

**From:** Bertucci, Jana (ACF)  
**Sent:** Tuesday, January 14, 2020 5:42 AM  
**To:** Collins, Gail (ACF); Speed, Cheryl (ACF)  
**Cc:** Randall, Carlette (ACF)  
**Subject:** RE: Tribal consultation information 2019

Hi Gail – Sorry I thought you were asking who was on the phone on June 3. I don't have an official excel sheet from Dorothy, but my notes for June 4 and 6 indicate that these people attended:

June 4

Andrea Smith Eastern Band of Cherokee Indians  
Sunshine Parker Eastern Band of Cherokee Indians  
Judge David Parker Aleut Community in AK  
Port Gamble S'Kallamie Tribe  
David Simmons NICWA

June 6

David Simmons NICWA

*Jana Bertucci*

Division of Policy  
Children's Bureau, ACYF, ACF, HHS  
[jana.bertucci@acf.hhs.gov](mailto:jana.bertucci@acf.hhs.gov)  
(202) 205-8054

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**From:** Collins, Gail (ACF) <[gail.collins@acf.hhs.gov](mailto:gail.collins@acf.hhs.gov)>  
**Sent:** Monday, January 13, 2020 4:29 PM  
**To:** Speed, Cheryl (ACF) <[cheryl.speed@acf.hhs.gov](mailto:cheryl.speed@acf.hhs.gov)>  
**Cc:** Randall, Carlette (ACF) <[Carlette.Randall@acf.hhs.gov](mailto:Carlette.Randall@acf.hhs.gov)>; Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>  
**Subject:** FW: Tribal consultation information 2019

Hi Cheryl,

You may have provided this to us at the time, but I can't locate it now. Do you have a count of how many tribal officials participated in the AFCARS tribal consultations conducted by phone on June 4 and 6, 2019?

Thanks.

Gail

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**From:** Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>  
**Sent:** Monday, January 13, 2020 4:22 PM  
**To:** Collins, Gail (ACF) <[gail.collins@acf.hhs.gov](mailto:gail.collins@acf.hhs.gov)>; Randall, Carlette (ACF) <[Carlette.Randall@acf.hhs.gov](mailto:Carlette.Randall@acf.hhs.gov)>  
**Cc:** McHugh, Kathleen (ACF) <[kathleen.mchugh@acf.hhs.gov](mailto:kathleen.mchugh@acf.hhs.gov)>  
**Subject:** RE: Tribal consultation information 2019

The excel sheet I sent is all I have. Dorothy Kinder sent it to Cheryl, who passed it along to me.

*Jana Bertucci*

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Children's Bureau, ACYF, ACF, HHS  
[jana.bertucci@acf.hhs.gov](mailto:jana.bertucci@acf.hhs.gov)  
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**From:** Collins, Gail (ACF) <[gail.collins@acf.hhs.gov](mailto:gail.collins@acf.hhs.gov)>  
**Sent:** Monday, January 13, 2020 4:20 PM  
**To:** Randall, Carlette (ACF) <[Carlette.Randall@acf.hhs.gov](mailto:Carlette.Randall@acf.hhs.gov)>; Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>  
**Cc:** McHugh, Kathleen (ACF) <[kathleen.mchugh@acf.hhs.gov](mailto:kathleen.mchugh@acf.hhs.gov)>  
**Subject:** RE: Tribal consultation information 2019

[Do we know how many people participated in the phone consultations?](#)

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**From:** Randall, Carlette (ACF) <[Carlette.Randall@acf.hhs.gov](mailto:Carlette.Randall@acf.hhs.gov)>  
**Sent:** Monday, January 13, 2020 4:18 PM  
**To:** Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>  
**Cc:** Collins, Gail (ACF) <[gail.collins@acf.hhs.gov](mailto:gail.collins@acf.hhs.gov)>; McHugh, Kathleen (ACF) <[kathleen.mchugh@acf.hhs.gov](mailto:kathleen.mchugh@acf.hhs.gov)>  
**Subject:** RE: Tribal consultation information 2019

Thank you very much!  
Carlette

Carlette Randall, MSW  
Child Welfare Program Specialist  
Children's Bureau  
330 C Street, SW  
Switzer Building., Room 3509A  
Washington, DC 20201  
Telephone: 202-205-8627

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**From:** Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>  
**Sent:** Monday, January 13, 2020 4:01 PM  
**To:** Randall, Carlette (ACF) <[Carlette.Randall@acf.hhs.gov](mailto:Carlette.Randall@acf.hhs.gov)>  
**Cc:** Collins, Gail (ACF) <[gail.collins@acf.hhs.gov](mailto:gail.collins@acf.hhs.gov)>; McHugh, Kathleen (ACF) <[kathleen.mchugh@acf.hhs.gov](mailto:kathleen.mchugh@acf.hhs.gov)>  
**Subject:** RE: Tribal consultation information 2019

Hi Carlette,

Attached is the list I was given, which is "registered participants". I'm not sure if this list includes those that were in the room; Jerry's staff may know. There were about 6 attendees in the room, but one of them I know was from NICWA.

