Reunify with parent(s)/legal guardian(s) Live with other relatives Adoption	1355.44(g)(3)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		Emancipation Guardianship Runaway or whereabouts unknown Death of child Transfer to another agency	
	Transfer to another agency	State title IV-E agency Tribal title IV-E agency Indian tribe or tribal agency (non IV-E) Juvenile justice agency Mental health agency Other public agency Private agency	1355.44(g)(4)
Exit to adoption and guardianship information	Marital status of adoptive parent(s) or guardian(s)	Married couple Married but individually adopting or obtaining legal guardianship Separated Unmarried couple Single adult	1355.44(h)(1)
	Child's relationship to the adoptive parent(s) or guardian(s)		1355.44(h)(2)
	Paternal grandparent(s)	Applies Does not apply	1355.44(h)(2)(i)
	Maternal grandparent(s)	Applies Does not apply	1355.44(h)(2)(ii)
	Other paternal relative(s)	Applies Does not apply	1355.44(h)(2)(iii)
	Other maternal relative(s)	Applies Does not apply	1355.44(h)(2)(iv)
	Sibling(s)	Applies Does not apply	1355.44(h)(2)(v)
	Kin	Applies Does not apply	1355.44(h)(2)(vi)
	Non-relative(s)	Applies Does not apply	1355.44(h)(2)(vii)
	Foster parent(s)	Applies Does not apply	1355.44(h)(2)(viii)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Date of birth of first adoptive parent or guardian	Date	1355.44(h)(3)
	First adoptive parent or guardian tribal membership	Yes No Unknown	1355.44(h)(4)
	Race of first adoptive parent or guardian		1355.44(h)(5)
	Race—American Indian or Alaska Native	Yes No	1355.44(h)(5)(i)
	Race—Asian	Yes No	1355.44(h)(5)(ii)
	Race—Black or African America	Yes No	1355.44(h)(5)(iii)
	Race—Native Hawaiian or Other Pacific Islander	Yes No	1355.44(h)(5)(iv)
	Race—White	Yes No	1355.44(h)(5)(v)
	Race--Unknown	Yes No	1355.44(h)(5)(vi)
	Race—Declined	Yes No	1355.44(h)(5)(vii)
	Hispanic or Latino ethnicity of first adoptive parent or guardian	Yes No Unknown Declined	1355.44(h)(6)
	Gender of first adoptive parent or guardian	Female Male	1355.44(h)(7)
	First adoptive parent or legal guardian sexual orientation	Straight or Heterosexual Gay or lesbian Bisexual Don't know Something else Declined	1355.44(h)(8)
	Date of birth of second adoptive parent, guardian or other member of the couple	Date	1355.44(h)(9)
	Second adoptive parent, guardian, or other member of the couple tribal membership	Yes No Unknown	1355.44(h)(10)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
	Race of second adoptive parent, guardian, or other member of the couple		1355.44(h)(11)
	Race—American Indian or Alaska Native	Yes No	1355.44(h)(11)(i)
	Race—Asian	Yes No	1355.44(h)(11)(ii)
	Race—Black or African America	Yes No	1355.44(h)(11)(iii)
	Race—Native Hawaiian or Other Pacific Islander	Yes No	1355.44(h)(11)(iv)
	Race—White	Yes No	1355.44(h)(11)(v)
	Race--Unknown	Yes No	1355.44(h)(11)(vi)
	Race—Declined	Yes No	1355.44(h)(11)(vii)
	Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple	Yes No Unknown Declined	1355.44(h)(12)
	Gender of second adoptive parent, guardian, or other member of the couple	Female Male	1355.44(h)(13)
	Second adoptive parent, guardian, or other member of the couple sexual orientation	Straight or heterosexual Gay or lesbian Bisexual Don't know Something else Declined	1355.44(h)(14)
	Inter/Intrajurisdictional adoption or guardianship	Interjurisdictional adoption or guardianship Intercountry adoption or guardianship Intrajurisdictional adoption or guardianship	1355.44(h)(15)
	Interjurisdictional adoption or guardianship jurisdiction	Name	1355.44(h)(16)
	Adoption or guardianship placing agency	Title IV-E agency Private agency under agreement	1355.44(h)(17)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		Indian tribe under contract/agreement	
	Assistance agreement type	Title IV-E adoption assistance agreement State/tribal adoption assistance agreement Adoption-Title IV-E agreement non-recurring expenses only Adoption-Title IV-E agreement Medicaid only Title IV-E guardianship assistance agreement State/tribal guardianship assistance agreement No agreement	1355.44(h)(18)
	Siblings in adoptive or guardianship home	Number	1355.44(h)(19)
	Available ICWA adoptive placements		1355.44(h)(20)
	A member of the Indian child's extended family	Yes No	1355.44(h)(20)(i)
	Other members of the Indian child's tribe	Yes No	1355.44(h)(20)(ii)
	Other Indian families	Yes No	1355.44(h)(20)(iii)
	A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)	Yes No	1355.44(h)(20)(iv)
	Adoption placement preferences under ICWA	A member of the Indian child's extended family Other members of the Indian child's tribe Other Indian families A placement that complies with the order of preference for adoptive placements established by	1355.44(h)(21)



**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Category	Element	Reponses Options	Section Citation
		an Indian child's tribe, in accordance with 25 U.S.C. 1915(c) Placement does not meet ICWA placement preferences	
	Good cause under ICWA	Yes No	1355.44(h)(22)
	Basis for good cause		1355.44(h)(23)
	Request of one or both of the child's parents	Yes No	1355.44(h)(23)(i)
	Request of the Indian child	Yes No	1355.44(h)(23)(ii)
	The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located	Yes No	1355.44(h)(23)(iii)
	The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live	Yes No	1355.44(h)(23)(iv)
	The presence of a sibling attachment that can be maintained only through a particular placement	Yes No	1355.44(h)(23)(v)

**List Data Elements (45 CFR 1355.44-.45)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

**Adoption and Guardianship Assistance Data Elements – 45 CFR 1355.45**

<b>Data Element</b>	<b>Reponses Options</b>	<b>Section Citation</b>
Title IV-E agency	Name	1355.45(a)(1)
Report date	Date	1355.45(a)(2)
Child record number	Number	1355.45(a)(3)
Child's date of birth	Date	1355.45(b)(1)
Child's gender	Male Female	1355.45(b)(2)
Child's race		1355.45(b)(3)
Race—American Indian or Alaska Native	Yes No	1355.45(b)(3)(i)
Race—Asian	Yes No	1355.45(b)(3)(ii)
Race—Black or African America	Yes No	1355.45(b)(3)(iii)
Race—Native Hawaiian or Other Pacific Islander	Yes No	1355.45(b)(3)(iv)
Race—White	Yes No	1355.45(b)(3)(v)
Race--Unknown	Yes No	1355.45(b)(3)(vi)
Race—Abandoned	Yes No	1355.45(b)(3)(vii)
Race—Declined	Yes No	1355.45(b)(3)(viii)
Hispanic or Latino Ethnicity	Yes No Unknown Abandoned Declined	1355.45(b)(4)
Assistance agreement type	Title IV-E adoption assistance agreement Title IV-E guardianship assistance agreement	1355.45(c)(1)
Subsidy amount	Number	1355.45(c)(2)
Adoption finalization or guardianship legalization date	Date	1355.45(d)
Agreement termination date	Date	1355.45(e)

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

1355.44 (a) General information.

1. IV-E Agency

Indicate the title IV-E agency responsible for submitting the AFCARS data in a format according to ACF's specifications.

2. Report date

The report date corresponds with the end of the report period. Indicate the last month and the year of the report period.

3. Local agency

Indicate the local county, jurisdiction or equivalent unit that has primary responsibility for the child in a format according to ACF's specifications.

4. Child's Record number

Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the title IV-E agency in out-of-home care and across all report periods and episodes. The title IV-E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(b) Child information

5. (b.1) Child's date of birth.

Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

6. (b.2.i) Child's gender

Indicate whether the child is "male" or "female," as appropriate.

7. (b.2.ii) Child's sexual orientation

For children age 14 and older, indicate whether the child self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "decline," if the child declined to provide the information. Indicate "not applicable" for children age 13 and under.

(b.3) Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.

For state title IV-E agencies only: Indicate whether the state title IV-E agency researched whether there is reason to know that the child is an Indian child as defined in ICWA in each paragraph (b)(3)(i) through (b)(3)(vii) below.

8. (b.3.i)

Indicate whether the state title IV-E agency inquired with the child's biological or adoptive mother. Indicate "yes," "no" or "the biological or adoptive mother is deceased."

9. (b.3.ii)



**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>Indicate whether the state title IV-E agency inquired with the child's biological or adoptive father. Indicate "yes," "no," or "the biological or adoptive father is deceased."  10. (b.3.iii)</p>
<p>Indicate whether the state title IV-E agency inquired with the child's Indian custodian, if the child has one. Indicate "yes," "no," or "child does not have an Indian custodian."  11. (b.3.iv)</p>
<p>Indicate whether the state title IV-E agency inquired with the child's extended family. Indicate "yes" or "no."  12 (b.3.v)</p>
<p>Indicate whether the state title IV-E agency inquired with the child who is the subject of the proceeding. Indicate "yes" or "no."  13. (b.3.vi)</p>
<p>Indicate whether the child is a member of or eligible for membership in an Indian tribe. Indicate "yes," "no," or "unknown."  14.(b.3.vii)</p>
<p>Indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. Indicate "yes," "no," or "unknown."  15. (b.4) Application of ICWA.</p>
<p>For state title IV-E agencies only: Indicate whether the state title IV-E agency knows or has reason to know, that the child is an Indian child as defined in ICWA. Indicate "yes" or "no."  If the state title IV-E agency indicated "yes," then the state title IV-E agency must complete paragraphs (b)(4)(i) and (b)(4)(ii).  If the state title IV-E agency indicated "no," then the state title IV-E agency must leave paragraphs (b)(4)(i) and (b)(4)(ii) of this section blank.</p>
<p>16. (b.4.i)</p>
<p>Indicate the date that the state title IV-E agency first discovered the information indicating the child is or may be an Indian child as defined in ICWA.  17. (b.4.ii)</p>
<p>Indicate all federally recognized Indian tribe (s) that may potentially be the Indian child's tribe(s). The title IV-E agency must submit the information in a format according to ACF's specifications.  18. (b.5) Court determination that ICWA applies</p>
<p>For state title IV-E agencies only: Indicate whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 C.F.R. 23.107(b)(2). Indicate "yes, ICWA applies," "no, ICWA does not apply," or "no court determination."</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>If the state title IV-E agency indicated “yes, ICWA applies,” the state title IV-E agency must complete paragraphs (b)(5)(i) and (b)(5)(ii).</p> <p>If the state title IV-E agency indicated “no, ICWA does not apply” or “no court determination,” the state title IV-E agency must leave paragraphs (b)(5)(i) and (b)(5)(ii) of this section blank.</p>
<p>19. (b.5.i)</p> <p>Indicate the date that the court determined that ICWA applies.</p>
<p>20. (b.5.ii)</p> <p>Indicate the Indian tribe that the court determined is the Indian child’s tribe for ICWA purposes. The title IV-E agency must submit the information in a format according to ACF’s specifications.</p>
<p>(b.6) Notification.</p> <p>State title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), the state title IV-E agency must complete paragraphs (b)(6)(i) through (b)(6)(iii). Otherwise, leave paragraphs (b)(6)(i) through (b)(6)(iii) blank.</p>
<p>21. (b.6.i)</p> <p>Indicate whether the Indian child’s parent or Indian custodian was sent legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate “yes” or “no.”</p>
<p>22. (b.6.ii)</p> <p>Indicate whether the Indian child’s tribe(s) was sent legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate “yes”, “no” or “the child’s Indian tribe is unknown.”</p>
<p>23. (b.6.iii)</p> <p>Indicate the Indian tribe(s) that were sent notice for a child custody proceeding as required in ICWA at 25 U.S.C. 1912(a). The title IV-E agency must report the information in a format according to ACF’s specifications.</p>
<p>24. (b.7) Request to transfer to tribal court.</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), indicate whether either parent, the Indian custodian, or the Indian child’s tribe requested, orally on the record or in writing, that the state court transfer a foster-care or termination-of-parental rights proceeding to the jurisdiction of the Indian child’s tribe, in accordance with 25 U.S.C. 1911(b), at any point during the report period. Indicate “yes” or “no.” If the state title IV-E agency indicated “yes,” then the state title IV-E agency must complete paragraph (b)(8) of this section. If the state title IV-E agency indicated “no,” the state title IV-E agency must leave paragraph (b)(8) of this section blank.</p>
<p>25. (b.8) Denial of transfer</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(7), indicate whether the state court denied the request to transfer the case to tribal jurisdiction. Indicate “yes” or “no.” If the state title IV-E agency indicated “yes,” then the state title IV-E agency must indicate in paragraphs (b)(8)(i) through (b)(8)(iii) whether each reason for denial “applies” or “does not apply.” Otherwise leave these paragraphs blank.</p>
<p>26. (b.8.i)</p> <p>Either of the parents objected to transferring the case to the tribal court.</p>
<p>27. (b.8.ii)</p> <p>The tribal court declined the transfer to the tribal court.</p>
<p>28. (b.8.iii)</p> <p>The state court determined good cause exists for denying the transfer to the tribal court.</p>
<p>(b.9) Child's race.</p> <p>In general, a child's race is determined by the child, the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(9)(i) through (b)(9)(viii) of this section applies with a “yes” or “no.”</p>
<p>29. (b.9.i) Race: American Indian or Alaska Native</p> <p>An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.</p>
<p>30. (b.9.ii) Race: Asian</p> <p>An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.</p>
<p>31. (b.9.iii) Black or African American</p> <p>A Black or African American child has origins in any of the black racial groups of Africa.</p>
<p>32. (b.9.iv) Native Hawaiian or other Pacific Islander</p> <p>A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.</p>
<p>33. (b.9.v) Race: White</p> <p>A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.</p>
<p>34. (b.9.vi) Unknown</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

The child or parent or legal guardian does not know or is unable to communicate the race, or at least one race of the child.
35. (b.9.vii) Race: Abandoned
The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."
36. (b.9.viii) Race: Declined
The child or parent(s) or legal guardian(s) has declined to identify a race.
37. (b.10) Hispanic/Latino origin
A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin.
38. (b.11.i) Health assessment
Indicate whether the child had a health assessment during the current out-of-home care episode. This assessment could include an initial health screening or any follow-up health screening per section 422(b)(15)(A) of the Act. Indicate "yes" or "no." If the title IV-E agency indicated "yes," the title IV-E must complete paragraphs (b)(11)(ii) and (b)(12); otherwise leave paragraphs (b)(11)(ii) and (b)(12) blank.
39. (b.11.ii) Date of health assessment
Indicate the month, day, and year of the child's most recent health assessment, if the title IV-E agency reported "yes" in paragraph (b)(11)(i); otherwise leave this paragraph blank.
40. (b.12) Timely Health Assessment
Indicate whether the date reported in paragraph (b)(11)(ii) is within the timeframes for initial and follow-up health screenings established by the title IV-E agency per section 422(b)(15)(A) of the Act. Indicate "yes" or "no." If the title IV-E agency reported "no" in paragraph (b)(11)(i), the title IV-E agency must leave this paragraph blank.
41 (b.13) Health, behavioral or mental health conditions
Indicate whether the child was diagnosed by a qualified professional, as defined by the state or tribe, as having a health, behavioral or mental health condition listed below, prior to or during the child's current out-of-home care episode as of the last day of the report period. Indicate "child has a diagnosed condition" if a qualified professional has made such a diagnosis and for each data element described in paragraphs (b)(13)(i) through (b)(13)(xii) of this section indicate "existing condition," "previous condition" or "does not apply," as applicable. Indicate "no exam or assessment conducted" if a qualified professional has not conducted a medical exam or assessment of the child and leave paragraphs (b)(13)(i) through (b)(13)(xii) blank. Indicate "exam or assessment conducted and none of the conditions apply" if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed below and leave paragraphs (b)(13)(i) through (b)(13)(xii) blank. Indicate "exam or assessment conducted but results not received" if a qualified professional has conducted a medical exam or assessment but the title IV-E agency has not yet received the results of such an exam or assessment and leave paragraphs (b)(13)(i) through (b)(13)(xii) blank.
42. (b.13.i) Intellectual disability

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

The child has, or had previously, significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect the child's socialization and learning.

43. (b.13.ii) Autism spectrum disorder

The child has, or had previously, a neurodevelopment disorder, characterized by social impairments, communication difficulties, and restricted, repetitive, and stereotyped patterns of behavior. This includes the range of disorders from autistic disorder, sometimes called autism or classical autism spectrum disorder, to milder forms known as Asperger syndrome and pervasive developmental disorder not otherwise specified.

44. (b.13.iii) Visual impairment and blindness

The child has, or had previously, a visual impairment that may adversely affects the day-to-day functioning or educational performance, such as blindness, amblyopia, or color blindness.

45. (b.13.iv) Hearing impairment and deafness

The child has, or had previously, an impairment in hearing, whether permanent or fluctuating, that adversely affects the child's day-to-day functioning and educational performance.

46. (b.13.v) Orthopedic impairment or other physical condition

The child has, or had previously, a physical deformity, such as amputations and fractures or burns that cause contractures, or an orthopedic impairment, including impairments caused by a congenital anomalies or disease, such as cerebral palsy, spina bifida, multiple sclerosis, or muscular dystrophy.

47. (b.13.vi) Mental/emotional disorders

The child has, or had previously, one or more mood or personality disorders or conditions over a long period of time and to a marked degree, such as conduct disorder, oppositional defiant disorder, emotional disturbance, anxiety disorder, obsessive-compulsive disorder, or eating disorder.

48. (b.13.vii) Attention deficit hyperactivity disorder.

The child has, or had previously, a diagnosis of the neurobehavioral disorders of attention deficit or hyperactivity disorder (ADHD) or attention deficit disorder (ADD).

49. (b.13.viii) Serious mental disorders

The child has, or had previously, a diagnosis of a serious mental disorder or illness, such as bipolar disorder, depression, psychotic disorders, or schizophrenia.

50. (b.13.ix) Developmental delay

The child has been assessed by appropriate diagnostic instruments and procedures and is experiencing delays in one or more of the following areas: physical development or motor skills, cognitive development, communication, language, or speech development, social or emotional development, or adaptive development.

51. (b.13.x) Developmental disability

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

The child has, or had previously been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402), section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely and results in substantial functional limitations in three or more areas of major life activity. Areas of major life activity include: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance that are of lifelong or **extended duration and are individually planned and coordinated**. **If a child is given the diagnosis of "developmental disability," do not indicate the individual conditions that form the basis of this diagnosis separately.**

52. (b.13.xi) Other diagnosed condition

The child has, or had previously, a diagnosed condition or other health impairment other than those described above, which requires special medical care, such as asthma, diabetes, chronic illnesses, a diagnosis as HIV positive or AIDS, epilepsy, traumatic brain injury, other neurological disorders, speech/language impairment, learning disability, or substance abuse issues.

53. (b.14) School enrollment

Indicate whether the child is a full-time student at and enrolled in (or in the process of **enrolling in**) "**elementary**" or "**secondary**" education, or is a **full or part-time** student at and **enrolled in "post-secondary education or training" or "college," as of the earlier of the last day of the report period or the day of exit** for a child exiting out-of-home care prior to the end of the report period. A child is still considered enrolled in school if the child would otherwise be enrolled in a school **that is currently out of session**. An "**elementary or secondary school student**" is defined in section 471(a)(30) of the Act as a child that is: enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the state or other jurisdiction in which the institution is located; instructed in elementary or secondary education at home in accordance with a home school law of the state or other jurisdiction in which the home is located; in an independent study elementary or secondary education program in accordance with the law of the state or other jurisdiction in which the program is located, which is administered by the local school or school district; or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by a regularly updated information in the case plan of the child. Enrollment in "**post-secondary education or training**" refers to **full or part-time** enrollment in any post-secondary education or training, other than an education pursued at a college or university. Enrollment in "**college**" refers to a child that is enrolled **full or part-time** at a college or university. **If child has not reached compulsory school age, indicate "not school-age."** **If the child has reached compulsory school-age, but is not enrolled or is in the process of enrolling in any school setting full-time, indicate "not enrolled."**

54. (b.15) Educational level

Indicate the highest educational level from kindergarten to college or post-secondary education/training completed by the child as of the last day of the report period. If child has not reached compulsory school-age, indicate "**not school-age**." Indicate "**kindergarten**" if the child is currently in or about to begin 1st grade. Indicate "**1st grade**" if the child is currently in or about to begin 2nd grade. Indicate "**2nd grade**" if the child is currently in or about to begin 3rd grade. Indicate "**3rd grade**" if the child is currently in or about to begin 4th grade. Indicate "**4th grade**" if the child is currently in or about to begin 5th grade. Indicate "**5th grade**" if the child is currently in or about to begin 6th grade. Indicate "**6th grade**" if the child is currently in or about to begin 7th grade. Indicate "**7th grade**" if the child is currently in or about to begin 8th grade. Indicate "**8th grade**" if the child is currently in or about to begin 9th grade. Indicate "**9th grade**" if the child is currently in or about to begin 10th grade. Indicate "**10th grade**" if the child is currently in or about to begin 11th grade. Indicate "**11th grade**" if the child is currently in or about to begin 12th grade. Indicate "**12th grade**" if the child has graduated from high school. Indicate "**GED**" if the child has completed a general equivalency degree or other high school equivalent. Indicate "**Post-secondary education or training**" if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Indicate "**College**" if the child has completed at least a semester of study at a college or university.



**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

55. (b.16) Educational stability
Indicate if the child is enrolled or is in the process of enrolling in a new elementary or secondary school prompted by an initial placement after entry into foster care or a placement change <b>during the report period</b> with “yes” or “no” as appropriate. If “yes,” indicate which of the applicable reason(s) for the change in enrollment as described in paragraphs (b)(16)(i) through (b)(16)(vii) of this section “applies” or “does not apply;” if “no,” the title IV-E agency must leave those data elements blank.
56. (b.16.i) Proximity
The child enrolled in a new school because of the distance to his or her former school.
57. (b.16.ii) District/zoning rules
The child enrolled in a new school because county or jurisdictional law or regulations prohibited attendance at former school.
58. (b.16.iii) Residential facility
The child enrolled in a new school because he or she formerly attended school on the campus of a residential facility.
59. (b.16.iv) Services/programs
The child enrolled in a new school to participate in services or programs (academic, behavioral or supportive services) not offered at former school.
60. (b.16.v) Child request
The child enrolled in a new school because he or she requested to leave former school and enroll in new school.
61. (b.16.vi) Parent/Legal Guardian request
The child enrolled in a new school because his or her parent(s) or legal guardian(s) requested for the child to leave the former school and enroll in a new school.
62. (b.16.vii) Other
The child enrolled in a new school for a reason other than those detailed in paragraphs (b)(13)(i) through (b)(13)(vi) of this section.
(b.17) Pregnant or parenting
63. (b.17.i)
Indicate whether the child is <b>pregnant as of the end of the report period</b> . Indicate “yes” or “no.”
64. (b.17.ii)
Indicate whether the child has ever fathered or bore a child. Indicate “yes” or “no.”
65. (b.17.iii)

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Indicate whether the child and his/her child(ren) are placed **together** at any point during the report period, if the response in paragraph (b)(17)(ii) is “yes.” Indicate “yes,” “no,” or “not applicable” if the response in paragraph (b)(17)(ii) is “no.”

66. (b.18) Special education

Indicate whether the child has an Individualized Education Program (IEP) as defined in section 614(d)(1) of Part B of Title I of the Individuals with Disabilities Education Act (IDEA) and implementing regulations, or an Individualized Family Service Program (IFSP) as defined in section 636 of Part C of Title I of IDEA and implementing regulations, as **of the end of the report period**. Indicate “yes” if the child has either an IEP or an IFSP or “no” if the child has neither.

67. (b.19) Prior adoption(s)

Indicate whether the child experienced a prior legal adoption before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another country and tribal customary adoptions. Indicate “yes,” “no” or “abandoned” if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal adoption, the title IV-E agency must complete paragraphs (b)(19)(i) and (b)(19)(ii); otherwise the title IV-E agency must leave those data elements blank.

#68. (b.19.i) Prior adoption date

Indicate the month and year that the most recent prior adoption was finalized. In the case of a prior intercountry adoption where the adoptive parent(s) readopted the child in the United States, the title IV-E agency must provide the date of the adoption (either the original adoption in the home country or the re-adoption in the United States) that is considered final in accordance with applicable laws.

69. (b.19.ii) Prior adoption intercountry

Indicate whether the child’s most recent prior adoption was an intercountry adoption, meaning that the child’s prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “yes” or “no.”

70. (b.20i) Prior Guardianship

Indicate whether the child experienced a prior legal guardianship before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(7) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, **custody, and decision making**. Indicate “yes,” “no,” or “abandoned” if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal guardianship, the title IV-E agency must complete paragraph (b)(20)(ii); otherwise the title IV-E agency must leave it blank.

71. (b20.ii) Prior guardianship date

Indicate the month and year that the most recent prior guardianship became legalized.

72. (b.21) Child financial and medical assistance

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>Indicate whether the child received financial and medical assistance at any point during the six-month report period. Indicate "child has received support/assistance" if the child was the recipient of such assistance during the report period, and indicate which of the following sources of support described in paragraphs (b)(21)(i) through (b)(21)(xiii) of this section "applies" or "does not apply." Indicate "no support/assistance received" if none of these apply.</p>
<p>#73. (b.21.i) SSI or Social Security benefits</p> <p>The child is receiving support from Supplemental Security Income (SSI) or other Social Security benefits under title II or title XVI of the Act.</p>
<p>#74. (b.21.ii) Title XIX Medicaid</p> <p>The child is eligible for and may be receiving assistance under the state's title XIX program for medical assistance, including any benefits through title XIX waivers or demonstration programs.</p>
<p>#75. (b.21.iii) Title XXI SCHIP</p> <p>The child is eligible for and receiving assistance under a state's Children's Health Insurance Program (SCHIP) under title XXI of the Act, including any benefits under title XXI waivers or demonstration programs.</p>
<p>#76. (b.21.iv) State/Tribal adoption assistance</p> <p>The child is receiving an adoption subsidy or other adoption assistance paid for solely by the state or Indian tribe.</p>
<p>#77. (b.21.v) State/Tribal foster care</p> <p>The child is receiving a foster care payment that is solely funded by the state or Indian tribe.</p>
<p>#78. (b.21.vi) Child support</p> <p>Child support funds are being paid to the title IV-E agency for the benefit of the child by assignment from the receiving parent.</p>
<p>#79. (b.21.vii) Title IV-E adoption subsidy</p> <p>The child is determined eligible for a title IV-E adoption assistance subsidy.</p>
<p>#80. (b.21.viii) Title IV-E guardianship assistance</p> <p>The child is determined eligible for a title IV-E guardianship assistance subsidy.</p>
<p>#81. (b.21.ix) Title IV-A TANF</p> <p>The child is living with relatives who are receiving a Temporary Assistance for Needy Families (TANF) cash assistance payment on behalf of the child.</p>
<p>#82. (b.21.x) Title IV-B</p> <p>The child's living arrangement is supported by funds under title IV-B of the Act.</p>
<p>#83. (b.21.xi) SSBG</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>The child's living arrangement is supported by funds under title XX of the Act.</p> <p>#84. (b.21.xii) Chafee Foster Care Independence Program.</p>
<p>The child is living independently and is supported by funds under the John F. Chafee Foster Care Independence Program.</p> <p>#85. (b.21.xiii) Other</p>
<p>The child is receiving financial support from another source not previously listed above.</p> <p>#86. (b.22) Title IV-E foster care during report period</p> <p>Indicate whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period that is claimed under title IV-E foster care with a <b>"yes"</b> or <b>"no," as appropriate. Indicate "yes" if the child has met all eligibility requirements</b> of section 472(a) of the Act and the title IV-E agency has claimed, or intends to claim, Federal reimbursement for foster care maintenance payments made on the child's behalf during the report period.</p>
<p>#87. (b.23) Total Number of siblings</p> <p>Indicate the total number of siblings of the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must indicate <b>"0."</b> If the title IV-E agency indicates <b>"0,"</b> the title IV-E agency must leave paragraphs (b)(24) and (b)(25) blank.</p>
<p>#88. (b.24) Siblings in foster care</p> <p>Indicate the number of siblings of the child who are in foster care as defined in section 1355.20. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must leave this paragraph blank. If the child has siblings, but they are not in foster care as defined in section 1355.20, the title IV-E agency must indicate <b>"0."</b> If the title IV-E agency reported <b>"0,"</b> leave paragraph (b)(25) blank.</p>
<p>#89. (b.25) Siblings in living arrangement</p> <p>Indicate the number of siblings of the child who are in the same living arrangement as the child, on the last day of the report period. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must leave this paragraph blank. If the child has siblings, but they are not in the same living arrangement as the child, the title IV-E agency must indicate <b>"0."</b></p>
<p>(c) Parent or legal guardian information</p>
<p>#90. (c.1) Year of birth of first parent or legal guardian</p> <p>If applicable, indicate the year of birth of the first parent (biological, legal or adoptive) or legal guardian of the child. To the extent that a child has both a parent and a legal guardian, or two different sets of legal parents, the title IV-E agency must report on those who had legal responsibility for the child. We are not seeking information on putative parent(s) in this paragraph. If there is only one parent or legal guardian of the child, that person's year of birth must be reported here. If the child was abandoned indicate <b>"abandoned."</b> Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. <b>This includes a child left at a "safe haven."</b></p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

#91. (c.2) Year of birth of second parent or legal guardian

If applicable, indicate the year of birth of the second parent (biological, legal or adoptive) or legal guardian of the child. We are not seeking information on putative parent(s) in **this paragraph**. **If the child was abandoned, indicate "abandoned."** Abandoned means that the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." Indicate "not applicable" if there is not another parent or legal guardian.

#92. (c.3) Tribal membership mother

For state title IV-E agencies only, indicate whether the biological or adoptive mother is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

#93. (c.4) Tribal membership father

For state title IV-E agencies only, indicate whether the biological or adoptive father is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

#94. (c.5) Termination/modification of parental rights.

Indicate whether the termination/modification of parental rights for each parent (biological, legal and/or putative) was voluntary or involuntary. Voluntary means the parent voluntarily relinquished their parental rights to the title IV-E agency, with or without court involvement. Indicate "voluntary" or "involuntary." Indicate "not applicable" if there was no termination/modification and leave paragraphs (c)(5)(i), (c)(5)(ii), (c)(6) and (c)(7) blank.

#95. (c.5.i) Termination/modification of parental rights petition

Indicate the month, day and year that each petition to terminate/modify the parental rights of a biological, legal and/or putative parent was filed in court, if applicable. Indicate "deceased" if the parent is deceased.

#96. (c.5.ii) Termination/modification of parental rights

Enter the month, day and year that the parental rights were voluntarily or involuntarily terminated/modified, for each biological, legal and/or putative parent, if applicable. If the parent is deceased, enter the date of death.

(c.6) Involuntary termination/modification of parental rights under ICWA

For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), and indicated "involuntary" to paragraph (c)(5), the state title IV-E agency must complete paragraphs (c)(6)(i) through (c)(6)(iii).

#97. (c.6i)

Indicate whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). Indicate with "yes" or "no."

#98. (c.6.ii)

Indicate whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f). Indicate "yes" or "no."

#99. (c.6.iii)

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>Indicate whether prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were <b>unsuccessful in accordance with 25 U.S.C. 1912(d)</b>. Indicate “yes” or “no.”</p>
<p>#100. (c.7) Voluntary termination/modification of parental rights under ICWA</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), and indicated “voluntary” to paragraph (c)(5), indicate whether the consent to termination of parental or Indian custodian rights was executed in writing and recorded before a court of competent jurisdiction with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in <b>accordance with 25 CFR 23.125(a) and (c)</b>. Indicate “yes” or “no.”</p>
<p>(d) Removal Information</p>
<p><b>#101. (d.1) Date of child’s removal</b></p> <p>Indicate the removal date(s) in month, day and year format for each removal of a child who enters the placement and care responsibility of the title IV-E agency. For a child who is removed and is placed initially in foster care, indicate the date that the title IV-E agency received placement and care responsibility. For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV-E agency, indicate the date that the title IV-E agency received placement and care responsibility. For a child who is removed and is placed initially in a non-foster care setting, indicate the date that the child enters foster care as the date of removal.</p>
<p>#102. (d.2) Removal transaction date</p> <p>A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) of this section was entered into the information system.</p>
<p>(d.3) Removals under ICWA</p> <p>For state title IV-E agencies: If the state title IV-E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), the state title IV-E agency must complete paragraphs (d)(3)(i) through (d)(3)(iii) for each removal reported in paragraph (d)(1) of this section.</p>
<p>103. (d.3.i)</p> <p>Indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the <b>Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a)</b>. Indicate “yes” or “no.”</p>
<p>104. (d.3.ii)</p> <p>Indicate whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) included the testimony of a qualified expert witness in accordance with <b>25 U.S.C. 1912(e) and 25 CFR 121(a)</b>. Indicate “yes” or “no.”</p>
<p>105. (d.3.iii)</p>



**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>Indicate whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) indicates that prior to each removal reported in paragraph (d)(1) that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate “yes” or “no.”</p>
<p>#106. (d.4) Environment at removal</p> <p>Indicate the type of environment (household or facility) the child was living in at the time of each removal for each removal reported in paragraph (d)(1) of this section. Indicate “parent household” if the child was living in a household that included one or both of the child’s parents, whether biological, adoptive or legal. Indicate “relative household” if the child was living with a relative(s), the relative(s) is not the child’s legal guardian and neither of the child’s parents were living in the household. Indicate “legal guardian household” if the child was living with a legal guardian(s), the guardian(s) is not the child’s relative and neither of the child’s parents were living in the household. Indicate “relative legal guardian household” if the child was living with a relative(s) who is also the child’s legal guardian. Indicate “justice facility” if the child was in a detention center, jail or other similar setting where the child was detained. Indicate “medical/mental health facility” if the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. Indicate “other” if the child was living in another situation not so described, such as living independently or homeless.</p>
<p>#107. (d.5) Authority for placement and care responsibility</p> <p>Indicate the title IV-E agency’s authority for placement and care responsibility of the child for each removal reported in paragraph (d)(1) of this section. “Court ordered” means that the court has issued an order that is the basis for the title IV-E agency’s placement and care responsibility. “Voluntary placement agreement” means that an official voluntary placement agreement has been executed between the parent(s), legal guardian(s), or child age 18 or older and the title IV-E agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in out-of-home care. “Not yet determined” means that a voluntary placement agreement has not been signed or a court order has not been issued. When either a voluntary placement agreement is signed or a court order issued, the record must be updated from “not yet determined” to the appropriate response option to reflect the title IV-E agency’s authority for placement and care responsibility at that time.</p>
<p>(d.6) Child and family circumstances at removal</p> <p>Indicate all child and family circumstances that were present at the time of the child’s removal and/or related to the child being placed into foster care for each removal reported in paragraph (d)(1) of this section. Indicate whether each circumstance listed in the data elements described in paragraphs (d)(6)(i) through (d)(6)(xxxiii) “applies” or “does not apply” for each removal indicated in paragraph (d)(1) of this section.</p>
<p>#108. (d.6.i) Runaway</p> <p>The child has left, without authorization, the home or facility where the child was residing.</p>
<p>#109. (d.6.ii) Whereabouts unknown</p> <p>The child’s whereabouts are unknown and the title IV-E agency does not consider the child to have run away.</p>
<p>#110. (d.6.iii) Physical abuse</p> <p>Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child’s welfare.</p>
<p>#111. (d.6.iv) Sexual abuse</p> <p>Alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child’s welfare.</p>
<p>#112. (d.6.v) Psychological or emotional abuse</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child's welfare. #113. (d.6.vi) Neglect
Alleged or substantiated negligent treatment or maltreatment of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person who is responsible for the child's welfare. #114. (d.6.vii) Medical neglect
Alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so. #115. (d.6.viii) Domestic violence
Alleged or substantiated violent act(s), including any forceful detention of an individual, that results in, threatens to result in, or attempts to cause physical injury or mental harm. <b>This is committed by a person against another individual residing in the child's home and with whom such person is in an intimate relationship;</b> dating relationship; is or was related by marriage; or has a child in common. This circumstance includes domestic violence between the child and his or her partner and applies to a child or youth of any age (including those younger and older than the age of majority. This does not include alleged or substantiated maltreatment of the child by a person who is responsible for the child's welfare.
116. (d.6.ix) Abandonment
The child was left alone or with others and the parent or legal guardian's identity is unknown and cannot be ascertained. <b>This includes a child left at a "safe haven."</b> This category does not apply when the identity of the parent(s) or legal guardian(s) is known.
117. (d.6.x) Failure to return
The parent, legal guardian or caretaker did not or has not returned for the child or made his or her whereabouts known. This category does not apply when the identity of the parent, legal guardian or caretaker is unknown.
#118. (d.6.xi) <b>Caretaker's alcohol</b> use
A parent, legal guardian or other caretaker responsible for the child uses alcohol compulsively that is not of a temporary nature.
#119. (d.6.xii) <b>Caretaker's drug</b> use
A parent, legal guardian or other caretaker responsible for the child uses drugs compulsively that is not of a temporary nature.
#120. (d.6.xiii) Child alcohol use
The child uses alcohol.
#121. (d.6.xiv) Child drug use