Best,

*Jana Bertucci*

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Children's Bureau, ACYF, ACF, HHS  
[jana.bertucci@acf.hhs.gov](mailto:jana.bertucci@acf.hhs.gov)

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**From:** Randall, Carlette (ACF) <[Carlette.Randall@acf.hhs.gov](mailto:Carlette.Randall@acf.hhs.gov)>  
**Sent:** Monday, January 13, 2020 3:51 PM  
**To:** Bertucci, Jana (ACF) <[Jana.Bertucci@ACF.hhs.gov](mailto:Jana.Bertucci@ACF.hhs.gov)>  
**Cc:** Collins, Gail (ACF) <[gail.collins@acf.hhs.gov](mailto:gail.collins@acf.hhs.gov)>  
**Subject:** Tribal consultation information 2019  
**Importance:** High

Hi Jana,

I am working on a Tribal Consultation report for Administration for Native Americans and I need some information about the number of tribal participants on the calls and the one in-person held on June 3<sup>rd</sup>, 2019 in Albuquerque, NM. Is there someone that has this information that I can access?

Thanks so much!  
Carlette

Carlette Randall, MSW  
Child Welfare Program Specialist  
Children's Bureau  
330 C Street, SW  
Switzer Building., Room 3509A  
Washington, DC 20201  
Telephone: 202-205-8627

**From:** ACF Anacomments (ACF)  
**Sent:** Friday, May 24, 2019 8:07 AM  
**Cc:** ACF Anacomments (ACF)  
**Subject:** Reminder - AFCARS Consultation Webinar Registration

**Categories:** Business

Good morning,

Thank you for registering for the Tribal Consultation on the Notice of Proposed Rulemaking (NPRM) on the Adoption and Foster Care Analysis and Reporting System (AFCARS). This consultation is scheduled for **Monday, June 3, 2019** at the Marriot Pyramid Hotel in Albuquerque, NM from 10:00 a.m. - 12:00 p.m. MT.

You are receiving this email because you indicated you might be attending remotely. As a reminder, if you are attending virtually, you **must also** [register for the webinar link separately, here](#). Once you sign-up for the webinar, you'll receive a separate email with information on how to log in when the consultation begins.

You can get more information on this consultation here: <https://www.acf.hhs.gov/ana/acf-tribal-consultation-on-afcars-2019>.

Best,

**The Administration for Native Americans**

330 C Street, SW  
4th Floor  
Washington, DC 20201  
Help Desk: 1-877-922-9262

**From:** [Dannan, Thomas \(ACF\) \(CTR\)](#)  
**To:** [Bertucci, Jana \(ACF\)](#)  
**Subject:** FW: Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx  
**Date:** Thursday, June 6, 2019 7:31:01 PM

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I'm also forwarding the below, which might be relevant for your work.

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**From:** Dannan, Thomas (ACF) (CTR)  
**Sent:** Thursday, June 6, 2019 9:41 PM  
**To:** Speed, Cheryl (ACF) <[cheryl.speed@acf.hhs.gov](mailto:cheryl.speed@acf.hhs.gov)>  
**Subject:** RE: Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx

Hi Cheryl,

We're providing Dorothy the backup audio that we made tomorrow.

In addition, here are some relevant comments/questions that came through the chat box:

- Delight Satter, CDC: Please send transcript [dsatter@cdc.gov](mailto:dsatter@cdc.gov)
- Pamela Rentz: I'm signing out too. Audio is terrible. The Kootenai Tribe of Idaho doesn't consider this consultation.
- Alisa Lee: This is Alisa Lee, Vice Chair of the Fort Independence Reservation, I called in but the sound is very low and I have to strain to hear anything.
- Patricia Courchane:
  - Taking out secondary portion negates the first portion of the first slide *[slide 7]*. Active efforts are a must in identifying all children when the first come into care, removing these elements would deviate from placement preference options when a child enters care.
  - Per our Vice Chairman, Leonard Gray, we do not feel as though this is a consultation. Please consider contacting our Chairman, Ronald Trahan, for further discussion at 406-675-2700.
- Ingrid Firemoon: Fort Peck will submit their comments before the deadline.

Best,

Tom Dannan

Project Manager (contractor)

Tribal Tech, LLC

Supporting the Administration for Native Americans

Direct: (202) 401-5544

Cell: (703) 239-4693

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**From:** Speed, Cheryl (ACF) <[cheryl.speed@acf.hhs.gov](mailto:cheryl.speed@acf.hhs.gov)>

**Sent:** Wednesday, June 5, 2019 5:38 PM

**To:** Kinder, Dorothy (ACF) <[dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov)>; Dannan, Thomas (ACF) (CTR) <[Thomas.Dannan@acf.hhs.gov](mailto:Thomas.Dannan@acf.hhs.gov)>

**Cc:** Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>

**Subject:** RE: Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx

Thanks so much Dorothy!

Cheryl Speed

202-708-1424

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**From:** Kinder, Dorothy (ACF) <[dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov)>

**Sent:** Wednesday, June 05, 2019 5:37 PM

**To:** Dannan, Thomas (ACF) (CTR) <[Thomas.Dannan@acf.hhs.gov](mailto:Thomas.Dannan@acf.hhs.gov)>; Speed, Cheryl (ACF) <[cheryl.speed@acf.hhs.gov](mailto:cheryl.speed@acf.hhs.gov)>

**Cc:** Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>

**Subject:** Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx

<< File: TRANSCRIPT\_for\_ACF\_Tribal\_Consultation\_on\_AFCAR 6-3-19.docx >>

Good Afternoon All,

Please see attached the "ACF Tribal Consultation on AFCARS Webinar Transcript" from the June 3<sup>rd</sup>, 2019 event. We are waiting to receive the backup Audio File from the event in order to edit the meeting. As soon as we receive the backup file we can proceed with editing and complete your Closeout Report.

If you have questions e-mail [dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov) or call me at 202 853-7148.

/dk

<< OLE Object: Picture (Device Independent Bitmap) >>

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**From:** Speed, Cheryl (ACF)  
**Sent:** Friday, June 7, 2019 12:04 PM  
**To:** Bertucci, Jana (ACF); Matlock, Christie (ACF) (CTR)  
**Subject:** FW: Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx

**Categories:** Business

FYI

Cheryl Speed  
202-708-1424

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**From:** Kinder, Dorothy (ACF) <[dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov)>  
**Sent:** Friday, June 07, 2019 3:01 PM  
**To:** Dannan, Thomas (ACF) (CTR) <[Thomas.Dannan@acf.hhs.gov](mailto:Thomas.Dannan@acf.hhs.gov)>  
**Cc:** Speed, Cheryl (ACF) <[cheryl.speed@acf.hhs.gov](mailto:cheryl.speed@acf.hhs.gov)>; Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>  
**Subject:** Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx



Good Afternoon,

I am writing to follow up on the "ACF Tribal Consultation on AFCARS Webinar held on June 3, 2019.

I have reviewed the backup audio recording that was recorded onsite during the meeting. Unfortunately the audio is not usable therefore I am unable to recreate any portion of the call.

I apologize for the technical difficulties you experienced with the Albuquerque onsite location.

We look forward to working with you on future webinars.

/dk

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**From:** Kinder, Dorothy (ACF) <[dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov)>  
**Sent:** Wednesday, June 5, 2019 5:37 PM  
**To:** Dannan, Thomas (ACF) (CTR) <[Thomas.Dannan@acf.hhs.gov](mailto:Thomas.Dannan@acf.hhs.gov)>; Speed, Cheryl (ACF) <[cheryl.speed@acf.hhs.gov](mailto:cheryl.speed@acf.hhs.gov)>  
**Cc:** Bock, Joe (ACF) <[Joe.Bock@acf.hhs.gov](mailto:Joe.Bock@acf.hhs.gov)>  
**Subject:** Partial Closeout Report for the -- ACF Tribal Consultation on AFCARS ALBUQUERQUE TRANSCRIPT 6-3-19.docx



<< File: TRANSCRIPT\_for\_ACF\_Tribal\_Consultation\_on\_AFCAR 6-3-19.docx >>

Good Afternoon All,

Please see attached the "ACF Tribal Consultation on AFCARS Webinar Transcript" from the June 3<sup>rd</sup>, 2019 event. We are waiting to receive the backup Audio File from the event in order to edit the meeting. As soon as we receive the backup file we can proceed with editing and complete your Closeout Report.

If you have questions e-mail [dorothy.kinder@acf.hhs.gov](mailto:dorothy.kinder@acf.hhs.gov) or call me at 202 853-7148.

/dk

<< OLE Object: Picture (Device Independent Bitmap) >>

[PLEASE STAND BY FOR REALTIME CAPTIONS.]

[Please stand by for realtime captions.]

>> [Please stand by for realtime captions.]

>> Good morning for everyone on the phone please continue to stand by. The conference will begin momentarily. Please continue to stand by.

>> And

>> Good morning everyone. Welcome to today's conference call. At this time your lines have been placed in listen only for today's conference until the question-and-answer portion of the call at which time you will be prompted to press\*1 on your phone. Ensure that your line is unmuted and please report your name when prompted so I may introduce you to ask your question. This conference is being recorded. If you have any objections you may disconnect at this time. I will now turn the conference over to our host, Mr. Tom Dan and. >> For those on the phone please continue to stand by. >> Thank you for joining us for this topic. For those on the phone my understanding is that

[Indiscernible - muffled]

four [Indiscernible - speaker too far from the microphone] but again I apologize we worked several hours on this technical difficulty.