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

The child uses drugs.
#122. (d.6.xv) Prenatal alcohol exposure
The child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome.
#123.(d.6.xvi).Prenatal drug exposure
The child has been identified as prenatally exposed to drugs.
#124. (d.6.xvii) Diagnosed Condition
The child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition.
#125. (d.6.xviii).Inadequate access to mental health services
The child and/or child's family has inadequate resources to access the necessary mental health services outside of the child's out-of-home care placement.
#126. (d.6.xix) Inadequate access to medical services
The child and/or child's family has inadequate resources to access the necessary medical services outside of the child's out-of-home care placement.
#127. (d.6.xx) Child behavior problem
The child's behavior in his or her school and/or community adversely affects his or her socialization, learning, growth and/or moral development. This includes all child behavior problems, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.
#128. (d.6.xxi) Death of caretaker
Existing family stress in caring for the child or an inability to care for the child due to the death of a parent, legal guardian or other caretaker.
#129. (d.6.xxii) Incarceration of caretaker
The child's parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his or her ability to care for the child.
#130. (d.6.xxiii)Caretakers significant impairment – physical/emotional
A physical or emotional illness or disabling condition of the child's parent, legal guardian or caretaker that adversely limits his or her ability to care for the child.
#131. (d.6.xxiv) <b>Caretaker's significant impairment – cognitive</b>
The child's parent, legal guardian or caretaker has cognitive limitations that impact his or her ability to function in areas of daily life, which adversely affect his or her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence.
#132. (d.6.xxv) Inadequate housing

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>The child's or his or her family's housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the child to reside.</p> <p>#133. (d.6.xxvi) Voluntary relinquishment for adoption</p> <p>The child's parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the title IV-E agency, in writing, for the purpose of having the child adopted.</p>
<p>#134. (d.6.xxvii) Child requested placement</p> <p>The child, age 18 or older, has requested placement into foster care.</p>
<p>#135. (d.6.xxiii) Sex trafficking</p> <p>The child is a victim of sex trafficking at the time of removal.</p>
<p>136. (d.6.xxix) Parental immigration detainment or deportation</p> <p>The parent is or was detained or deported by immigration officials.</p>
<p>#137. (d.6.xxx) <b>Family conflict related to child's sexual orientation, gender identity, or gender expression</b></p> <p><b>There is family conflict related to the child's sexual orientation, gender identity, or gender expression. This includes the child's expressed identity or perceived status as lesbian, gay, bisexual, transgender, questioning, queer, or gender non-conforming. This also includes any conflict related to the ways in which a child manifests masculinity or femininity.</b></p>
<p>#138. (d.6.xxxi) Educational Neglect</p> <p>Alleged or substantiated failure of a parent or caregiver to enroll a child of mandatory school age in school or provide appropriate home schooling or needed special educational training, thus allowing the child or youth to engage in chronic truancy.</p>
<p>139. (d.6.xxxii) Public agency title IV-E agreement</p> <p>The child is in the placement and care responsibility of another public agency that has an agreement with the title IV-E agency pursuant to section 472(a)(2)(B) of the Act and on whose behalf title IV-E foster care maintenance payments are made</p>
<p>140 (d.6.xxxiii) Tribal title IV-E agreement</p> <p>The child is in the placement and care responsibility of an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement and on whose behalf title IV-E foster care maintenance payments are made.</p>
<p>141. (d.6.xxxiv) Homelessness</p> <p>The child or his or her family has no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.</p>
<p>142 (d.7) Victim of sex trafficking prior to entering foster care</p> <p>Indicate whether the child had been a victim of sex trafficking before the current out-of-home care episode. Indicate "yes" if the child was a victim or "no" if the child had not been a victim.</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

143 (d.7.i) Report to Law Enforcement
If the title IV-E agency indicated “yes” in paragraph (d)(7), indicate whether the title IV-E agency made a report to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate “yes” if the agency made a report to law enforcement and indicate “no” if the agency did not make a report.
144. (d.7.ii) Date
If the title IV-E agency indicated “yes” in paragraph (d)(7)(i), indicate the date that the agency made the report to law enforcement.
145. (d.8) Victim of sex trafficking while in foster care
Indicate “yes” if the child was a victim of sex trafficking while in out-of-home care during the current out-of-home care episode. Indicate “no” if the child was not a victim of sex trafficking during the current out-of-home care episode.
#146. (d.8.i) Report to law enforcement
If the title IV-E agency indicated “yes” in this paragraph (d)(8), indicate whether the agency made a report to law enforcement for entry into the NCIC database. Indicate “yes” if the title IV-E agency made a report(s) to law enforcement and indicate “no” if the title IV-E agency did not make a report.
#147 (d.8.ii) Date
If the title IV-E agency indicated “yes” in paragraph (d)(8)(i), indicate the date(s) the agency made the report(s) to law enforcement.
(e) Living arrangement and provider information
#148. (e.1) Date of living arrangement
Indicate the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. In the case of a child who has run away, whose whereabouts are unknown, or who is already in a living arrangement and remains there when the title IV-E agency receives placement and care responsibility, indicate the date of the VPA or court order providing the title IV-E agency with placement and care responsibility for the child, rather than the date when the child was originally placed in the living arrangement.
#149. (e. 2) Foster family home
Indicate whether each of the child's living arrangements is a foster family home, with a “yes” or “no” as appropriate. If the child has run away or the child's whereabouts are unknown, indicate “no.” If the title IV-E agency indicates that the child is living in a foster family home, by indicating “yes,” the title IV-E agency must complete the data element Foster family home type in paragraph (e)(3) of this section. If the title IV-E agency indicates “no,” the title IV-E agency must complete the data element Other living arrangement type in paragraph (e)(4).
(e.3) Foster family home type
If the title IV-E agency indicated that the child is living in a foster family home in the data element described in paragraph (e)(2), indicate whether each foster family home type listed in the data elements in paragraphs (e)(3)(i) through (e)(3)(vi) of this section applies or does not apply; otherwise the title IV-E agency must leave this data element blank.
#150 (e.3.i.) Licensed home

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>The child's living arrangement is licensed or approved by the state or tribal licensing/approval authority.</p> <p>#151. Therapeutic foster family</p>
<p>The home provides specialized care and services.</p> <p>152. Shelter care foster family home</p>
<p>The home is so designated by the state or tribal licensing/approval authority, and is designed to provide short-term or transitional care.</p> <p>#153. Relative foster family</p>
<p>The foster parent(s) is related to the child by biological, legal or marital connection and the relative foster parent(s) lives in the home as his or her primary residence.</p> <p>#154. Pre-adopt home</p>
<p>The home is one in which the family and the title IV-E agency have agreed on a plan to adopt the child.</p> <p>#155. Kin foster family home</p>
<p>The home is one in which there is a kin relationship as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.</p> <p>#156. (e.4) Other living arrangement type</p> <p>If the title IV-E agency indicated that the child's living arrangement is other than a foster family home in the data element Foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise the title IV-E agency must leave this data element blank. <b>Indicate "group home-family operated" if the child is in a group home that provides 24-hour care in a private family home where the family members are the primary caregivers. Indicate "group home-staff operated" if the child is in a group home that provides 24-hour care for children where the care-giving is provided by shift or rotating staff. Indicate "group home-shelter care" if the child is in a group home that provides 24-hour care which is short-term or transitional in nature, and is designated by the state or tribal licensing/approval authority to provide shelter care. Indicate "residential treatment center" if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions. Indicate "child care institution" if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the state or tribal authority responsible for licensing or approving child care institutions. This does not include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Indicate "child care institution-shelter care" if the child is in a child care institution as defined above and the institution is designated to provide shelter care by the state or tribal authority responsible for licensing or approving child care institutions and is short-term or transitional in nature. Indicate "supervised independent living" if the child is living independently in a supervised setting. Indicate "juvenile justice facility" if the child is in a secure facility or institution where alleged or adjudicated juvenile delinquents are housed. Indicate "medical or rehabilitative facility" if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate "psychiatric hospital" if the child is in a facility that provides emotional or psychological health care and is licensed or accredited as a hospital. Indicate "runaway" if the child has left, without authorization, the home or facility where the child was placed. Indicate "whereabouts unknown" if the child is not in the physical custody of the title IV-E agency or person or institution with whom the child has been placed, the child's whereabouts are unknown and the title IV-E agency does not consider the child to have run away. Indicate "placed at home" if the child is home with the parent(s) or legal guardian(s) in preparation for the title IV-E agency to return the child home permanently.</b></p>
<p>#157. (e.5) Private agency living arrangement.</p>



**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>Indicate the type of contractual relationship with a private agency for each of the child's living arrangements reported in paragraph (e)(1) of this section. Indicate "private agency involvement" if the child is placed in a living arrangement that is either licensed, managed, or run by a private agency that is under contract with the title IV-E agency. Indicate "no private agency involvement" if the child's living arrangement is not licensed, managed or run by a private agency.</p>
<p>#158. (e. 6) Location of living arrangement</p> <p>Indicate whether each of the child's living arrangements reported in paragraph (e)(1) of this section is located within or outside of the reporting state or tribal service area or is outside of the country. Indicate "out-of-state or out-of-tribal service area" if the child's living arrangement is located outside of the reporting state or tribal service area but inside the United States. Indicate "in-state or in-tribal service area" if the child's living arrangement is located within the reporting state or tribal service area. Indicate "out-of-country" if the child's living arrangement is outside of the United States. Indicate "runaway or whereabouts unknown" if the child has run away from his or her living arrangement or the child's whereabouts are unknown. If the title IV-E agency indicates either "out-of-state or out-of-tribal service area" or "out-of-country" for the child's living arrangement, the title IV-E agency must complete the data element in paragraph (e)(7) of this section; otherwise the title IV-E agency must leave paragraph (e)(7) blank.</p>
<p>159. (e. 7) Jurisdiction or country where child is living</p> <p>Indicate the state, tribal service area, Indian reservation, or country where the reporting title IV-E agency placed the child for each living arrangement, if the title IV-E agency indicated either "out-of-state" or "out-of-tribal service area" or "out-of-country" in paragraph (e)(6) of this section; otherwise the title IV-E agency must leave paragraph (e)(7) blank. The title IV-E agency must report the information in a format according to ACF's specifications.</p>
<p>(e.8) Available ICWA foster care and pre-adoptive placement preferences</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), indicate which foster care or pre-adoptive placements that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) were willing to accept placement for each of the child's living arrangements reported in paragraph (e)(1) of this section. Indicate in each paragraph (i)(8)(i) through (e)(8)(v) of this section "yes" or "no."</p>
<p>160. (e.8.i)</p> <p>A member of the Indian child's extended family</p>
<p>161. (e.8.ii)</p> <p>A foster home licensed, approved, or specified by the Indian child's tribe</p>
<p>162. (e.8.iii)</p> <p>An Indian foster home licensed or approved by an authorized non-Indian licensing authority</p>
<p>163. (e.8.iv)</p> <p>An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.</p>
<p>164. (e.8.v)</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).</p> <p>165. (e.9) Foster care and pre-adoptive placement preferences under ICWA</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), for each of the Indian child's foster care or pre-adoptive placement(s) reported in paragraph (e)(1) of this section, indicate whether the placement meets the placement preferences of ICWA in 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed. Indicate "a member of the Indian child's extended family," "a foster home licensed, approved, or specified by the Indian child's tribe," "an Indian foster home licensed or approved by an authorized non-Indian licensing authority," "an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs," "a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)" or "placement does not meet ICWA placement preferences." If the state IV-E agency indicated "placement does not meet ICWA placement preferences," then the state IV-E agency must complete paragraph (e)(10). Otherwise, the state title IV-E agency must leave paragraph (e)(10) blank.</p>
<p>166. (e.10) Good cause under ICWA</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated "placement does not meet ICWA placement preferences" in paragraph (e)(9), indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) or to depart from the placement preferences of the Indian child's tribe in accordance with 25 U.S.C. 1915(c). Indicate "yes" or "no." If the state title IV-E agency indicated "yes," then the state title IV-E agency must indicate the basis for good cause in paragraph (e)(11) of this section. If the state title IV-E agency indicated "no," then the state title IV-E agency must leave paragraph (e)(11) blank.</p>
<p>(e.11) Basis for good cause</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (e)(10), indicate the state court's basis for determining good cause to depart from ICWA placement preferences by indicating "yes" or "no" in each paragraph (e)(11)(i) through (e)(11)(v) of this section.</p>
<p>167. (e.11.i)</p> <p><b>Request of one or both of the Indian child's parents.</b></p>
<p>168. (e.11.ii)</p> <p><b>Request of the Indian child.</b></p>
<p>169. (e.11.iii)</p> <p>The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.</p>
<p>170. (e.11.iv)</p> <p>The extraordinary physical, mental or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.</p>
<p>171. (e.11.v)</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>The presence of a sibling attachment that can be maintained only through a particular placement.</p>
<p>#172 (e.12) Marital status of the foster parent(s)</p> <p>Indicate the marital status of the child's foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. <b>Indicate "married couple" if the foster parents are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate "unmarried couple" if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. Indicate "separated" if the foster parent is legally separated or is living apart from his or her spouse. Indicate "single adult" if the foster parent is not married and is not living with another individual as part of a couple. If the response is either "married couple" or "unmarried couple," the title IV-E agency must complete the data elements for the second foster parent in paragraphs (e)(20) through (e)(25) of this section; otherwise the title IV-E agency must leave those data elements blank.</b></p>
<p>#173. (e.13) Child's relationships to the foster parent(s)</p> <p>Indicate the type of relationship between the child and his or her foster parent(s), for each foster family home living arrangement in which the child is placed, as indicated in <b>paragraph (e)(3) of this section. Indicate "paternal grandparent(s)" if the foster parent(s) is the child's paternal grandparent (by biological, legal or marital connection). Indicate "maternal grandparent(s)" if the foster parent(s) is the child's maternal grandparent (by biological, legal or marital connection). Indicate "other paternal relative(s)" if the foster parent(s) is the child's paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate "other maternal relative(s)" if the foster parent(s) is the child's maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate "sibling(s)" if the foster parent(s) is a brother or sister of the child, either biologically, legally or by marriage. Indicate "non-relative(s)" if the foster parent(s) is not related to the child (by biological, legal or marital connection). Indicate "kin" if the foster parent(s) has kin relationship to the child as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.</b></p>
<p>#174. (e.14) Year of birth for first foster parent</p> <p>Indicate the year of birth for the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section.</p>
<p>175. (e.15) First foster parent tribal membership</p> <p>Indicate whether the <b>first foster parent is a member of an Indian tribe. Indicate "yes," "no," or "unknown."</b></p>
<p>(e.16) Race of first foster parent</p> <p>Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (e)(16)(i) through (e)(16)(vii) of this section <b>applies with a "yes" or "no."</b></p>
<p>#176. (e.16.i.) Race-American Indian or Alaskan Native</p> <p>An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.</p>
<p>#177. (e.16.ii) Race-Asian</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
#178. (e.16.iii) Race—Black or African American
A Black or African American individual has origins in any of the black racial groups of Africa.
#179. (e.16.iv) Race—Native Hawaiian or Other Pacific Islander
A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.
#180. (e.16.v) Race—White
A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.
#181. (e.16.vi) Race—unknown
The foster parent does not know his or her race, or at least one race.
#182. (e.16.vii) Race—declined
The first foster parent has declined to identify a race.
#183. (e.17) Hispanic or Latino origin of first foster parent
Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. <b>Indicate whether this category applies with a “yes” or “no.” If the first foster parent does not know his or her ethnicity indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.”</b>
184. (e18) Gender of first foster parent
<b>Indicate whether the first foster parent self identifies as “female” or “male.”</b>
185. (e.19) First foster parent sexual orientation
<b>Indicate whether the first foster parent self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the first foster parent declined to identify his/her status.</b>
#186. (e.20) Year of birth for second foster parent.
Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. The title IV-E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(12) of this section.
187 (e21) Second foster parent tribal membership

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p><b>Indicate whether the second foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”</b></p> <p>(22) Race of second foster parent</p> <p>Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (e)(22)(i) through (e)(22)(vii) of this section applies with a “yes” or “no.” The title IV-E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(12) of this section.</p>
<p>#188. (e.16.i.) Race-American Indian or Alaskan Native</p> <p>An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains tribal affiliation or community attachment.</p>
<p>#189. (e.16.ii) Race-Asian</p> <p>An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.</p>
<p>#190. (e.16.iii) Race—Black or African American</p> <p>A Black or African American individual has origins in any of the black racial groups of Africa.</p>
<p>#191. (e.16.iv) Race—Native Hawaiian or Other Pacific Islander</p> <p>A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.</p>
<p>#192. (e.16.v) Race—White</p> <p>A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.</p>
<p>#193. (e.16.vi) Race—unknown</p> <p>The foster parent does not know his or her race, or at least one race.</p>
<p>#194. (e.16.vii) Race—declined</p> <p>The first foster parent has declined to identify a race.</p>
<p>#195. (e.23) Hispanic origin of the second foster parent</p> <p>Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the second foster parent does not know his or her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.” The title IV-E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(12) of this section.</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

#196 (e.24) Gender of second foster parent
Indicate whether the second foster parent self identifies as “female” or “male.”
197. (e.25) Second foster parent sexual orientation
Indicate whether the second foster parent self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the second foster parent declined to identify his/her status.
(f.) Permanency planning
198. (f.1) Permanency plan.
Indicate each permanency plan established for the child. Indicate “reunify with parent(s) or legal guardian(s)” if the plan is to keep the child in out-of-home care for a limited time and the title IV-E agency is to work with the child’s parent(s) or legal guardian(s) to establish a stable family environment. Indicate “live with other relatives” if the plan is for the child to live permanently with a relative(s) (by biological, legal or marital connection) who is not the child’s parent(s) or legal guardian(s). Indicate “adoption” if the plan is to facilitate the child’s adoption by relatives, foster parents, kin or other unrelated individuals. Indicate “guardianship” if the plan is to establish a new legal guardianship. Indicate “planned permanent living arrangement” if the plan is for the child to remain in foster care until the title IV-E agency’s placement and care responsibility ends. The title IV-E agency must only select “planned permanent living arrangement” consistent with the requirements in section 475(5)(C)(i) of the Act. Indicate “permanency plan not established” if a permanency plan has not yet been established.
199. (f.2) Date of permanency plan
Indicate the month, day and year that each permanency plan(s) was established during each out-of-home care episode.
200. (f.3) Date of periodic review
Enter the month, day and year of each periodic review, either by a court or by administrative review (as defined in section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act.
201. (f.4) Date of permanency hearing
Enter the month, day and year of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act.
202. (f.5) Juvenile justice
Indicate whether the child was found to be a status offender or adjudicated delinquent by a juvenile judge or court at any time during the report period. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate “yes” or “no.”
203. (f.6) Caseworker visit dates



**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

Enter each date in which a caseworker had an in-person, face-to-face visit with the child consistent with section 422(b)(17) of the Act. Indicate the month, day and year of each visit.
204. (f.7) Caseworker visit location
Indicate the location of each in-person, face-to-face visit between the caseworker and the child. Indicate "child's residence" if the visit occurred at the location where the child is currently residing, such as the current foster care provider's home, child care institution or facility. Indicate "other location" if the visit occurred at any location other than where the child currently resides, such as the child's school, a court, a child welfare office or in the larger community.
205. (f.8) Transition plan
Indicate whether a child has a transition plan that meets the requirements of section 475(5)(H) of the Act, including plans developed before the 90-day period. Indicate "yes," "no" or "not applicable."
206. (f.9) Date of transition plan
Indicate the month, day and year of the child's transition plan, if the title IV-E agency indicated in paragraph (f)(8) that the child has a transition plan that meets the requirements of section 475(5)(H) of the Act; otherwise leave this paragraph blank.
(10) Active Efforts.
For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), indicate whether the active efforts in each paragraph (f)(10)(i) through (f)(10)(xiii) "applies" or "does not apply." The state title IV-E agency must indicate all of the active efforts that apply once the child enters the AFCARS out-of-home care reporting population per section 1355.42(a) through the child's exit per paragraph (g)(1) of this section and the active efforts made prior to the child entering the out-of-home care reporting population.
207. (f.10.i)
Assist the parent(s) or Indian custodian through the steps of a case plan and with developing the resources necessary to satisfy the case plan
208. (f.10.ii)
<b>Conduct a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal</b>
209. (f.10.iii)
Identify appropriate services and to help the parent overcome barriers, including actively assisting the parents in obtaining such services
210. (f.10.iv)
<b>Identify, notify and invite representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning and resolution of placement issues</b>
211. (f.10.v)

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p><b>Conduct or cause to be conducted a diligent search for the Indian child's extended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents</b></p>
<p>212. (f.10.vi)</p>
<p>Offer and employ all available and culturally appropriate family preservation <b>strategies and facilitate the use of remedial and rehabilitative services provide by the child's tribe</b></p>
<p>213. (f.10.vii)</p>
<p>Take steps to keep siblings together whenever possible</p>
<p>214. (f.10.viii)</p>
<p>Support regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child</p>
<p>215. (f.10.ix)</p>
<p>Identify community resources including housing, financial, transportation, mental health, substance abuse and peer support services and actively assisting the Indian child's <b>parents or when appropriate, the child's family in utilizing and accessing those resources</b></p>
<p>216. (f.10.x)</p>
<p>Monitor progress and participation in services</p>
<p>217. (f.10.xi)</p>
<p><b>Consider alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available</b></p>
<p>218. (f.10.xii)</p>
<p>Provide post-reunification services and monitoring</p>
<p>219 (f.10.xiii)</p>
<p>Other active efforts tailored to the facts and circumstances of the case</p>
<p>(g) General exit information - Provide exit information for each out-of-home care episode. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends.</p>
<p>220. (g.1) Date of exit</p>
<p>Indicate the month, day and year for each of the child's exits from out-of-home care. An exit occurs when the title IV-E agency's placement and care responsibility of the child ends. If the child has not exited out-of-home care the title IV-E agency must leave this data element blank. If this data element is applicable, the data elements in paragraphs (g)(2) and (g)(3) of this section must have a response.</p>
<p>221. (g.2) Exit transaction date</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) of this section was entered into the information system.

222. (g.3) Exit reason

Indicate the reason for each of the child's exits from out-of-home care. Indicate "not applicable" if the child has not exited out-of-home care. Indicate "reunify with parent(s)/legal guardian(s)" if the child was returned to his or her parent(s) or legal guardian(s) and the title IV-E agency no longer has placement and care responsibility. Indicate "live with other relatives" if the child exited to live with a relative (related by a biological, legal or marital connection) other than his or her parent(s) or legal guardian(s). Indicate "adoption" if the child was legally adopted. Indicate "emancipation" if the child exited care due to age. Indicate "guardianship" if the child exited due to a legal guardianship of the child. Indicate "runaway or whereabouts unknown" if the child ran away or the child's whereabouts were unknown at the time that the title IV-E agency's placement and care responsibility ends. Indicate "death of child" if the child died while in out-of-home care. Indicate "transfer to another agency" if placement and care responsibility for the child was transferred to another agency, either within or outside of the reporting state or tribal service area.

223. (g.4) Transfer to another agency

If the title IV-E agency indicated the child was transferred to another agency in the data element Exit reason described in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility for the child from the following options: "State title IV-E agency," "Tribal title IV-E agency," "Indian tribe or tribal agency (non-IV-E)," "juvenile justice agency," "mental health agency," "other public agency" or "private agency."

(h) Exit to adoption and guardianship information

Report information in paragraph (h) only if the title IV-E agency indicated the child exited to adoption or legal guardianship in the data element Exit reason described in paragraph (g)(3) of this section. Otherwise the title IV-E agency must leave the data elements in paragraph (h) blank.

224. (h.1) Marital status of the adoptive parent(s) or guardian(s)

Indicate the marital status of the adoptive parent(s) or legal guardian(s). Indicate "married couple" if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate "married but individually adopting or obtaining legal guardianship" if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws, but are individually adopting or obtaining legal guardianship. Indicate "separated" if the foster parent is legally separated or is living apart from his or her spouse. Indicate "unmarried couple" if the adoptive parents or guardians are living together as a couple, but are not united in matrimony according to applicable laws. Use this response option even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate "single adult" if the adoptive parent or legal guardian is not married and is not living with another individual as part of a couple. If the response is "married couple" or "unmarried couple," the title IV-E agency also must complete the data elements for the second adoptive parent or second legal guardian in paragraphs (h)(9) through (14) of this section; otherwise the title IV-E agency must leave these data elements blank.

(h.2) Child's relationship to the adoptive parent(s) or guardian(s)

Indicate the type of relationship, kinship or otherwise, between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in the data elements described in paragraphs (h)(2)(i) through (h)(2)(viii) of this section "applies" or "does not apply."

225. (h.2i) Paternal grandparent(s)

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

The adoptive parent(s) or legal guardian(s) is the child's paternal grandparent(s), by biological, legal or marital connection.
226. (h.2.ii) Maternal grandparent(s)
The adoptive parent(s) or legal guardian(s) is the child's maternal grandparent(s), by biological, legal or marital connection.
227. (h.2.iii) Other paternal relative(s)
The adoptive parent(s) or legal guardian(s) is the child's paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin.
228. (h.2.iv) Other maternal relative(s)
The adoptive parent(s) or legal guardian(s) is the child's maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin.
229. (h.v) Sibling(s)
The adoptive parent or legal guardian is a brother or sister of the child, either biologically, legally or by marriage.
230. (h.2.vi) Kin
The adoptive parent(s) or legal guardian(s) has a kin relationship with the child, as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the adoptive parent(s) or legal guardian(s) and there is not a legal, biological, or marital connection between the child and foster parent.
231. (h.2.vii) Non-relative(s)
The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.
232. (h.2.viii) Foster parent(s)
The adoptive parent(s) or legal guardian(s) was the child's foster parent(s).
233. (h.3) Date of birth of first adoptive parent or guardian
Indicate the month, day and year of the birth of the first adoptive parent or legal guardian.
234. (h.4) First adoptive parent or guardian tribal membership
<b>Indicate whether the first adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."</b>
(h.5) Race of first adoptive parent or guardian.
In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (h)(5)(i) through (h)(5)(vii) of this section applies <b>with a "yes" or "no."</b>
235. (h.5.i) Race—American Indian or Alaska Native

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.
236. (h.5.ii) Race—Asian
An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
237. (h.5.iii) Race—Black or African American
A Black or African American individual has origins in any of the black racial groups of Africa.
238. (h.5.iv) Race—Native Hawaiian or Other Pacific Islander
A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.
239. (h.5.v) Race—White
A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.
240. (h.5.vi) Race—Unknown
The first adoptive parent or legal guardian does not know his or her race, or at least one race.
241. (h.5.vii) Race—Declined
The first adoptive parent, or legal guardian has declined to identify a race.
242. (h.6) Hispanic or Latino ethnicity of first adoptive parent or guardian
In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a <b>“yes”</b> or <b>“no.”</b> <b>If the first adoptive parent or legal guardian does not know his or her ethnicity, indicate “unknown.”</b> <b>If the individual refuses to identify his or her ethnicity, indicate “declined.”</b>
243. (h.7) Gender of first adoptive parent or guardian
<b>Indicate whether the first adoptive parent self identifies as “female” or “male.”</b>
244. (h.8) First adoptive parent or legal guardian sexual orientation
<b>Indicate whether the first adoptive parent or legal guardian self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the first adoptive parent or legal guardian declined to identify his/her status.</b>
245. (h.9) Date of birth of second adoptive parent, guardian, or other member of the couple
Indicate the month, day and year of the date of birth of the second adoptive parent, legal guardian, or other member of the couple. The title IV-E agency must leave this data

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.</p>
<p>246. (h.10) Second adoptive parent, guardian, or other member of the couple tribal membership</p> <p>Indicate whether the second adoptive parent or guardian is a member of an Indian tribe. Indicate “yes,” “no” or “unknown.”</p>
<p>(h.11) Race of second adoptive parent, guardian, or other member of the couple</p> <p>In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (h)(11)(i) through (h)(11)(vii) of this section applies with a “yes” or “no.” The title IV-E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.</p>
<p>247. (h.11.i) Race—American Indian or Alaska Native</p> <p>An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.</p>
<p>248. (h.11.ii) Race—Asian</p> <p>An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.</p>
<p>249. (h.11.iii) Race—Black or African American</p> <p>A Black or African American individual has origins in any of the black racial groups of Africa.</p>
<p>250. (h.11.iv) Race—Native Hawaiian or Other Pacific Islander</p> <p>A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.</p>
<p>251. (h.11.v) Race—White</p> <p>A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.</p>
<p>252. (h.11.vi) Race—Unknown</p> <p>The first adoptive parent or legal guardian does not know his or her race, or at least one race.</p>
<p>253. (h.11.vii) Race—Declined</p> <p>The first adoptive parent, or legal guardian has declined to identify a race.</p>
<p>254. (h.12) Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple</p> <p>In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the second adoptive parent, legal</p>



**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>guardian, or other member of the couple does not know his or her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.” The title IV-E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.</p>
<p>255. (h.13) Gender of second adoptive parent, guardian, or other member of the couple</p> <p>Indicate whether the second adoptive parent, guardian, or other member of the couple self identifies as “female” or “male.”</p>
<p>256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation</p> <p>Indicate whether the second adoptive parent or legal guardian self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the second adoptive parent or legal guardian declined to identify his/her status.</p>
<p>257. (h.15) Inter/Intra-jurisdictional adoption or guardianship</p> <p>Indicate whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. Indicate “interjurisdictional adoption or guardianship” if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the state or tribal service area but within the United States. Indicate “intercountry adoption or guardianship” if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the United States. Indicate “intra-jurisdictional adoption or guardianship” if the reporting title IV-E agency placed the child within the same state or tribal service area as the one with placing responsibility. If the title IV-E agency indicates either “interjurisdictional adoption or guardianship” or “intercountry adoption or guardianship” apply for the child's adoption or legal guardianship, the title IV-E agency must complete the data element in paragraph (h)(16) of this section; otherwise the title IV-E agency must leave it blank.</p>
<p>258. (h.16) Interjurisdictional adoption or guardianship jurisdiction</p> <p>Indicate the state, tribal service area, Indian reservation or country where the reporting title IV-E agency placed the child for adoption or legal guardianship, in a format according to ACF’s specifications. The title IV-E agency must complete this data element only if the title IV-E agency indicated either “interjurisdictional adoption or guardianship” or “intercountry adoption or guardianship” in paragraph (h)(15) of this section; otherwise the title IV-E agency must leave it blank.</p>
<p>259. (h.17) Adoption or guardianship placing agency</p> <p>Indicate the agency that placed the child for adoption or legal guardianship. Indicate “title IV-E agency” if the reporting title IV-E agency placed the child for adoption or legal guardianship. Indicate “private agency under agreement” if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV-E agency. Indicate “Indian tribe under contract/agreement” if an Indian tribe, tribal organization or consortia placed the child for adoption or legal guardianship through a contract or an agreement with the reporting title IV-E agency.</p>
<p>260. (h.18) Assistance agreement type</p> <p>Indicate the type of assistance agreement between the title IV-E agency and the adoptive parent(s) or legal guardian(s): “Title IV-E adoption assistance agreement;” “State/tribal adoption assistance agreement;” “Adoption-Title IV-E agreement non-recurring expenses only;” “Adoption-Title IV-E agreement Medicaid only;” “Title IV-E guardianship assistance agreement;” “State/tribal guardianship assistance agreement;” or “no agreement” if there is no assistance agreement.</p>
<p>261. (h.19) Siblings in adoptive or guardianship home</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)**  
**As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>Indicate the number of siblings of the child who are in the same adoptive or guardianship home as the child. A sibling to the child is his or her brother or sister by biological, legal, or marital connection. Do not include the child who is subject of this record in the total number. If the child does not have any siblings, the title IV-E agency must indicate <b>"not applicable."</b> <b>If the child has siblings, but they are not in the same adoptive or guardianship home as the child, the title IV-E agency must indicate "0."</b></p>
<p>(h.20) Available ICWA Adoptive placements</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated <b>"yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) were willing to accept placement.</b> Indicate in each paragraph (h)(20)(i) through (h)(20)(iv) of this section <b>"yes" or "no."</b></p>
<p>262. (h.20.i)</p> <p><b>A member of the Indian child's extended family.</b></p>
<p>263. (h.20.ii)</p> <p><b>Other members of the Indian child's tribe.</b></p>
<p>264. (h.20.iii)</p> <p><b>Other Indian families.</b></p>
<p>265. (h.20.iv)</p> <p><b>A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).</b></p>
<p>266. (h.21) Adoption placement preferences under ICWA</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated <b>"yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), indicate whether the adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed. Indicate "a member of the Indian child's extended family," "other members of the Indian child's tribe," "other Indian families," "a placement that complies with the order of preference for adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)," or "placement does not meet ICWA placement preferences."</b> If the state IV-E agency indicated <b>"placement does not meet ICWA placement preferences," then the state IV-E agency must complete paragraph (h)(22).</b> Otherwise, leave blank.</p>
<p>267. (h.22) Good cause under ICWA</p> <p>For state title IV-E agencies only: If the state title IV-E agency indicated <b>"placement does not meet ICWA placement preferences" in paragraph (h)(21), indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences under 25 U.S.C. 1915(a) or to depart from the placement preferences of the Indian child's tribe under 25 U.S.C. 1915(c).</b> Indicate <b>"yes" or "no."</b> If the state title IV-E agency indicated <b>"yes," then the state title IV-E agency must indicate the basis for good cause in paragraph (h)(23) of this section.</b> If the state title IV-E agency indicated <b>"no," then the state title IV-E agency must leave paragraph (h)(23) blank.</b></p>
<p>(h.23) Basis for good cause</p>

**Out-of-Home Care Data Elements with Definitions (45 CFR 1355.44)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<p>For state title IV-E agencies only: If the state title IV-E agency indicated “yes” in paragraph (h)(22), indicate the state court’s basis for determining good cause to depart from ICWA adoptive placement preferences by indicating “yes” or “no” in each paragraph (h)(23)(i) through (h)(23)(v) of this section.</p>
<p>268. (h.23.i)</p> <p><b>Request of one or both of the child’s parents.</b></p>
<p>269. (h.23.ii)</p> <p>Request of the Indian child.</p>
<p>270. (h.23.iii)</p> <p>The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.</p>
<p>271. (h.23.iv)</p> <p>The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.</p>
<p>272. (h.23.v)</p> <p>The presence of a sibling attachment that can be maintained only through a particular placement.</p>

**Adoption-Guardianship Assistance Elements with Definitions (45 CFR 1355.45)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

<sup>1</sup> 1355.45(a) General Information *
(a.1) Title IV-E agency
Indicate the title IV-E agency responsible for submitting the AFCARS data to ACF per requirements issued by ACF.
(a.2) Report date
The report date corresponds to the end of the current report period. Indicate the last month and the year of the report period.
(a.3) Child record number
The child record number is the encrypted, unique person identification number. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.
(b) Child Demographics *
<b>(b.1) Child's date of birth</b>
Indicate the month, day and year of the child's birth.
<b>(b.2) Child's gender</b>
Indicate whether the child is "male" or "female," as appropriate.
<b>(b.3) Child's race</b>
(b.3.i) Race—American Indian or Alaska Native
An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.
(b.3.ii) Race—Asian
An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.
(b.3.iii) Race—Black or African America
A Black or African American child has origins in any of the black racial groups of Africa.
(b.3.iv) Race—Native Hawaiian or Other Pacific Islander
A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.
(b.3.v) Race—White

<sup>1</sup> Items or categories marked with an asterisk (\*) are items are duplicative of items in the out-of-home file for children who exit out-of-home care.

**Adoption-Guardianship Assistance Elements with Definitions (45 CFR 1355.45)  
As Published in the Final Rule Issued on December 14, 2016 ([81 FR 90524](#))**

A White child has origins in any of the original peoples of Europe, the Middle East or North Africa.
(b.3.vi)Race--Unknown The child or parent or legal guardian does not know the race, or at least one race of the child.
(b.3.vii)Race—Abandoned <b>The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven."</b>
(b.3.viii)Race—Declined The child or parent or legal guardian has declined to identify a race.
(b.4)Hispanic or Latino Ethnicity <b>In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent or legal guardian does not know or cannot communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child was abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."</b>
(c) Adoption and guardianship assistance agreement information
(c.1) Adoption and guardianship Assistance agreement type * Indicate whether the child is or was in a finalized adoption with a title IV-E adoption assistance agreement or in a legal guardianship with a title IV-E guardianship assistance agreement, pursuant to sections 473(a) and 473(d) of the Act, in effect during the report period. <b>Indicate "title IV-E adoption assistance agreement" or "title IV-E guardianship assistance agreement," as appropriate.</b>
(c.2) Adoption and guardianship Subsidy amount Indicate the per diem dollar amount of the financial subsidy paid to the adoptive parent(s) or legal guardian(s) on behalf of the child during the last month of the current report period, if any. <b>The title IV-E agency must indicate "0" if a financial subsidy was not paid during the last month of the report period.</b>
(d) Adoption finalization or guardianship legalization date * Indicate the month, day and year that the child's adoption was finalized or the guardianship became legalized.
(e) Agreement termination date If the title IV-E agency terminated the adoption assistance or guardianship assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement terminated or expired; otherwise leave this data element blank.