For those of you on the phone, please continue to stand by. >>

[Indiscernible - muffled] >> Welcome to New Mexico. [Indiscernible - muffled]

[Indiscernible - muffled] >> Go ahead and introduce yourself please.

>> Hello everybody.

Your line is open.

How do we mute it again.

I will mute you.

Okay. >> Please introduce yourself. >> Lisa, please introduce yourself.

This is Lisa and I'm here on behalf of the tribal Council.

You may introduce yourself.

Verna Johnson with the intertribal Council of Arizona. >> This is Lauren Cummings from the admission ration from tribal and families. >> We have no one else at this time. >>

If anyone has not identified were introduced themselves, please do so now.

>>

Adam, you may introduce yourself.

Adam Macquarie with the commission of Governor relations.

Thank you. >> Do you know how many calls are queued up.

We have no one in the queue. >> Quickly identify yourself. We need to move forward and we need to know who's on the line with us.

Once again to introduce yourself please press star 1 and record your name. >> This is Joe Bacon the deputy in the [Indiscernible] Bureau.  
>> Thank you. >>

Please quickly identify yourself. We need to make sure that you are with the federal government designated tribal officials or designee with the tribal organization and you to identify yourself and we need to move forward and if you don't identify yourself, you will not be able to participate. At this time if they don't identify we will have their call disconnected. Thank you. Again, we will move forward and we are behind schedule. Operator, for those that are not identify we will have to there -- I will go quickly through the agenda which you all should have. Welcome we have done the introduction of tribal leaders [Silence]

will be adhering to the tribal Council policy with established presentation protocol and this ensures that the highest ranking officials for these three tribes are given the opportunity to address [Indiscernible - low volume] by their elected officials [Indiscernible - audio cutting in and out] first tribal president, [Indiscernible] person, Governor, vice chairperson Governor started [Indiscernible - audio cutting in and out] will be designated tribal [Indiscernible]. [Indiscernible - audio cutting in and out] operator,

can you confirm that those that did not identify have been removed from the call? >> Operator? >>

Operator, are you able to hear me?

I can hear you now.

Can you tell us if those that did not identify are still on the call or not?

They are not.

Thank you so much. We will go ahead and move forward with today's agenda. I will handed over to [Indiscernible - audio cutting in and out] >>

[Indiscernible - low volume]

This will it was a for better understanding whether or not certain aspects [Indiscernible - audio cutting in and out] other elements that folks would [Indiscernible - low volume]

At this time we will open it up to your from tribal leaders those that are on the phone. We will have to let the operator know by hitting \*1 and we also have folks in the room when we will open up the comments. >> [Indiscernible - audio cutting in and out] tribal leaders we work with our families [Indiscernible - audio cutting in and out] and the state to ensure that our children if removed our return home or safe with

tribal families. With that element essential tries because capturing this data will improve [Indiscernible - muffled] in the tribal welfare to ensure [Indiscernible - audio cutting in and out] these Indian families are native children from entering the child welfare system and this helps strengthen the tribe and our travel children are able to be strong and resilient tribal citizens politically, culturally and spiritually. Tribal homeland is California and California is the home of the largest population of Needham -- Native American

in the country. California department of social services is already underway with implementation efforts and has provided written support to ACF to include all the elements in AFCARS. In fact they have written two letters to ACF in support of the full data elements as set forth in the final rule. In this latest letter of June 5th, 2018 the state provided a strong message. Letters submitted to once again reiterate California's steadfast and unequivocal support for the data collection set forth in the final rule including the proposed collection of LGBT Q and ICEBA to perform the functions of the agency. We wholeheartedly believe that this information [Indiscernible - audio cutting in and out] and informing policy decisions and program management. Further it is essential in maximizing utilization with limited resources and in achieving beneficial outcomes for children and families. [Indiscernible - muffled] state of California the ICWA data elements are necessary not only to the state and agency before our into your own children, parents and tribes. Thank you. >> Governors on the phone right now that would like to submit comment. >> We will open this up to vice chairs now. >> [Indiscernible - low volume] [Indiscernible - audio cutting in and out] I'm a little unsure that states are

[Indiscernible - audio cutting in and out] does not have the relationship that [Indiscernible - audio cutting in and out] related data such as child and family services [Indiscernible - audio cutting in and out] for the collection of [Indiscernible - audio cutting in and out] history of funding this type of research for demonstrated that it can be relied upon to provide accurate and regular reporting data for the multitude of jurisdictions [Indiscernible - audio cutting in and out] ICWA is the only federal child welfare law without regular data collection [Indiscernible - audio cutting in and out] largely unsupported. Is detrimental to efforts by state and tribes to improve outcomes for the [Indiscernible - audio cutting in and out] reported numbers [Indiscernible - audio cutting in and out] have documented [Indiscernible - audio cutting in and out] data important to tribe and states [Indiscernible - audio cutting in and out] tribes are being [Indiscernible - audio cutting in and out] there are other data element in the final rule that can provide important information [Indiscernible - audio cutting in and out] improve outcomes. [Indiscernible - audio cutting in and out] from the title for -- Title IV [Indiscernible - audio cutting in and out] >> Vice chairs, vice president, vice governors on the foreman that would like to comment? >> Also if anybody joined the call if you can quickly identify yourselves. \*1 and quickly identify yourself, your title and your tribal affiliation and federal agency or else you will not be able to participate if you do not identify yourself. Please do so at this time. >>

Hearing none,

>> [Indiscernible - audio cutting in and out] will go from there and is [Indiscernible - audio cutting in and out] it will be passed

along [Indiscernible - audio cutting in and out] all of these things need to be documented and they're not following the practice and implementation [Indiscernible - audio cutting in and out] asking you questions either to a court minute order [Indiscernible - audio cutting in and out] and look at their court record

all families and all children [Indiscernible - audio cutting in and out] I believe that this gold standard [Indiscernible - audio cutting in and out] 20 years experience. [Indiscernible - audio cutting in and out]

I just wanted to do an analogy kind of [Indiscernible - audio cutting in and out] exactly what happens. Giving important data points not even able to give correct information on our kids now [Indiscernible - audio cutting in and out] we are getting better with the state because we have [Indiscernible - audio cutting in and out] it's working with us but that takes time. We get when we meet as a consortium and we get the number of kids [Indiscernible - audio cutting in and out] always discrepancies [Indiscernible - audio cutting in and out] captured [Indiscernible - audio cutting in and out] at state attorneys call me [Indiscernible - audio cutting in and out] assessment

[Indiscernible - audio cutting in and out] rarely run into worker whether it's the tribal with the state investigators, case managers they want to do the right thing. We have to make sure that they are able to do what they need to ask [Indiscernible - audio cutting in and out] . I think that anything that is [Indiscernible - audio cutting in and out] the other thing that comes into play is [Indiscernible - audio cutting in and out] our tries and pueblos have problems with [Indiscernible - audio cutting in and out] residence. [Indiscernible - audio cutting in and out]

I'm here representing family and children services. My directors currently on medical leave so that she did write her statement and she said if you can get them there any read my letter and she is a strong advocate for the children. And social services just has a wealth of knowledge and more importantly her voice is soft but her message is strong. This is her words. I'm responding to the proposed revision of the adoption and foster care analysis and reporting system. Tribal government we have a trust relationship with United States government which extends down to Maine federal agencies that work with American Indian tribal governments. He needs to be recognized that amongst approximately 570 federal recognized tribes in United states only approximately 15 tribes receive direct funding. All of the tribes not have resources to fund Indian child welfare services for members of the tribe . These tribes that entered into the safe travel agreement for title 4 funding [Indiscernible - muffled] impacts the number of tribes willing to enter the state tried -- tribe. Tribes need access to federal resources provide training for potential foster parents, tribal licensing, social services, and payment for foster care services. Searching for a creative approach to determine how the child welfare system should be modified to make funding available directly to tribes regarding

tribal population size. Allstate and union must comply with the federal Indian child welfare had of 1970 eight -- 1978 are mandated to report to tribes information on Indian child who claims tribal enrollment specific were specified by for claims to be an American Indian even though the child may not know the tribal origin or the child may be eligible for tribal enrollment. The Indian child welfare act and guideline they failed to report such information to tribe therefore resulting with on proportion number of Indian children in state custody child welfare and exceeds all other racial population. AFCARS is a critical source of equal information on Indian children at in-state while -- in state well fell custody. [Indiscernible - muffled] provides descriptive information on the Indian child in state custody that gender, age, health needs, mental health, gender issues, special services needs of the children. Tribes continually report challenges in acquiring data on Indian children who are in state custody. 30 years after passage of the Indian Child Welfare Act we still do not know or have little information about Indian children lost in state welfare systems or the needs of those children. It is recognized that these the establishment of a data systems cost and difficult to maintain. Human efforts for data entry can be challenging to the alternative electronic system and software that can Semper Fi data entry and cleaning before imputing the data and data analysis software.