# AFCARS Briefing: ANPRM & NPRM on implementation

Presentation Will Include:

- Analysis of December 2016 Final Rule Pursuant to EO 13777
- Advance Notice of Proposed Rulemaking (ANPRM)
- Notice of Proposed Rulemaking (NPRM) to Delay Reporting Deadline in December 2016 final rule



## Executive Order 13777

- On February 24, 2017, the President issued Executive Order 13777 on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. It directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification.
- The U.S. Department of Health and Human Services' Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

# Analysis of December 2016 AFCARS Final Rule Under Executive Order 13777

- 2016 Final Rule Significantly increased the number of individual data points.
- The proposed rules that informed the 2016 Final Rule did not provide sufficient opportunity to fairly assess and report state burden.
- The data points related to the Indian Child Welfare Act (ICWA) are not closely tied to HHS requirements.

# 2016 Final Rule Significantly Increased Data Reporting

- December 2016 Final Rule contains 272 individual data points.
- 153 of those are new, 65 of which gather data on ICWA compliance.
- State performance in Child and Family Services Reviews shows flat performance over the last decade.
- Every state is struggling with recruitment and retention of qualified case work staff.
- Caseworks are critical to the improvement of child welfare outcomes and are responsible for gathering most of the information that is to be reported to AFCARS.

# Proposed Rules that Informed the 2016 Final Rule Did Not Provide Sufficient Time for Burden Analysis

- 2015 NPRM provided 60 day comment period – it proposed a number of new points, a new approach to data reporting, new population for reporting and a new penalty structure. Made assertion that ACF had no authority to collect ICWA-related data.
- 2016 Supplemental Proposed Rule provided only 30 day comment period – proposed large number of new data points related to ICWA compliance that states had never seen before, following assertion in the 2015 NPRM that ACF had no authority to collect ICWA data.

# Proposed Rules that Informed the 2016 Final Rule Did Not Provide Sufficient Time for Burden Analysis (cont.)

- Response from states to both 2015 and 2016 Proposed Rules focused on the data elements.
- Response to burden in the form of cost, worker training, was minimal which we attribute to brevity of comment period.

## ICWA-related Data Not Closely Tied to HHS Requirements

- 2016 Final Rule for the ICWA-related data points does not articulate HHS functions or requirements as a basis for reporting them. The justifications all tie back to consistency with Department of Interior's final rule on ICWA (published on June 14, 2016, 81 FR 38778).
- Requirements in Interior's June 2016 final rule are directed to state courts. The court findings and other activity taking place before the court represents a shift away from a child welfare agency reporting on its own activity to reporting on the activity of an independent third party. This raises questions of efficiency, reliability and consistency, which §479(c)(1)&(2) require for the AFCARS data collection.



## ICWA-related Data Not Closely Tied to HHS Requirements(cont.)

- ICWA-related data points in the 2016 Final Rule are based on a statute and regulation that is not under HHS's purview, opening the potential for serious interpretation issues.
- ICWA experts from DOJ and DOI identified the ICWA-related data points in the 2016 supplemental proposed rule.
- HHS has no expertise in ICWA compliance, statute, and regulations and is not the cognizant authority over it, yet HHS will be put in the position of interpreting various ICWA requirements when providing technical assistance to states on how to report the data.
- Federal law mandates penalties on title IV-E agencies for non-compliance on AFCARS data, of which the ICWA-related data points are not exempt. States face losing HHS funds for errors in reporting what amounts to data to be used by Department of Interior for ICWA compliance.

## NPRM on Implementation Delay

- The NPRM on implementation delay was published in the Federal Register on March 15, 2018 and comments are due by April 16, 2018.
- It does two things:
  - Proposes to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-.47) by two years until October 1, 2021 and;
  - Proposes to extend the reporting of AFCARS data in accordance with the current AFCARS regulation (45 CFR 1355.40 and the appendices to 45 CFR 1355) until September 30, 2021.

# Purpose and goal of the ANPRM

- The ANPRM was published in the Federal Register on March 15, 2018 and comments are due by June 13, 2018.
- We encourage state and tribal title IV-E agencies that did not comment on the previously issued proposed rulemakings in 2015 and 2016 to do so now. We provide a 90-day period for comments to the ANPRM to encourage all title IV-E agencies to provide thorough comments.
- The ANPRM lists questions asking commenters to:
  - Identify the data elements, non-ICWA-related and ICWA-related, that are overly burdensome for title IV-E agencies and to provide an explanation with cost and burden estimates for recordkeeping and reporting;
  - Provide recommendations on data elements to retain with a justification for using the data at the national level;
  - Provide recommendations on data elements to remove with an explanation as to why the data are not reliable or necessary at the national level; and
  - Provide suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data.

# Process for the public to submit comments

- Comments to the ANPRM must be received by June 13, 2018.
- Comments to the NPRM on implementation delay must be received by April 16, 2018.
- You may submit comments by one of the following methods:
  - Federal eRulemaking Portal: Follow the links below for each notice, click the “Comment now!” button and follow the instructions for submitting comments. We recommend this method.
    - Use this link for the ANPRM:  
<https://www.regulations.gov/document?D=ACF-2018-0003-0001>
    - Use this link for the NPRM:  
<https://www.regulations.gov/document?D=ACF-2018-0004-0001>
  - Email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include appropriate docket number and/or RIN number in subject line of the message.
  - Mail: Mail written comments to: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please allow sufficient time for mailed comments to be received before the close of the comment period.

**From:** [Keplinger, Stephen](mailto:Keplinger.Stephen)  
**To:** [cwpm@lists.childwelfare.gov](mailto:cwpm@lists.childwelfare.gov); [capacity-building@lists.childwelfare.gov](mailto:capacity-building@lists.childwelfare.gov); [tta@lists.childwelfare.gov](mailto:tta@lists.childwelfare.gov); [aja@lists.childwelfare.gov](mailto:aja@lists.childwelfare.gov); [cap-partners@lists.childwelfare.gov](mailto:cap-partners@lists.childwelfare.gov); [cbdgfpo@lists.childwelfare.gov](mailto:cbdgfpo@lists.childwelfare.gov); [tribal-cip@lists.childwelfare.gov](mailto:tribal-cip@lists.childwelfare.gov); [tribal-grantees@lists.childwelfare.gov](mailto:tribal-grantees@lists.childwelfare.gov); [slo@lists.childwelfare.gov](mailto:slo@lists.childwelfare.gov); [tanf-cw@lists.childwelfare.gov](mailto:tanf-cw@lists.childwelfare.gov); [pssf@lists.childwelfare.gov](mailto:pssf@lists.childwelfare.gov); [cw-train@lists.childwelfare.gov](mailto:cw-train@lists.childwelfare.gov); [child-welfare@lists.childwelfare.gov](mailto:child-welfare@lists.childwelfare.gov); [cip-grantees@lists.childwelfare.gov](mailto:cip-grantees@lists.childwelfare.gov); [cja@lists.childwelfare.gov](mailto:cja@lists.childwelfare.gov); [cmrg@lists.childwelfare.gov](mailto:cmrg@lists.childwelfare.gov); [cw-directors@lists.childwelfare.gov](mailto:cw-directors@lists.childwelfare.gov); [cws-tribes@lists.childwelfare.gov](mailto:cws-tribes@lists.childwelfare.gov); [r10-cwtribes@lists.childwelfare.gov](mailto:r10-cwtribes@lists.childwelfare.gov); [ilcetv-cbcs@lists.childwelfare.gov](mailto:ilcetv-cbcs@lists.childwelfare.gov); [inhome-cbcs@lists.childwelfare.gov](mailto:inhome-cbcs@lists.childwelfare.gov); [cqicfsr-cbcs@lists.childwelfare.gov](mailto:cqicfsr-cbcs@lists.childwelfare.gov); [cwstd-cbcs@lists.childwelfare.gov](mailto:cwstd-cbcs@lists.childwelfare.gov); [efc-cbcs@lists.childwelfare.gov](mailto:efc-cbcs@lists.childwelfare.gov); [fcmgr-cbcs@lists.childwelfare.gov](mailto:fcmgr-cbcs@lists.childwelfare.gov)  
**Subject:** FW: Info Session on AFCARS ANPRM and NPRM on implementation delay  
**Date:** Wednesday, March 28, 2018 7:34:51 AM

---

The Children's Bureau is holding an information session for the public to provide an overview of the two notices that were published in the Federal Register on March 15, 2018 on the Adoption and Foster Care Analysis and Reporting System (AFCARS): an [Advance Notice of Proposed Rulemaking](#) (ANPRM) seeking public suggestions for streamlining the AFCARS data elements and a [Notice of Proposed Rulemaking](#) (NPRM) proposing to provide an additional two fiscal years to comply with the AFCARS December 2016 final rule.

**The information session will be on Thursday, April 5, 2018 from 3:00 – 4:00 pm Eastern.**

**The call-in information is:**

To connect via Adobe Connect:

<https://acf.adobeconnect.com/childrensbureau2/>

**Audio Connection**

**AUDIO ONLY:** Dial 888 233-7142 // Participants 6229257

We will hold a tribal-specific information session at a later date.

Additionally, the Children's Bureau issued an Information Memorandum on the two AFCARS notices and it is available on the Children's Bureau website [here](#).

## AFCARS Data Elements Side-by-Side Comparison

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the Appendix to 45 CFR part 1355
1. IV-E Agency	1. IV-E Agency
2. Report date	2. Report date
3. Local agency	3. Local agency
4. Child record number	4. Child's Record number
<b>(b) Child information</b>	<b>Child's Demographic Information</b>
5. (b.1) Child's date of birth	5. Date of birth
6. (b.2.i) Child's gender	7. Child's Sex
7. (b.2.ii) Child's sexual orientation	N/A not in the current AFCARS collection
8 – 14. (b.3) Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.	N/A not in the current AFCARS collection
15 - 17. (b.4) Application of ICWA.	N/A not in the current AFCARS collection
18 – 20. (b.5) Court determination that ICWA applies	N/A not in the current AFCARS collection
21 – 23. (b.6) Notification - ICWA	N/A not in the current AFCARS collection
24. (b.7) Request to transfer to tribal court - ICWA	N/A not in the current AFCARS collection
25 - 28. (b.8) Denial of transfer - ICWA	N/A not in the current AFCARS collection
29 - 36. (b.9) Child's race	8. Child's Race
37. (b.10) Hispanic/Latino origin	9. Child's Hispanic or Latino Ethnicity
38. (b.11.i) Health assessment	10. Child diagnosed with disability and response options of yes, no, not yet determined.
39. (b.11.ii) Date of health assessment	N/A not in the current AFCARS collection
40. (b.12) Timely Health Assessment	N/A not in the current AFCARS collection
41. (b.13) Health, behavioral or mental health conditions	10. Has the Child Been Clinically Diagnosed with a Disability(ies)?
42. (b.13.i) Intellectual disability	11. Mental Retardation
43. (b.13.ii) Autism spectrum disorder	15 Other Medically Diagnosed Conditions Requiring Special Care
44. (b.13.iii) Visual impairment and blindness	12 Visually or Hearing Impaired
45. (b.13.iv) Hearing impairment and deafness	12 Visually or Hearing Impaired
46. (b.13.v) Orthopedic impairment or other physical condition	13. Physically Disabled
47. (b.13.vi) Mental/emotional disorders	14. Emotionally Disturbed (DSM- IV)
48. (b.13.vii) Attention deficit hyperactivity disorder.	14. Emotionally Disturbed (DSM- IV)
49. (b.13.viii) Serious mental disorders	14. Emotionally Disturbed (DSM- IV)
50. (b.13.ix) Developmental delay	N/A not in the current AFCARS collection
51. (b.13.x) Developmental disability	N/A not in the current AFCARS collection
52. (b.13.xi) Other diagnosed condition	15. Other Medically Diagnosed Conditions Requiring Special Care
53. (b.14) School enrollment	N/A not in the current AFCARS collection
54. (b.15) Educational level	N/A not in the current AFCARS collection
55. (b.16) Educational stability	N/A not in the current AFCARS collection
56. (b.16.i) Proximity	N/A not in the current AFCARS collection
57. (b.16.ii) District/zoning rules	N/A not in the current AFCARS collection
58. (b.16.iii) Residential facility	N/A not in the current AFCARS collection
59. (b.16.iv) Services/programs	N/A not in the current AFCARS collection
60. (b.16.v) Child request	N/A not in the current AFCARS collection
61. (b.16.vi) Parent/Legal Guardian request	N/A not in the current AFCARS collection
62. (b.16.vii) Other	N/A not in the current AFCARS collection
63. (b.17.i) Pregnant as of the end of the report period	N/A not in the current AFCARS collection
64. (b.17.ii) Ever fathered or bore children	N/A not in the current AFCARS collection
65. (b.17.iii) Child and his/her child(ren) placed together at any point during the report period?	N/A not in the current AFCARS collection



## AFCARS Data Elements Side-by-Side Comparison

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the Appendix to 45 CFR part 1355
66. (b.18) Special education	N/A not in the current AFCARS collection
67. (b.19) Prior adoption(s)	16. Has this Child Ever Been Adopted?
68. (b.19.i) Prior adoption date	N/A not in the current AFCARS collection
69. (b.19.ii) Prior adoption type - <i>intercountry</i>	N/A not in the current AFCARS collection
70. Prior Guardianship (b.20i)	N/A not in the current AFCARS collection
71. (b.20.ii) Prior guardianship date	N/A not in the current AFCARS collection
72. (b.21) Child financial and medical assistance	59 -65 Sources of Federal Financial Support/Assistance for Child
73. (b.21.i) SSI or Social Security benefits	64. SSI or Other Social Security Benefits
74. (b.21.ii) Title XIX Medicaid	63. Title XIX (Medicaid)
75. (b.21.iii) Title XXI SCHIP	65. None of the Above
76. (b.21.iv) State/Tribal adoption assistance	65. None of the Above
77. (b.21.v) State/Tribal foster care	65. None of the Above
78. (b.21.vi) Child support	62. Title IV-D (Child Support)
79. (b.21.vii) Title IV-E adoption subsidy	60. Title IV-E (Adoption Assistance)
80. (b.21.viii) Title IV-E guardianship assistance	65. None of the Above
81. (b.21.ix) Title IV-A TANF	61. Title IV-A
82. (b.21.x) Title IV-B	65. None of the Above
83. (b.21.xi) SSBG	65. None of the Above
84. (b.21.xii) Chafee Foster Care Independence Program.	65. None of the Above
85. (b.21.xiii) Other	65. None of the Above
86. (b.22) Title IV-E foster care during report period	59. Title IV-E (Foster Care)
87. (b.23) Total Number of siblings	N/A not in the current AFCARS collection
88. (b.24) Siblings in foster care	N/A not in the current AFCARS collection
89. (b.25) Siblings in living arrangement	N/A not in the current AFCARS collection
<b>(c) Parent or legal guardian information</b>	<b>Principal Caretaker Information</b>
90. (c.1) Year of birth of first parent or legal guardian	45. Year of Birth (1 <sup>st</sup> Principal Caretaker)
91. (c.2) Year of birth of second parent or legal guardian	46. Year of Birth (2 <sup>nd</sup> Principal Caretaker - if applicable)
92. (c.3) Tribal membership mother	N/A not in the current AFCARS collection
93. (c.4) Tribal membership father	N/A not in the current AFCARS collection
94. (c.5) Termination/modification of parental rights.	N/A not in the current AFCARS collection
95. (c.5.i) Termination/modification of parental rights petition	N/A not in the current AFCARS collection
96. (c.5.ii) Termination/modification of parental rights	47. Date of Mother's Parental Rights Termination (if applicable) 48. Date of Legal or Putative Father's Parental Rights Termination (if applicable)
97 - 99 Involuntary termination/modification of parental rights under ICWA	N/A not in the current AFCARS collection
100. Voluntary termination/modification of parental rights under ICWA	N/A not in the current AFCARS collection
<b>(d) Removal Information</b>	<b>Removal/Placement Setting Indicators</b>
101. (d.1) Date of child's removal	18 Date of first removal from home and 21. Date of latest removal
102. (d.2) Transaction date: removal	22. Removal Transaction Date
103 -105 Removals under ICWA.	N/A not in the current AFCARS collection
106. (d.4) Environment at removal	N/A not in the current AFCARS collection
107. (d.5) Authority for placement and care responsibility	25. Manner of Removal from Home for Current Removal Episode
<b>(d)(6) Child and family circumstances at removal</b>	<b>Circumstances Associated with Removal</b>
108. (d.6.i) Runaway	N/A not in the current AFCARS collection
109. (d.6.ii) Whereabouts unknown	N/A not in the current AFCARS collection
110. (d.6.iii) Physical abuse	26. Physical Abuse (alleged/reported)