[Indiscernible] which is a marketing softer is an example of a system where you build a data collection system that you can receive important data electronically for multiple [Indiscernible] which automatically enters the data in the data system. This allows for data cleaning as the data manager reviews alert of incomplete or absent variables does [Indiscernible] time and manual input of data. Data to be entered telephonically on the computer or gather in paper form which is then scanned to computer systems and transmits the data to the central collecting site. Those are examples of the Ryan White softer HIV data collection and it's strongly recommended that multiple methods be reviewed before making a final determination. I support state agencies wanting to minimize data elements on collecting useful data that can be used to informing the public about numbers of cases, descriptive information and servicing the population. Issues related to foster care placement and adoption are also important. In general we as a population tend to over collect information that has limited value. Let's focus on the most critical elements to define the population served and the service needs of that population and challenges in finding appropriate foster homes , adoption, or treatment facilities for you. Respectfully submitted. Working with Ms. [Indiscernible name] and also as part of the child Pueblo , this data is vital and so important and what we're struggling with now is we are trying to get that information with limited information given to us. To reduce that even further it is going to bring us [Indiscernible - low volume].

On the phone, if you would like to submit comments, please open your line by pressing \*1.

We do have a question from Tino Back. Your line is open. >> Mr. Bat?

Can you hear me? Can you hear me?

Go ahead with your question or comment. >> I from the tribal treasure and I would like to thank Janine and others for setting this conference up and I do appreciate the tribal chairman and tribal vice chair and other tribal members as well as staff for attending physically. I'm sorry and unable to attend due to other commitments at home. I do want to make a comment and suggestions. The tribal consultation it is kind of frustrating that we are able to start late at this time and we continue through the ACF and we will continue to do tribal consultations on further matters that involve children and aspects there is. Today we are discussing [Indiscernible - muffled] and issues of the data elements. We are appreciating that there are some there are still remaining but we are very discouraged and concerned that [Indiscernible - muffled]. We understand we are trying to create an efficient process for the state to report the child welfare but again, our children are key to our success [Indiscernible - muffled] council members that these children are our future. The data collecting from the state is critical for us to address those needs. We are still catching up as tribes to require and identify where our children are in the state system. Many times we are unaware and many times we identify those issues until after the fact. Personally I have been involved in various state courts in adoption and the tribe is challenging the state to not notify and identify that these are Indian children. We want to make sure we reunify our families and our lost children and lost relatives. [Indiscernible - muffled] they are still the sentence and members of our tribes. My concerns is the burden for states on telephone agencies to collect that element and are they manageable. My concern is when native children make up a small population of the vast majority of state systems when the child determines not to be Indian [Indiscernible - muffled] other elements need to be collected for reporting and [Indiscernible - muffled] court determination most of the actions agency efforts case management child welfare agencies to document court findings and case files include those [Indiscernible - muffled] in the number of states have Artie began as mentioned including the 2016 state court data element and are finding the data to be very helpful in addressing implementation challenges policy development and program management. Our concern is that states may be giving away some of this information and do not want to report this data. It is crucial that we are still trying to create that relationship with state agencies to identify where are Indian children are. The benefits of collecting the data elements are critical for us as the [Indiscernible] tribes and other tribes. It is a way for us to determine where our children are and what services they need. We believe in reunification of our Indian children to the families and we believe that they are better served with their people. At this time that is my comment and I'm waiting to hear from others. >> If anyone else would like to make a comment, please press \*1 at this time. >>

We have a comment from Patricia Crochane. >>

Patricia, are you on mute?

Sorry. IM. I'm sitting here also with our vice chair and having listened to some of the common from the others who have already spoken

I want to reiterate that I agree with most of the comments that have been made as well. I typed earlier I had asked for the slides to be put back up but looking at the order in which we had to speak so I went and got the vice chair as well. And he is giving me permission to speak. In the elements that we talk about moving and then replacing I wanted to talk about the fact that when we take out active efforts and remove those, it takes the burden away from a worker to go out and ensure that they are doing everything they can to identify the relationship of the child with the tribe. And when we do that, we don't look at making sure that the child's identity is protected and that we ensure the child is placed within the tribe because when the child first comes into care the first thing we look at is placement. We want to make sure that the child is placed within the tribe first and within their family and that they maintain that cultural identity. When we take God away -- when we take that away and we remove the identity portion we begin to strip the child of their identity. That's one of the things that this particular tribe maintains even up to placement. The first thing we look at when we take a child away we look at kinship placement, that's what ICWA is about. It's about maintaining the identity of a child and here we are looking at

active efforts. One of the first things we are looking at and we don't want to have that removed from this. We want that identity maintained from that child. What we have seen many times is that they state fails to make proper inquiry on a child's identity and that child and up becoming adopted by non-native people. Eventually that child comes back to the tribe and have to relearn their heritage at 18, 19, 20, 25 and we have gone to conferences here in the last year or two and met with a lot of native youth who are just now in their 20s and early 30s learning their culture, trying to find who they are and we do not want that to continue to happen. That's what happened and why ICWA came about. And it came about because children were forcibly removed from their tribes and we don't want to see that continue to happen. So that is one of our points here about collecting data. We collect data but we need to collect data for the right reasons.

The 2016 I think was just spoken about by the tribe and the 2016 there was a request to transfer the tribal court and it was denied and this may be the proposal where a child left a placement because of the transfer but nothing else was transferred. There's different things and people need to be paying attention to. Whether an appropriate court finding was made related to voluntary termination of parental rights include meeting the standards of proof and whether a qualified expert with NIST -- expert witness testimony was provided changes even there whether active efforts were made prior to termination and modification what those efforts were and even what ICWA adopted preadoptive placements were adopted -- were available and if there was a deviation from the placement preferences and whether a finding was made in the basis of that finding. These are all things that need to be looked at because they change what is there and what could not be there and what is proposed and not proposed. As tribes we have had many things taken from us in this -- we do not want this to continue to happen because when you start changing ICWA, you're changing what was put in place to protect the children and we have enough things changing and attacking the statute of ICWA already and we do not want to see that continue to happen even in the elements of data collection because we



consider it another active attack. Those are my comments for now. >> If you like to make a comment please press \*1 and record your name. Any other comments? Prevention services it provides a notice but they didn't [Indiscernible - audio cutting in and out] >> Both for the state and the tribe. Also recognize they are not collecting data on reasonable [Indiscernible - audio cutting in and out] but we understand the examples I gave you just now are now indebted to [Indiscernible - audio cutting in and out] what was the tribe's involvement and why it was the child placed [Indiscernible - audio cutting in and out]

We have some new people that have joined us. Can you introduce yourself name and title. >> And Marianne the tribal Council for [Indiscernible - audio cutting in and out] I serve on the ACS

[Indiscernible - audio cutting in and out] those later in writing. I guess we're coming to the end [Indiscernible - audio cutting in and out] on behalf of the tribe difficulty hearing [Indiscernible - audio cutting in and out] it's extremely [Indiscernible - audio cutting in and out] if you want me to [Indiscernible - audio cutting in and out].

Again, my apologies for that. I'm extremely frustrated as well. For those on the phone that can hear me thank you everybody for your comments.

>> [Indiscernible - audio cutting in and out] beneficial and [Indiscernible - audio cutting in and out] have to analyze [Indiscernible - audio cutting in and out] data points are [Indiscernible - audio cutting in and out]

Any other comments? >> Thank you, Jeremy.

We appreciate your honesty and the candor in your sincere desire for the outcomes of children and families. We all share that concern. There is no question about that data collection is one of the many ways which

trying to improve those outcomes as we go forward. As I listen to many of the concerns raised here today, your concerns about where children are in the system and what happens to those children are they getting their needs met. With the data elements related to travel memberships that we are proposing to retain at this point it allows us to capture more information in that regards then we have ever been able to capture. This new ground for us to be able to do that and identify children and understand the tribal membership and their foster parents for adopting them. That information we would be able to [Indiscernible] other data elements as part of the AFCARS system and the outcomes are critical decisions have been made that they are unified adopted and that is new ground and I just don't want that critical

advance that I think we've made here and we think that the data elements most of which are process oriented [Indiscernible - audio cutting in and out] quite clear for proposing something is not retained speaks to the [Indiscernible] requirements that are in [Indiscernible - audio cutting in and out]. We have to make some very tough decisions and we are not able to accurately [Indiscernible] the kind of information we need on reasonable efforts and the thing we see is that

it's very important and does require us what we believe is essential to outreach to the goals that you have and goals that we have in the outcomes that we want for all of our children . [Indiscernible - audio cutting in and out] as we go forward [Indiscernible] information it is the integrity accuracy and [Indiscernible - audio cutting in and out] use that information . Our work our experience that children [Indiscernible - audio cutting in and out] incredibly helpful to us and in spite of the technical difficulties [Indiscernible - audio cutting in and out]

>> [Event concluded]

>>

NAME	LOGIN	REGISTRATION DATE
Dorothy kin	dkinder@acf.hhs.gov	5/8/2019 10:18
Patricia Courchane	patricia.courchane@cskt.org	5/28/2019 5:55
Lisa Rieger	LRieger@citci.org	5/24/2019 21:45
Pamela Rentz	prentz@kootenai.org	5/29/2019 13:56
Elinor Nault	enault@cctcourt.org	5/30/2019 17:51
Miriam Titus	miriam.titus@tananachiefs.org	5/24/2019 13:45
Jennifer Yogi	jennifery@nwjustice.org	5/24/2019 12:07
Candy Jeanotte	candy.jeanotte@icloud.com	5/30/2019 11:48
Delight Satter	Dsatter@cdc.gov	6/3/2019 8:10
Mary Risling	mary.risling@dss.ca.gov	5/13/2019 17:21
Stephanie Benally	stephanie.benally@utahfostercare.org	5/31/2019 13:00
Tamara Walters	Tamara.R.Walters@pascuayaqui-nsn.gov	5/28/2019 13:21
Kendra Martinez	kemartinez@pechanga-nsn.gov	5/29/2019 11:18
Betty Wilson	Betty.J.Wilson@wv.gov	6/3/2019 8:08
TeAta Loper-Purcell	oicwa.gc@gmail.com	5/24/2019 16:41
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Verna Johnson	verna.johnson@itcaonline.com	5/29/2019 17:20
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Lauren Cummings	lauren.cummings@acf.hhs.gov	5/24/2019 11:30
Carmela Quitugua	cquitugua@fmya.org	5/14/2019 13:47
Joe Bock	joe.bock@acf.hhs.gov	5/28/2019 14:31
jana bertucci	jana.bertucci@acf.hhs.gov	5/24/2019 11:16
DOROTHY KINDER	DOROTHY.KINDER@ACF.HHS.GOV	