## AFCARS Data Elements Side-by-Side Comparison

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the <a href="#">Appendix to 45 CFR part 1355</a>
111. (d.6.iv) Sexual abuse	27. Sexual Abuse (alleged/reported)
112. (d.6.v) Psychological or emotional abuse	N/A not in the current AFCARS collection
113. (d.6.vi) Neglect	28. Neglect (alleged/reported)
114. (d.6.vii) Medical neglect	N/A not in the current AFCARS collection
115. (d.6.viii) Domestic violence	N/A not in the current AFCARS collection
116. (d.6.ix) Abandonment	38. Abandonment
117. (d.6.x) Failure to return	N/A not in the current AFCARS collection
118. (d.6.xi) Caretaker's alcohol use	29. Alcohol Abuse (parent)
119. (d.6.xii) Caretaker's drug use	30. Drug Abuse (parent)
120. (d.6.xiii) Child alcohol use	31. Alcohol Abuse (child)
121. (d.6.xiv) Child drug use	32. Drug Abuse (child)
122. (d.6.xv) Prenatal alcohol exposure	31. Alcohol Abuse (child)
123. (d.6.xvi) Prenatal drug exposure	32. Drug Abuse (child)
124. (d.6.xvii) Diagnosed Condition	33. Child's Disability
125. (d.6.xviii) Inadequate access to mental health services	N/A not in the current AFCARS collection
126. (d.6.xix) Inadequate access to medical services	N/A not in the current AFCARS collection
127. (d.6.xx) Child behavior problem	34. Child's Behavior Problem
128. (d.6.xxi) Death of caretaker	35. Death of Parent(s)
129. (d.6.xxii) Incarceration of caretaker	36. Incarceration of Parent(s)
130. (d.6.xxiii) Caretakers significant impairment – physical/emotional	37. Caretaker's Inability to Cope Due to Illness or Other Reason
131. (d.6.xxiv) Caretaker's significant impairment – cognitive	37. Caretaker's Inability to Cope Due to Illness or Other Reason
132. (d.6.xxv) Inadequate housing	40. Inadequate Housing
133. (d.6.xxvi) Voluntary relinquishment for adoption	39. Relinquishment
134. (d.6.xxvii) Child requested placement	N/A not in the current AFCARS collection
135. (d.6.xxviii) Sex trafficking	N/A not in the current AFCARS collection
136. (d.6.xxix) Parental immigration detention or deportation	N/A not in the current AFCARS collection
137. (d.6.xxx) Family conflict related to child's sexual orientation, gender identity, or gender expression.	N/A not in the current AFCARS collection
138. (d.6.xxxi) Educational Neglect	N/A not in the current AFCARS collection
139. (d.6.xxxii) Public agency title IV-E agreement	N/A not in the current AFCARS collection
140. (d.6.xxxiii) Tribal title IV-E agreement	N/A not in the current AFCARS collection
141. (d.6.xxxiv) Homelessness.	40. Inadequate Housing
142. (d.7) Victim of sex trafficking prior to entering foster care	N/A not in the current AFCARS collection
143. (d.7.i) Report to Law Enforcement	N/A not in the current AFCARS collection
144. (d.7.ii) Dates of each report	N/A not in the current AFCARS collection
145. (d.8) Victim of sex trafficking while in foster care	N/A not in the current AFCARS collection
146. (d.8.i) Report to law enforcement	N/A not in the current AFCARS collection
147. (d.8.ii) Date	N/A not in the current AFCARS collection
<b>(e) Living arrangement and provider information.</b>	<b>Current Placement Settings</b>
148. (e.1) Date of living arrangement	23. Date of Placement in Current Foster Care Setting
149. (e.2) Foster family home	41. Current Placement Setting
150. (e.3.i.) Foster family home type: Licensed home	N/A not in the current AFCARS collection
151. (e.3.ii) Foster family home type: Therapeutic foster family	N/A not in the current AFCARS collection

## AFCARS Data Elements Side-by-Side Comparison

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the Appendix to 45 CFR part 1355
152. (e.3.iii) Foster family home type: Shelter care foster family home.	N/A not in the current AFCARS collection
153. (e.3.iv) Foster family home type: Relative foster family	41. Current Placement Setting - Foster Family Home (Relative)
154. (e.3.v) Foster family home type: Pre-adopt home	41. Current Placement Setting - Pre-Adoptive Home
155. (e.3.vi) Foster family home type: Kin foster family home	41. Current Placement Setting - Foster Family Home (Non-Relative)
156. (e.4) Other living arrangement type	41. Current Placement Setting
157. (e.5) Private agency living arrangement.	N/A not in the current AFCARS collection
158. (e.6) Location of living arrangement	42. Is Current Placement Setting Outside of State or Tribal Service Area?
159. (e.7) Jurisdiction or country where child is living	N/A not in the current AFCARS collection
160 -164 (e.8) Available ICWA foster care and pre-adoptive placement preferences: a member of the Indian child's extended family	N/A not in the current AFCARS collection
165. (e.9) Foster care and pre-adoptive placement preferences under ICWA.	N/A not in the current AFCARS collection
166. (e.10) Good cause under ICWA.	N/A not in the current AFCARS collection
167 - 171. (e.11) Basis for good cause.	N/A not in the current AFCARS collection
172. (e.12) Marital status of the foster parent(s)	49. Foster Family Structure
173. (e.13) Child's relationships to the foster parent(s).	N/A not in the current AFCARS collection
174. (e.14) Year of birth for first foster parent	50. Year of Birth (1 <sup>st</sup> Foster Caretaker)
175. (e.15) First foster parent tribal membership.	N/A not in the current AFCARS collection
176 -182. (e.16) Race of first foster parent.	52. Race of 1 <sup>st</sup> Foster Caretaker
183. (e.17) Hispanic or Latino ethnicity of first foster parent.	53. Hispanic or Latino Ethnicity of 1 <sup>st</sup> Foster Caretaker
184. (e.18) Gender of first foster parent.	N/A not in the current AFCARS collection
185. (e.19) First foster parent sexual orientation.	N/A not in the current AFCARS collection
186. (e.20) Year of birth for second foster parent.	51. Year of Birth (2 <sup>nd</sup> Foster Caretaker)
187. (e.21) Second foster parent tribal membership.	N/A not in the current AFCARS collection
188 - 194. (e.22) Race of second foster parent.	N/A not in the current AFCARS collection
195. (e.23) Hispanic origin of the second foster parent	55. Hispanic or Latino Ethnicity of 2 <sup>nd</sup> Foster Caretaker (if applicable)
196. (e.24) Gender of second foster parent.	N/A not in the current AFCARS collection
197. (e.25) Second foster parent sexual orientation.	N/A not in the current AFCARS collection
<b>(f) Permanency planning</b>	<b>Most Recent Case Plan Goal</b>
198. (f.1) Permanency plan	43. Case Plan Goal
199. (f.2) Date of permanency plan	N/A not in the current AFCARS collection
200 (f.3) Date of periodic review	5. Date of Most Recent Periodic Review (if applicable)
201 (f.4) Date of permanency hearing	5. Date of Most Recent Periodic Review (if applicable)
202 (f.5) Juvenile justice	N/A not in the current AFCARS collection
203 (f.6) Caseworker visit dates	N/A not in the current AFCARS collection
204 (f.7) Caseworker visit location	N/A not in the current AFCARS collection
205 Transition plan.	N/A not in the current AFCARS collection
206 Date of transition plan	N/A not in the current AFCARS collection
207 - 219 (f.10) Active Efforts.	N/A not in the current AFCARS collection
<b>(g) General exit information</b>	<b>Discharge Data</b>
220. (g.1) Date of exit.	56. Date of Discharge from Foster Care (in foster care data file) and 21. Date adoption legalized (in adoption data file)
221. (g.2) Exit transaction date.	57. Foster Care Discharge Transaction Date

## AFCARS Data Elements Side-by-Side Comparison

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the Appendix to 45 CFR part 1355
222. (g.3) Exit reason.	58. Reason for Discharge
223. (g.4) Transfer to another agency	N/A not in the current AFCARS collection
<b>(h) Exit to adoption and guardianship information</b>	<b>Adoption Data File Data Elements – for adoptions only, guardianship not collected currently</b>
224. (h.1) Marital status of the adoptive parent(s) or guardian(s).	22. Adoptive Parents' Family Structure
<b>(h.2) Child's relationship to the adoptive parent(s) or guardian(s).</b>	<b>29 – 32. Relationship to Adoptive Parent (Adoption only)</b>
225. (h.2.i) Child's relationship to the adoptive parent(s) or guardian(s). Paternal grandparent(s).	30. Relationship - other relative
226. (h.2.ii) Child's relationship to the adoptive parent(s) or guardian(s). Maternal grandparent(s).	30. Relationship - other relative
227. (h.2.iii) Child's relationship to the adoptive parent(s) or guardian(s). Other paternal relative(s)	30. Relationship - other relative
228 (h.2.iv) Child's relationship to the adoptive parent(s) or guardian(s). Other maternal relative(s)	30. Relationship - other relative
229 (h.2.v) Child's relationship to the adoptive parent(s) or guardian(s). Sibling(s).	30. Relationship - other relative (Adoption only)
230 (h.2.vi) Child's relationship to the adoptive parent(s) or guardian(s). Kin	30. Relationship - other relative or 32. Relationship - other non-relative (Adoption only)
231. (h.2.vii) Child's relationship to the adoptive parent(s) or guardian(s). Non-relative(s)	32. Relationship - other non-relative (Adoption only)
232. (h.2.viii) Child's relationship to the adoptive parent(s) or guardian(s).Foster parent(s)	31. Relationship - foster parent (Adoption only)
233. (h.3) Date of birth of first adoptive parent or guardian.	23. Adoptive Mother's Year of Birth 24. Adoptive Father's Year of Birth
234. (h.4) First adoptive parent or guardian tribal membership.	N/A not in the current AFCARS collection
235 - 241 (h.5) Race of first adoptive parent or guardian.	25. Adoptive Mother's Race 27. Adoptive Father's Race
242. (h.6) Hispanic or Latino ethnicity of first adoptive parent or guardian.	26. Adoptive Mother's Hispanic Origin 28. Adoptive Father's Hispanic Origin
243. (h.7) Gender of first adoptive parent or guardian	N/A not in the current AFCARS collection
244. (h.8) First adoptive parent or legal guardian sexual orientation.	N/A not in the current AFCARS collection
245. (h.9) Date of birth of second adoptive parent, guardian, or other member of the couple.	23. Adoptive Mother's Year of Birth 24. Adoptive Father's Year of Birth
246. (h.10) Second adoptive parent, guardian, or other member of the couple tribal membership.	N/A not in the current AFCARS collection
247 – 253. (h.11) Race of second adoptive parent, guardian, or other member of the couple.	25. Adoptive Mother's Race 27. Adoptive Father's Race
254. (h.12) Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.	26. Adoptive Mother's Hispanic Origin 28. Adoptive Father's Hispanic Origin
255. (h.13) Sex of second adoptive parent, guardian, or other member of the couple.	N/A not in the current AFCARS collection
256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.	N/A not in the current AFCARS collection
257. (h.15) Inter/Intrajurisdictional adoption or guardianship.	33. Child was placed from (Adoption only)



## AFCARS Data Elements Side-by-Side Comparison

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 ( <a href="#">81 FR 90524</a> ) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the <a href="#">Appendix to 45 CFR part 1355</a>
258. (h.16) Interjurisdictional adoption or guardianship jurisdiction	N/A not in the current AFCARS collection
259. (h.17) Adoption or guardianship placing agency.	34. Child was placed by (Adoption only)
260. (h.18) Assistance agreement type.	35 – 37. Financial Adoption Support (Adoption only)
261. (h.19) Siblings in adoptive or guardianship home.	N/A not in the current AFCARS collection
262 – 265. (h.20) Available ICWA Adoptive placements.	N/A not in the current AFCARS collection
266. (h.21) Adoption placement preferences under ICWA.	N/A not in the current AFCARS collection
267. (h.22) Good cause under ICWA.	N/A not in the current AFCARS collection
268 – 272. (h.23) Basis for good cause.	N/A not in the current AFCARS collection

AFCARS Adoption and Guardianship Assistance Data Elements as Published in the Final Rule Issued 12/14/16 ( <a href="#">81 FR 90524</a> ) (1355.44)	AFCARS Adoption Data Elements as Published in the <a href="#">Appendix to 45 CFR part 1355</a> (Note: Guardianship not currently collected)
1. IV-E Agency	1. IV-E Agency code
2. Report date	2. Report period ending date
3. Child record number	3. Record number
4. Child's date of birth	5. Child's date of birth
5. Child's gender	6. Sex
6. Child's race	7. Race
7. Hispanic or Latino Ethnicity	8. Hispanic origin
8. Assistance agreement type	37. Title IV-E Adoption assistance
9. Subsidy amount	36. Monthly amount
10. Adoption finalization or guardianship legalization date	21. Date adoption legalized
11. Agreement termination date	N/A not in the current AFCARS collection





ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034  
Washington, D.C. 20201 | [www.acf.hhs.gov](http://www.acf.hhs.gov)

**TO:** Steven Wagner  
Acting Assistant Secretary

**FROM:** Jerry Milner  
Acting Commissioner, ACYF

**DATE:** June 29, 2018

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System – **DECISION to Issue a Notice of Proposed Rulemaking**

**ISSUE**

I request your approval to move forward with drafting a Notice of Proposed Rulemaking (NPRM) for the Adoption and Foster Care Analysis and Reporting System (AFCARS) that is based on the analysis of comments received in response to the Advance Notice of Proposed Rulemaking (ANPRM). I am also requesting approval to post a notice in the Federal Register informing the field of our intent to move forward on a Notice of Proposed Rulemaking if approved.

**BACKGROUND**

The ANPRM was published in the Federal Register on March 15, 2018 ([83 FR 11449](#)). It was published in response to the President's request that federal agencies establish a Regulatory Reform Task Force who identified the AFCARS December 2016 final rule ([81 FR 90524](#)) as one where there may be areas for reducing burden. Through the ANPRM, we provided a 90-day comment period for the public to give specific feedback to ACF on the AFCARS data points, both related to the Indian Child Welfare Act of 1978 (ICWA) and those unrelated, and costs to implement and burden hours to complete the work required to comply with the AFCARS requirements.

The AFCARS December 2016 final rule contains information for compliance with the Paperwork Reduction Act (44 U.S.C. 35, as amended) (PRA). Under the PRA, all departments must submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. PRA rules require that ACF estimate the total burden created by proposed and final rules regardless of what information is available. In the AFCARS December 2016 final rule, ACF provided burden and cost estimates using the best available information which was via comments on previous AFCARS proposed rules. Unfortunately, very few states provided specific burden and cost estimates. In the December 2016 final rule, we estimated the total recordkeeping and reporting burden to be 970,226 hours, which is a combined



Page 2 – Acting Assistant Secretary Wagner

total for all states and seven tribal title IV-E agencies. These hours comprised of tasks such as searching data sources, entering information into the data system, developing/modifying procedures/systems to comply with AFCARS, and tasks associated with training personal on AFCARS requirements. Regarding cost, we estimated an average hourly labor rate of \$84, for a total cost of \$81,499,584, which again is a combined total for all states and seven tribal title IV-E agencies. Based on an estimated federal financial participation rate of 50%, the total cost was estimated to be \$40,749,792 for state and tribal title IV-E agencies.

## DISCUSSION

The ANPRM's comment period ended on June 13, 2018. In response to the ANPRM, we received 249 comments, which comprised of 38 states, 43 Indian tribes or consortiums, 71 organizations representing state or tribal interests, national public advocacy groups, professional associations, universities, and 97 private citizens

**States:** All but two states (36) supported making revisions to streamline the AFCARS regulation. This was based on each state's self-assessment of the cost and burden/work hours needed at various levels and the number of hours it will take to complete the work required to comply with the AFCARS December 2016 final rule. States shared similar concerns for implementing the new AFCARS requirements such as: 1) requiring the additional data points could adversely impact their ability to provide safety, permanency and well-being for youth in their care; 2) the additional work needed to comply would pull valuable resources away from the field and decrease the amount of time caseworkers have to work with families and children; and 3) many new data points are qualitative and therefore more accurately evaluated in a case review.

- *Burden Estimates* – States ranged considerably in estimating the length of time it would take to comply with the AFCARS requirements. States estimated that it would take between 200-25,000 hours for the ICWA-related data points and 800-70,000 for all other points. Some of the tasks associated with these wide-ranging hours included searching/gathering information, inputting information into the system, developing or modifying procedures to comply with AFCARS, and training staff on the requirements. Hours related to developing and administering training ranged from 20-102,000 depending on the number of staff requiring training and materials needing to be developed.
- *Cost Estimates* – Depending on the size of the foster care population, level of system functionality, length of time to full implementation, and data exchanges with other agency systems, states' estimates varied considerably. States estimated that total costs to comply with AFCARS ranged from \$1 million for one year to \$45 million over multiple years. They provided ranges for specific costs, such as \$41 million to hire and train new staff for administrative support, \$600,000-\$1 million for total initial costs, and \$741,000-\$11 million in ongoing costs. These costs included analyzing practice and casework to determine and implement modifications needed to capture and report data, systems changes (e.g., contract and staff time to revise systems), developing and administering training, and reporting the AFCARS data to ACF.
- *Data Points* – Based in large part on the cost and hours required to complete the work to comply with the December 2016 final rule, 36 states are in favor of streamlining AFCARS, many of whom provided recommendations. Of the specific recommendations



Page 3 – Acting Assistant Secretary Wagner

for streamlining, a third of the states expressed concerns with the data points around sexual orientation and recommended they be removed, and almost all states made recommendations around education, health assessments and conditions, youth pregnancy/fathering, siblings, prior adoptions, caseworker visits, and sex trafficking. Reasons provided for streamlining is that it would be costly to program so many new data points (compared to the current AFCARS) and they did not see the benefit at the national level for providing a lot of new information that was not explicitly used for monitoring. Regarding the ICWA-related data points, half of the states expressed concern with the large number of and detailed questions asked related to ICWA, with five states expressly asking for no ICWA-related data points in AFCARS. Four states reported that ICWA-applicable children in their populations were well under 1%; however states with higher numbers of tribal children reported that some of the ICWA-related data points were redundant, overly detailed, and can be streamlined.

**Other Commenters:** All tribes and organizations representing tribal interests opposed streamlining the AFCARS data points. Reasons provided were: 1) while some tribes reported good working relationships with some states, they are still concerned that there are children in state custody who are not identified as Indian children; 2) the public already had ample opportunities to comment; 3) ACF illustrated its authority to collect ICWA-related data points in AFCARS in prior rulemakings; and 4) without any uniform, national data, we have no idea the scope of issues to inform policy changes; and 5) in general, the state burden in collecting the ICWA-related data points is not significant enough to warrant streamlining it.

Most other national advocacy organizations, universities, private individuals, and other groups opposed streamlining for similar reasons, such as it will provide context for the children in care and the benefits outweigh the burden to have new information to inform policy. A few private individuals supported streamlining based on the cost and system changes states will need to make to comply with AFCARS requirements.

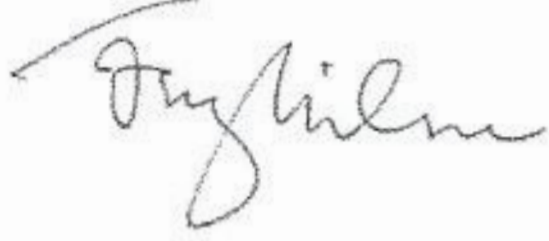
### **RECOMMENDATION**

We took the comments and cost estimates into consideration and believe that based on our analysis of the comments, the best way to reduce the burden to title IV-E agencies is propose revisions to the AFCARS regulation through a NPRM. We believe that the states sufficiently argued through detailed work and cost estimates that the December 2016 final rule has many data points that can be streamlined while still providing critical information on the out-of-home care population. We also want to note that as of November 16, 2017, 33 states (including DC and Puerto Rico) reported to AFCARS that the population of children/youth in care who have an identified race as American Indian/Alaskan Native is less than 1% and six of those states reported zero. Most commenters that opposed streamlining are not required to report AFCARS data, thus could not speak to the burden that the December 2016 final rule places on title IV-E agencies. We appreciate their comments about the need for data on particular topics, such as ICWA and other data points, and we believe that we can balance the need for updated data with the burden on title IV-E agencies through a new NPRM. We think it is important to inform the field of the decision to move forward with a new NPRM so that states do not move ahead with unnecessary system changes prior to publication of a new rule.



Page 4 – Acting Assistant Secretary Wagner


I recommend you approve the Children's Bureau to draft a NPRM for publication in the Federal Register and to post a notice in the Federal Register informing the field of such.



\_\_\_\_\_  
Jerry Milner

**DECISION**

Approve  Disapprove \_\_\_\_\_ Need More Information \_\_\_\_\_

 \_\_\_\_\_ **JUL - 6 2018**  
Steven Wagner Date



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**  
 CONFERENCING OPERATIONS

**AFCARS BRIEFING FOR TRIBES**  
**Wednesday, April 25th, 2018**  
**2:00 PM-3:30 PM Eastern Time**

**WEBINAR REGISTRATION DETAILS:**

---

HOST: DOROTHY KINDER  
 DATE/TIME: WEDNESDAY, APRIL 25, 2018  
 CONFIRMATION #: 7248644

**REGISTERED ADOBE CONNECT PARTICIPANTS AS OF APRIL 20, 2018**

---

<b>FIRST NAME</b>	<b>LAST NAME</b>	<b>EMAIL ADDRESS</b>
Adam	Reno	Areno@msn.com
Amanda	Oliver	amanda.oliver@catav
1 Amelia	Blodgett DeLaCruz	amelia.delacruz@quir
2 Becky	Peratrovich	becky.peratrovich@k
3 Carlene	Chamberlain	cchamberlain@jiv.nsr
4 Catherine	Hendricks	catherine.hendricks@
5 Catherine	Castagne	Ccastagne@ltbbodaw
6 Charles	Henry	chenry@cdatribe-nsn
7 Cheyenne	Sanders	csanders@morongo-r
David	Montoya	dmontoya@ziapueblc
Dawn	Baum	dbaum@yuroktribe.n
8 Delvin	Schmunk	delvin.schmunk@acf.l
9		dim58663@adobe.co
10 DOROTHY	KINDER	DOROTHY.KINDER@A
11 Dot	Kinder	dkinder@acf.hhs.gov
12 geeta	mannes	geeta.mannes@acf.hl
13 Heather	La Forme	heather.laforme@ocf
14 Hilary	McKinney	hilary.mckinney@chic
15 Jennifer	Prieto	jenniferp@miccosuke
16 Judy Jo	Matson	nnvc.judyjo@gmail.cc
17 Juliette	Knight	knighjp@dshs.wa.gov
18 Karla	Eisen	karlaeisen@westat.cc
19 Kelly	Mounce	kmounce@ihcrc.org
20 Kelsey	Bless	kmbless@nd.gov
21 keshan	dowd	keshandowd08@gma
22 Laurie	Clark	lclark@potawatomi.o
23 Lee	Collins	lcollins@osagenation-
24 Lisa	Norton	lisan@ctsi.nsn.us

25 Loni	Greninger	lgreninger@jamestow
26 Maritza	Hawrey	maritza.hawrey@oig.l
27 Martina	Gauthier-Tourtillott	mgauthier@lagunapu
28 Mary	Risling	mary.risling@osi.ca.g
29 Mary	Wolf	marywolf04@gmail.co
30 Melinda	Golub	melinda.golub@oig.hl
31 Michele	Fahley	mfahley@pechanga-n
32 Michelle	Sauve	michelle.sauve@acf.h
33 Mona	Maxwell	mmaxwell@jenachoc
34 Nicole	Le Prohn	nleprohn@casey.org
35 Nikki	Hatch	nikki.hatch@acf.hhs.g
36 Pamela	Rentz	prentz@kootenai.org
37 Patricia	Hobbs	phobbs@karuk.us
38 Penny	Kerr	penny.kerr@sni.org
39 Rebecca	Grey Bull	Rgreybull@standingrc
40 Rebecca	St. Germaine	rebeccast.germaine@
41 Regina	Yazzie	reginayazzie@navajo-
42 Savannah	Sinquah	savannah.sin@riverst
43 Sharon	Francis	sharon.francis@senec
44 Stacey	Ecoffey	Stacey.Ecoffey@hhs.g
45 Sunshine	Whitehair	Sunshine.Whitehair@
46 terry	ross	nantaan@tss.scats-nsr
tino	batt	tbatt@sbtribes.com
Tleena	Ives	tleena.ives@del.wa.g
47 Trista	Gannon	tgannon@choctawna
48 Vanessa	Ray-Hodge	vrayhodge@abqsono
Verna	Johnson	verna.johnson@itcao
Vi	Waln	viwaln@sicanguscribe

|



|

vbaindian.net  
vault.org  
odiakhealthcare.org  
v.gov  
vmwtribe-NSN.gov  
va-man.gov  
.gov  
vsn.gov  
v.org  
sn.us  
hhs.gov  
m  
.CF.HHS.GOV

hs.gov  
s.ny.gov  
:kasaw.net  
:tribe.com  
m  
,  
m

il.com  
rg  
-nsn.gov

ntribe.org  
hhs.gov  
eblo-nsn.gov  
ov  
om  
hs.gov  
nsn.gov  
hs.gov  
taw.org

gov

ock.org  
hhs.millelacsband-nsn.gov  
nsn.gov  
onehealth.org  
ahealth.org  
gov  
gric.nsn.us  
l.gov

ov  
tion.com  
sky.com  
nline.com  
.com

[ Please stand by for realtime captions ] [ Please stand by for realtime captions ] >> Testing 123.

Testing 123. >>

Testing 123. >> Testing 123. >> Testing 123.

Testing 123. >>

Your conference will begin momentarily. >> Your conference will begin momentarily. Thank you for your patience. >> Thank you for standing by. You are in a listen and -- listen only mode.

Good afternoon, everyone. Welcome to the trouble consultation on the AFCARS rulemaking, hopefully you are aware of the published this notice of proposed rulemaking on March 15, with the intent of opening up the consultation process, to gain a better understanding of what the burden that was imposed on the final rule, that was published in December 2016, and to gather information on possible opportunities for streamlining the role if it is determined to be overly burdensome.

Before we get started, I want to introduce the folks in the room. I am the deputy associate Commissioner, with me I have Gail Collins, Eileen West, Sharon Newberg, I want to invite any tribal leaders who have joined to introduce themselves. Julia?

Press \*1. >>

If we have anybody representing a tribal leader, please introduce yourselves.

We have Caroline.

I am not a tribal leader I am representing the Pueblo social service component.

Welcome.

Thank you. >> I am salt River -- I am from salt River and I represent the president.

Welcome.

Hello. I am here on behalf of the tribal Indian group. >>

Hello. I am from the state of New Mexico. I am director of social services.

Welcome.

I am vice president of the Central Council of Alaska.

Thank you for joining.

That is all at this time.

We do not prepare a formal presentation for the consultation, we are here to gather information on two different aspects of the advanced notice of proposed rulemaking, the purpose is to try to have a better understanding of the burden that the rule imposes and from that perspective, we hope to hear from tribes who are either operating, preparing to operate a title IV program because there are 88 additional related data elements that have been imposed on tribes were operating for a program so we want to get a sense of your perspective on that burden and out to streamline that or if it is necessary, and a broader interest to all tribes, the final rule included 65 data elements on compliance, and we want to spend some time getting a better understanding of what the data needs are so we are sure it is represented in the collection, and discuss what you see as the data needs related to Native American programming and children and I would not necessarily confine yourself to what is currently in the regulation if the administration does decide to open it up again and attempt to streamline it, represents an opportunity to better align whatever data is in the collection to the data needs that you expressed today.

I think will end up spending the majority of the time, to all tribes, if we can open it up to comments, if you want to provide feedback on the elements and what data needs you have that you want to see in the collection.

Thank you. If you want to make a comment press \*1. Please record your first and last name. To withdraw question, press \*2. One moment please -- >>

I represent social service departments.

Welcome.

Thank you.

Hello. I am vice chair of Jamestown tribe and I share the task meeting, we worked on this with the state, in Washington, one of the main concerns when we discussed that with them was it wasn't so much the questions and the burden but how quickly they could implement it so it is a time issue more than the burden some questions. I think when we first started working on this, the main thing was, the main questions, down to just -- is the child Indian, is the tribe notified, and a certain amount of time, and what did they respond with so the main questions -- the ones that they are not asking, have been confusing Washington state does a great job with that, they have embraced the Indian child welfare, it is a good model for child care and also for good casework.

The key data elements that we need to collect our Native American, tribal affiliation, parents, resource family parents and timing on notification.

Yes. Those are essential. >> Also it would be nice if the other states followed the ICW review model which we do here, it takes the burden off of the federal government and it's a working relationship



between the tribes and the state, in reviewing the cases themselves and making sure that the Indian child welfare is followed.

Can I ask a favor? Would you mind emailing that to your regional office representative? Then they can send that to me. I would like to see that.

Okay. Send it to region 10. I can also send it to Stacy also.

That would be great. Thank you.

Hello. I do not have a question at this time. I just wanted to make my introduction.

Welcome. Thank you for joining. >> Whenever you are ready --

Thank you. I thank you for the opportunity to comment on the ANPRM, I did want to note that I did not hear that the associate Commissioner of the children's Bureau is here.

He was called away today.

That is disappointing. We do not want decision-makers on this consultation calls so I hope you can convey to him the comments that we're providing.

I want to approach this for my prior service, I served six years on the HHS advisory committee, as an at-large member. As early as 2011, the tribal members and other tribes advocated to the ACF and the children's Bureau to include measures in the AFCARS we were disappointed that 2015 asserted that including additional data elements in AFCARS specifically, and the impact on tribal children, was outside the purview and therefore the ACF do not have the authority to collect specific data on implementation and compliance for instruction and meeting tribes on how to meet its requirements. This view in our mind, we believe the tribes and the members of the staff believe that this view was expressed in PRN and that was an error and we set out to rub out the error from the 2015 document. We worked closely with the secretary, the office of government affairs, and the children's Bureau and the result of the collaboration was the December, 2016 new regulations regarding the data to be collected through the AFCARS and for the first time, requirements included the collection of data relating to Indian child welfare compliance.

The collaboration included very close examination of section 422, of the Social Security act that requires title IV state plans to contain a description developed after consultation with tribal organizations in the state of the measures taken by the state to comply with EQUA HHS has implemented a title IV stapling requirement for program instruction document, in the PI cut HHS requires the states to include in their service plan, the CF, a description developed in consultation with Indian tribes --

They want to measure the requirements and if they are met, and that requirement has been spelled out in the PI and that creates broad authority to allow for the collection of additional elements relevant to EQUA compliance, the data can assist the state in assessing its level of compliance as required in the PI, the PI instructs states to identify sources of data to assess the state's ongoing compliance with EQUA as part of the title IV requirement, linking such data in AFCARS will facilitate and make it easier for compliance with the section 422 requirement. The new requirements were supposed to take affect in October, 2019 but in March of this year, HHS published a proposal to delay implementation of the new AFCARS requirement for two years, October, 2021 and also published an advanced notice of proposed rulemaking taking ideas on how to extreme line -- on how to align for more detailed comments on the specific limitations we should be aware of that states will encounter.

The new data requirements are clearly a target of these proposals by the use of pejorative language that trades the new data elements as costly and burdensome, clearly, the children's Bureau believes it should not have to implement EQUA

data, because this is what we gleaned from the notice that it is too much of a burden on frontline staff to put EQUA data into the database, the children's Bureau believes that it would be collecting data for the Department of Interior, and the children's Bureau does not believe they have the expertise on compliance because that responsibility falls on BIA cut the collection of EQUA data is responsible for the children's Bureau because the federal legislation of EQUA mandates state agencies to comply with the law, the children's Bureau should be responsible for evaluating whether this is happening just as it does for other federal policies.

If it is a burden then the state child protection caseworkers can enter the data and ACF needs to privilege duty to provide technical assistance to states and front-line staff and the federal agencies are removing tribal children in large part due to generational trauma impose upon tribes and native peoples by the federal government consequent to obligations and duties based in the U.S. Constitution, the treaties, federal court, jurisprudence, and federal policies that shakes the federal trust responsibility, HHS is a trustee with the duty to fulfill that leads us to the additional efficacy and effectiveness that would be implemented through the new AFCARS data requirements.

I have recommendations, we don't have a problem with the delay, the additional delay suggested in the AFCARS, I think states may need additional time to implement the additional data elements, number two, the data elements themselves do not seem overly burdensome, there was an excellent element comparison and assessment review guide and definitions and the list of elements that was prepared from the 2016 notice, I think that makes it clear that the additional information is not overly burdensome nor costly for states, that they need time to implement these data in their information system, but the actual collection of the data is something that we work towards together with a very excellent relationship with the state of Alaska, we have the first of its kind, collaborative agreement with the state of Alaska,

child protective services, we don't see that this is a cause of concern from the state to the extent that the data element should be withdrawn or shrunk down substantially.

The additional time afforded maybe helpful.

Thank you. We will provide extended remarks.

Thank you. >> On behalf of Cherokee nation I want to thank you for the opportunity prove -- the opportunity to provide content. It is important to our children families and tribes, I hope you're listening today on this very important topic in discussion, the implementation of this data element will assist the state and federal agencies to improve the implementation of EQUA to improve writing of appropriate policy for working with Indian children. I hope this data will help the children's Bureau and understand the issues demonstrated by the overrepresentation of Indian children in foster care.

ACF has the late implementation by seeking supplemental comments last year which Cherokee nation of the tribe submitted. The 2016 role provides a mechanism to collect data that is critical to improving application across all states. Moreover, ensuring that HHS implements the 2016 role consistent with the Department of Interior's EQUA regulations and the litigation positions taken by the Department of Justice should not be a cause for delay because all three agencies entered into a memorandum of understanding creating an interagency partnership to strengthen EQUA compliance. Again, Cherokee nation asserts there is no reason for delay and implementation, and strongly opposes any further attempts to delay or we can AFCARS for EQUA reporting requirements. It is necessary for states to gather data to comply with instructions. >>

Thank you.

To ask a question press \*1.

Thank you. From the other previous comments that were made, these questions may have been answered but my question is in the lane the compliance dates, December 2016, what happens to the data in the interim in the meantime because time is very crucial to us when we think about the Indian children that maybe in substitute placement that the tribes know nothing about with regard to the Indian heritage or the connection to the tribe so that is one question. What happens to the data in the interim and my second question is I'm wondering if someone could talk with us about what the specific costs are because that seems to be the language that is being used, the specific cost and the specific burden that is being addressed will be costly it will be quite burdensome, I have not heard enough discussion about what those specifics are.

In response to your first question, currently there are two different versions of AFCARS, who was the version that was originally promulgated in 1993, and states will continue to report to that version of AFCARS until it is replaced and that comes online. All the data that we are

being reported prior to the promulgation of the 2016 final rule is still being reported through the original AFCARS rule.

As far as the burden, it is not up to us to dictate what constitutes burden, the advanced notice of proposed rulemaking we gave some ideas about where some of the burden items might exist. Some of it may be with amending the states data collection system, some of the elements that are new are not consistent with the way states defined as data elements, they will have to change the definitions, they may not -- if they collected data they may collect the data in a way that it is not easily reportable.

Is also burden associated with training staff, the report and collect on a bunch of data elements. There are those cost that removes staff from the field and doing their case activities to perform the training functions in order to report the data and there are staff costs associated with the data collection itself. Early on, before the 16 role was published, we heard from some states about how much time the staff was spending doing data entry once they told us that they did a study and her staff were spending two of their five working days doing data entry. The aspect of the balance between reporting on the work and doing the work.

It will be up to the states and tribes were operating programs and are having to report AFCARS data you tell us with a burden is and what the costs are so there is no prescribed framework for what constitutes burden. Burden is in the eye of the entity responsible for meeting the requirements.

Thank you. >> I have a couple of comments. [ Indiscernible ] I looked at the proposed data elements, I like all of them. They are precise. They are specific. It can give us a lot of information. EQUA data will be collected [ Indiscernible ] we can look at that at the tribal level and national level. I do not receive a burden at the collection, I am a researcher by trade. [ Indiscernible ] >> [ Indiscernible ] >> The cost can be minimal. It is the responsibility of the federal government to work with a good data specialist. That will reduce costs and burden. The EQUA data is critical for American Indian tribes because we continue to see many of our Indian children continue to remain in the state's custody because tribes are poor. They do not meet the standard requirements [ Indiscernible ] they must rely on the states to provide services for those children. So having the data available gives us an idea of the services and responsibilities in which tribes are meeting support.

In regard to the responsibility of the Department of Interior, they're responsible having to house the legislative policy, and to provide the guidelines, [ Indiscernible ] this goes directly to the states, very few tribes [ Indiscernible ] the states should be mandated to collect EQUA data

thank you. I will submit my comments in writing.

Thank you. >> Hello I have comments on -- my comment is that we are small population of Native American children because we have become a

small population in this country. But yet we are overrepresented in removals and foster care. Therefore how can we get a complete justification of the overrepresentation without true data? That is my question. We need the true data basically, an oxymoron, to justify why it is over burdensome when we have that large population of our children and the issues that I would like to see within that AFCARS is the notice piece I want to see -- what permanency are the children getting. We do not have a true picture. How can we tell if EQUA is working or not unless we see that true picture? And the permanency, what active efforts have been done? A lot of times we are not getting what efforts have been done so I want to see that in order to see if EQUA is working or not working. Those are some of the issues.

The children's Bureau, if you want no responsibility I do want to see what happened with the removal and later children's Bureau apologizing after the fact, like happened when children's Bureau apologized for the removal of Indian children, I don't want 20, 40 years to go by and get an apology. That is one of the issues. We are looking on doing our own direct EQUA which would include EQUA children, we know and understand what we have to have AFCARS we accept that, yet when it comes to EQUA it is not being respected or taken into account as child well-being, at the children's Bureau is responsible for child welfare and well-being elements, this is a child well-being element for Native American children.

As part of the oversight of the children's Bureau, we look at the well-being of all children in chair. Including Native American children. If you overlook that piece, that's giving them less regard than you would any other child.

Having the count, and having this as an AFCARS element could justify state dollars and tribal dollars and staff dollars for states. Once you get a true picture of how many cases are out there, how much longer does it take to unify these kids, but now we do not know. Thank you.

Thank you. >> To ask a question or make a comment press \*1. >> I am showing no comments or questions at this time.

We had planned to have two different phases, the first to talk about specific data elements in the second to gather information and comments on the data elements, it sounds like a lot of the commenters who have spoken, they pertain to both but if there is anyone on the call who wants to provide insight or information on some of the nine data elements that tribes are operating on, we want to hear that as well.

My comment was on the data collection after 25 years, and this is the first time there has been a change, it would be burdensome no matter what, for the states and tribes in updating the data collection, this is normal, I don't think anybody should be afraid of the changes, we need to work to collect the data together, the children's Bureau is not the only one who updates their federal laws and collecting data so I don't think any of us should worry about that, which is fine this as a blessing to update data that is not current.

Thank you.

Press \*1. >> I'm showing no comments at this time.

We want to encourage everyone to submit your written statements that you presented today. Please do that by June 13. If there is something that -- we will hold another consultation tomorrow. If you want another opportunity and you come up with additional information that you want to share, we will do this again tomorrow.

If there are no additional questions or comments --

Good afternoon. I am from the Hopi nation, we do not have a program but we are working on getting that program set up through our tribe. I want to echo some of the comments that were made earlier in support of getting all the data elements implemented. I believe the information is very vital to our survival of our generation. It is important that we get accurate information of where our children are and who they are, and where they come from.

A lot of that has to do with the lost generations that we have, and people coming back to our reservations trying to determine who they are and where they are from, and what makes them who they are. I think that has been something that has been forgotten for generations from the federal government. Another thing I want to also add that is important, the collection of the data is the only thing that is mandated from Congress at this point. To analyze how effective this program is. I believe all the data elements should be included including any data gathering that should be implemented for the LGBT community because that is another population that is being forgotten. I strongly support the comments that were made before. I support possibly delaying so everyone understands fully what is required when we gather the information, I do not think that it is burdensome. And perhaps there's a lot more work to be done. Again, there is no analysis, there is nothing to tell us what it is that the problem is in my opinion, it is merely another tactic to not be able to provide adequate services to our community and population.

Thank you. >> I am showing no further questions or comments. >> We will give it another minute or so, just in case.

To make a question or comment press \*1. >>

Hello. I want to make sure we will provide a written comment, for the third round. Our concern is the lack of communication regarding the notice in the Federal Register, that we are bringing this issue up again, we discussed this issue with our state personnel and everyone is known for -- everyone is on board, and the proposed AFCARS changes, for us it is discouraging to see this come through the process again. It is frustrating. The need for the data is clear, we understand our children are disproportionately overrepresented in each state, and over 14 states, there is a major problem for over two different decades and without the data, it has been hard for the states and tribes to address these issues effectively. We believe the requirements for the states, it is not a burden something it is -- we want to have

an effective communication and provide services to our Indian children.

As you know over the years, the new data elements relating to our Indian children in the state system, there are concerns and every tribe wants to make sure that these are implemented, we do not under -- we do not understand the reasoning, speaking with our state officials, they are prepared and ready to implement these new requirements.

We request this kind of consultation. We want to look at the official leaders regarding consultation and involvement of the regulatory reform that has been processed. Tribes were not consulted, in advance. As tribal leaders we need to know what the intention of the department is to develop these rules. Is it an issue at the central office? We need to address the issues, more likely you'll see the same language and the request from the tribes, and the states, that there is no contest and we fulfill these requirements of the AFCARS regulations and they should not be delayed, they should be implemented. They should be implemented in a timely manner. We continue to believe there needs to be more transparency in the government to government relationship with the tribes, and for us to go through this a third round, it is not effective and does not demonstrate the effectiveness of the agency in protecting our Indian children as well as respecting the tribes and their responsibility requirements.

Those of the concerns. We do plan to submit again, our concerns, and requirements, as required before the due date. Thank you for listening.

We will send an official letter signed by our chairman.

Thank you. >> I want to thank our leadership for the support of our program. Reporting these elements would give a truer picture, right now the plans are at the discretion of the state and do not show a true picture. These would show a better picture of what is happening with our children. Thank you. >> We will give you another couple of minutes.

To ask a question or make a comment press \*1. >> Thank you for your participation. Thank you for your information. It is very helpful. I understand the frustration about having to comment on AFCARS. I want to say, part of the dynamic was that the rule was published under a prior administration and we have a new administration coming in with a presidential order to assess all regulations to determine whether or not they are burdensome. Rather than making decisions at face value, they want to hear from the field and getting their own set of comments. We appreciate your patience.

If you have other things that come up, join us tomorrow.

Thank you.

Thank you for your participation you may disconnect at this time. >> [ Event concluded ]





AFCARS ANPRM TRIBAL CONSULTATION CHAT LOG  
Tuesday, May 15, 2018

Loni Greninger: Hello, Jamestown S'Klallam Tribe is on the phone as well. Thank you!

Terrelene Massey: Can you all speak louder? Trying t o figure out how to make this louder

Terrelene Massey: Got it. Terrelene Massey with Navajo Nation Division of Social Services here.

Elizabeth Eggert: Regarding reviews vs ICWA data elements: The states whose quality service reviews I've seen do not ask any ICWA questions and do not involve the intervened tribe in the case reviews.

Loni Greninger: Hi Elizabeth, have you reviewed the review tool from WA State? We are pretty involved in the process here.

Loni Greninger: I could pass it along if you like?

Elizabeth Eggert: I have not seen WA's. It would be great if you would forward it to me.

Loni Greninger: Can do! What is your email?

Elizabeth Eggert: eeggert@saulttribe.net

Loni Greninger: Thanks!

Elizabeth Eggert: Thank you!

Terrelene Massey: \*1

### AFCARS ANPRM TRIBAL CONSULTATION AUDI

#### CONFERENCE DETAILS:

---

LEADER: Dorothy Kinder  
DATE/TIME: May 16 2018 @ 01:00 PM CT  
CONFIRMATION #: 7248649

#### ATTENDEE PROVIDED

##### NAME

---

##### SPEAKERS

- 1 Cheryl Speed
- 2 Damien Jackson
- 3 Dorothy Kinder

##### PARTICIPANTS

- |                          |   |
|--------------------------|---|
| 4 Angelica Ramirez       | St. Croix Tribe                           |
| 5 Angelina Palmero       | Childrens Bureau                          |
| 6 Annette Nickel         | Pokagon Band of Potawatami                |
| 7 Delvin Schmunk         | Tribaltech LLC                            |
| 8 Dirk Philipps          | Salt River Pima Mericopa Indian Community |
| 9 Eileen West            | Childrens Bureau                          |
| 10 Justin Derhammer      | Natawasippi Heron Band of the Potawatami  |
| 11 Kathleen Mchugh       | Children's Bureau                         |
| 12 Lample                | Childrens Bureau                          |
| 13 Mary Pavel            | Sonosky                                   |
| 14 Michele Fahley        | Pechanga Band of Luiseno Indians          |
| 15 Michelle Sauve        | ANA                                       |
| 16 Silent Recording Line |   |
| 17 Terrelene Massey      | Navajo Division of Social Services        |
| 18 Thomas Van Norman     | Puyallup Indian Tribe                     |
| 19 Trista Gannon         | Choctaw Nation                            |
| 20 Ty Lynch-Sparks       | ACF Childrens Bureau                      |
| 21 Vanessa Rae Hodge     | Attorney at Synoski Chambers              |

#### ADOBE CONNECT WEBINAR PARTICIPANT

---

- |    |                          |
|----|--------------------------|
| 22 | <b>Cindi Horshaw</b>     |
| 23 | <b>Sandra Galindo</b>    |
| 24 | <b>Shawna Folsom</b>     |
|    | <b>Thomas Van Norman</b> |

**O/WEBINAR PARTICIPANTS LIST, MAY 16, 2018**

Blank Fields = Indecipherable Info

	<b>SYSTEM CAPTURED CALLED FROM</b>
	(202) 401-5691 (301) 974-7307 (202) 853-7148
angelicar@stcroixcenter.com	(715) 416-0484
angelina.palmero@acf	(202) 205-7240
annette.nickel@pokagonband-nsn.gov	(269) 783-0970
delvin.schmunk@acf.hhs.gov	(202) 260-0339
dirk.philipps@srpmic-nsn.gov	(480) 362-7512
eileen.west@acf.dhs.gov	(717) 319-8881
justin.derhammer@nhbi.com	(231) 818-0981
kathleen.mchugh@acf.hhs.gov	(571) 332-8844 -816
mpavel@sonosky.com	(202) 312-1699
mfahley@pechanga-nsn.gov	(951) 770-6179
michelle.sauve@acf.hhs.gov	(202) 260-6974 (408) 889-0898
tmassey@navajo-nsn.gov	(928) 871-6685
thomas.vannorman@puyalluptribe.com	(253) 573-7800
tgannon@choctawnation.com	(580) 740-2043 (919) 630-5294
vrayhodge@avqsonosky.com	(202) 460-4519 (715) 349-2195 (717) 349-2195 (202) 205-8054
cindi.horshaw@acf.hhs.gov	
Sandra.galindo@dfps.state.tx.us	
sfolsom@choctawnation.com	
thomas.vannorman@puyalluptribe.com	

**From:** [Bock, Joe \(ACF\)](#)  
**To:** [Bertucci, Jana \(ACF\)](#); [McHugh, Kathleen \(ACF\)](#)  
**Subject:** FW: AFCARS ANPRM TRIBAL CONSULTATION, MAY 15, 2018  
**Date:** Friday, October 5, 2018 8:49:28 AM  
**Attachments:** [AFCARS ANPRM TRIBAL CONSULTATION CHAT LOG.docx](#)  
[TRIBAL CONSULTATION ON AFCARS ADVANCE NOTICE AUDIO AND WEBINAR PARTICIPANTS FOR MAY 15 2018.xls](#)

---

FYI – they were recorded so we can refer to as consultation.

---

**From:** Kinder, Dorothy (ACF)  
**Sent:** Friday, October 05, 2018 11:48 AM  
**To:** Bock, Joe (ACF) <Joe.Bock@acf.hhs.gov>  
**Subject:** AFCARS ANPRM TRIBAL CONSULTATION, MAY 15, 2018

Hello Joe

Please find enclosed your conference closeout report for the “**AFCARS ANPRM TRIBAL CONSULTATION WEBINAR**” held Tuesday, May 15<sup>th</sup>, 2018.

Enclosed you will find:

- Audio Participants List (combined with Webinar List)
- Webinar Participants list
- Recorded Link
- Chat Session

Please keep in mind there may be a duplication of names as some participants dial in via audio as well as join via the webinar.

Thank you for trusting us with your conferencing needs. If we can be of further assistance please let me know.

/dk

Title: AFCARS ANPRM TRIBAL CONSULTATION  
Audio Participant: Enclosed  
Webinar Participant: Enclosed  
Chat Log Enclosed  
Recorded Link: <https://acf.adobeconnect.com/piuygxhebyuo/>

**Dorothy Kinder,**

ACF Conferencing Coordinator,  
ACF/Office Chief Information Officer (OCIO)

Video/Audio/Webinar Control Center

W: 214 767-8717 | C: (202) 853-7148

F: (214) 767-3743 | E-mail: [dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov)

**\*\*\*ACF INTEGRATED COLLABORATIONS AND SOLUTIONS\*\*\***

**COMING SOON..... STAY TUNED**

**DID YOU KNOW?**

We offer a variety of Conferencing Services.

Our services include: Video/Audio Conferencing,  
Desktop Video Conferencing, Webinars  
(WebEx or Adobe Connect), Recording/Productions,  
Editing, Duplicating, Archiving, Web Streaming and more!

Note: All ACF Webinars must be 508 Compliant.

<https://connect.acf.hhs.gov/workplace-services/conference-rooms>

All times listed in this e-mail are in the following time zone: (GMT-05:00) Eastern Time (US & Canada)

**From:** [Bock, Joe \(ACF\)](#)  
**To:** [Bertucci, Jana \(ACF\)](#); [McHugh, Kathleen \(ACF\)](#)  
**Subject:** FW: Tribal Consultation on AFCARS Advance Notice of Proposed Rulemaking (ANPRM), May 16, 2018  
**Date:** Friday, October 5, 2018 9:08:04 AM  
**Attachments:** [TRIBAL CONSULTATION FOR AFCARS AUDIO AND WEBINAR PARTICIPANTS LIST.xls](#)

---

And here is the one for the 16<sup>th</sup>

---

**From:** Kinder, Dorothy (ACF)  
**Sent:** Friday, October 05, 2018 12:06 PM  
**To:** Bock, Joe (ACF) <Joe.Bock@acf.hhs.gov>  
**Cc:** Speed, Cheryl (ACF) <cheryl.speed@acf.hhs.gov>  
**Subject:** Tribal Consultation on AFCARS Advance Notice of Proposed Rulemaking (ANPRM), May 16, 2018

Hello Joe

Please find enclosed your conference closeout report for the “**Tribal Consultation on AFCARS Advance Notice of Proposed Rulemaking (ANPRM)**” held Tuesday, May 16<sup>th</sup>, 2018.

Enclosed you will find:

- Audio Participants List (combined with Webinar List)
- Recorded Link

Please keep in mind there may be a duplication of names as some participants dial in via audio as well as join via the webinar.

Thank you for trusting us with your conferencing needs. If we can be of further assistance please let me know.

/dk

Title: AFCARS ANPRM TRIBAL CONSULTATION  
Audio Participant: Enclosed  
Webinar Participant: Enclosed

Recorded Link: <https://acf.adobeconnect.com/p88mv02g92na/>

**Dorothy Kinder,**

ACF Conferencing Coordinator,  
ACF/Office Chief Information Officer (OCIO)  
Video/Audio/Webinar Control Center  
W: 214 767-8717 | C: (202) 853-7148  
F: (214) 767-3743 | E-mail: [dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov)

**\*\*\*ACF INTEGRATED COLLABORATIONS AND SOLUTIONS\*\*\***

**COMING SOON..... STAY TUNED**

**DID YOU KNOW?**

We offer a variety of Conferencing Services.  
Our services include: Video/Audio Conferencing,  
Desktop Video Conferencing, Webinars  
(WebEx or Adobe Connect), Recording/Productions,  
Editing, Duplicating, Archiving, Web Streaming and more!

Note: All ACF Webinars must be 508 Compliant.  
<https://connect.acf.hhs.gov/workplace-services/conference-rooms>

All times listed in this e-mail are in the following time zone: (GMT-05:00) Eastern Time (US & Canada)





ADMINISTRATION FOR  
**CHILDREN & FAMILIES**

330 C Street, S.W., Washington, DC 20201 | [www.acf.hhs.gov](http://www.acf.hhs.gov)

April 16, 2018

Dear Tribal Leader:

The Children's Bureau within the Administration for Children and Families (ACF) is requesting tribal consultation on potential changes to the Adoption and Foster Care Analysis and Reporting System (AFCARS).

In particular, as described in an Advance Notice of Proposed Rulemaking (ANPRM) published in the Federal Register on March 15, 2018 (see [83 FR 11449](#)), ACF is seeking input on potentially streamlining and removing any undue burden related to reporting revised AFCARS data elements that were promulgated in a final rule published in the Federal Register on December 14, 2016 (see [81 FR 90524](#)). The final rule substantially increased the number of data points that state and tribal title IV-E agencies must report. Of particular interest to tribal leaders, the changes also included requirements for state title IV-E agencies to report data for the first time related to the Indian Child Welfare Act of 1978 (ICWA).

We recognize that while states have many years of experience in reporting AFCARS data, tribes may not be as familiar with AFCARS. To prepare for consultation, the Children's Bureau is offering a briefing webinar for tribal leaders and/or members of your staff. The briefing webinar will be an opportunity for tribal leaders and members of your staff to learn more about AFCARS, including current data reported by states since the 1990's and the changes to AFCARS that were promulgated in December 2016, but have not yet been implemented. During the briefing webinar, the Children's Bureau will also review the purpose of the ANPRM notice. Participation in this briefing may assist you and your staff in providing context that will allow for a more meaningful exchange during tribal consultation.

The briefing webinar to learn more about AFCARS will be held on **Wednesday, April 25, 2018 from 2:00 pm – 3:30 pm (EDT)**. If you are interested in participating in this webinar, please register at:

**[https://acf.adobeconnect.com/afcars/event/event\\_info.html](https://acf.adobeconnect.com/afcars/event/event_info.html)**

Page 2 – Tribal Leader

Tribal Consultation seeking input on the ANPRM and potential changes to AFCARS will be held through two teleconference calls on the following dates and times.

Tuesday, May 15, 2018 @ 2:00 pm – 3:30 pm (EDT).

Please register here: <https://acf.adobeconnect.com/efdd2gqe733x/event/registration.html>

Wednesday, May 16, 2018 @ 2:00 pm – 3:30 pm (EDT)

Please register here: <https://acf.adobeconnect.com/enhysqrbcyal/event/registration.html>

For both consultations, the call-in number and passcode are: 877-917-3403, Passcode: 2498350.

*(Please note, if there are a small number of participants on the call, the call may end sooner than 3:30 p.m.)*

Both Tribal consultation teleconference calls are open to all tribal leaders or their designees and may address any aspect of the ANPRM's request for comments on AFCARS data collection, including data elements relating to ICWA that would be reported by states and all other AFCARS elements that would be reported by both states and tribes operating title IV-E programs. Overall, we are interested to hear both recommendations on data elements to retain with a justification for using the data at the national level and recommendations on any data elements to remove because they may be either overly burdensome for title IV-E agencies to report or may not be reliable or necessary at the national level.

In addition to participating in the tribal consultation conference calls, the Children's Bureau encourages tribal leaders to submit comments in writing in response to the ANPRM, as only written comments may be included in the regulatory record. **The deadline for the receipt of written comments in response to the ANPRM is June 13, 2018.**

You may submit written comments to the ANPRM, identified by the Federal Register docket number 2018-05042 and/or RIN number 0970-AC72 in any of the following three ways:

- Federal eRulemaking Portal: Use this link for the ANPRM, click the "Comment now!" button and follow the instructions for submitting comments: [https://www.regulations.gov/document?D=ACF\\_FRDOC\\_0001-0081](https://www.regulations.gov/document?D=ACF_FRDOC_0001-0081). The Children's Bureau recommends use of this method.
- Email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include docket number and/or RIN number in subject line of the message.

Page 3 – Tribal Leader

- Mail: Mail written comments to: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

Additional Information on the AFCARS ANPRM, as well as a related notice proposing to delay for an additional two fiscal years implementation of the AFCARS December 2016 final rule, is provided in Information Memorandum [ACYF-CB-IM-18-01](#), dated March 16, 2018, which is posted on the Children's Bureau's website at <https://www.acf.hhs.gov/cb/resource/im1801>.

If you have any questions regarding the upcoming briefing webinar or tribal consultation teleconference calls, please contact Cheryl Speed of the Children's Bureau at [Cheryl.Speed@acf.hhs.gov](mailto:Cheryl.Speed@acf.hhs.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry Milner".

Jerry Milner  
Associate Commissioner  
Children's Bureau