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Chief Legal Officer	(907)748-4909
Paralegal	503-719-4496
Chippewa Cree Tribal Court Administrator/Exe Director	406-395-4735
Child Protection Program Manager	907-452-8251
Attorney	2067692083
Child Welfare Specialist	
Senior Health Scientist	4044980440
Tribal Consultant, CDSS	7073822153
	8015028749
Assistant Attorney General - ICWA	(520) 404-2624
Associate General Counsel	951-770-6176
Business Analyst	304-627-2295
Oklahoma Indian Child Welfare Association Grant Coordinator	4054645655
Government Relations Manager	9186971163
Project Manager	6022584822
Child Welfare Program Specialist	2022054014
Family Services Director	14807897990





## DEPARTMENT OF HEALTH & HUMAN SERVICES

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

April 29, 2019

Dear Tribal Leader:

The Children's Bureau (CB) within the Administration for Children and Families (ACF), Department of Health and Human Services (HHS) is requesting tribal consultation on a 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](#)).

As described in the 2019 NPRM, ACF is seeking input on the 2019 NPRM, which proposes to streamline and remove data elements from the AFCARS final rule that was published on December 14, 2016 ([81 FR 90524](#)). The goal of the 2019 NPRM is to reduce burden on title IV-E agencies consistent with [Executive Order \(E.O.\) 13777](#) (issued February 24, 2017) and the HHS Regulatory Reform Task Force that identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. The 2016 final rule substantially increased the information that state and tribal title IV-E agencies must report, including for the first time, requiring state title IV-E agencies to report information related to the Indian Child Welfare Act of 1978 (ICWA).

The 2019 NPRM was informed by comments we received to the Advance Notice of Proposed Rulemaking (ANPRM, published March 15, 2018, [83 FR 11449](#)) and tribal consultation held on May 15 and 16, 2018 during the ANPRM comment period. During consultation, tribal representatives expressed a need for information on the tribal membership of children in foster care and their foster care and adoptive placements, whether ICWA applies for the child, and notification of proceedings per ICWA requirements. These were identified as the most important pieces of information to be able to know the number of children nationally to whom ICWA applies and provide some national information on whether the state made inquiries and whether notification to the Indian child's tribe occurred.

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

- CB proposes to streamline the ICWA-related data elements by instead requiring states to report on key milestones and outcomes associated with meeting the needs of Native American children. For example, we have proposed to retain elements such as whether the child and the child's mother and father are tribal members, whether ICWA applies to the child, whether the tribe was sent notice, and whether the child is placed in a foster family home who are tribal members.
- 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, such as court findings, good cause findings, qualified expert witness testimony, and information on active efforts.

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To prepare for consultation, CB is holding an informational overview call for tribal leaders and/or members of your staff that will provide an overview of the 2019 NPRM. Attending this call will allow for a more meaningful exchange during tribal consultation. During this informational overview of the 2019 NPRM, telephone lines will not be open.

CB is holding two additional calls, separate from the informational overview call, for tribal consultation where telephone lines will be open.

The dates, times, and call-in details for all three calls is below. **Notice of the opportunity for in-person consultation to occur in Indian country will soon follow.**

Overview of the 2019 NPRM:

- Tuesday, May 28, 2019 from 1:30 pm – 2:30 pm (EDT)

If you are interested in participating, please register at:

**<https://acf.adobeconnect.com/esmoxxm95mgz/event/registration.html>**

Tribal consultation seeking input on the 2019 NPRM will be held through two teleconference calls on the following dates and times.

Tuesday, June 4, 2019 from 2:00 pm – 4:00 pm (EDT)

Please register here: **<https://acf.adobeconnect.com/eho44sbk3blb/event/registration.html>**

Thursday, June 6, 2019 from 2:00 pm – 4:00 pm (EDT)

Please register here: **<https://acf.adobeconnect.com/e62431q9f1uf/event/registration.html>**

For both consultations, the call-in number and passcode are: 888-233-7142 (Passcode: 1588042)

In addition to the oral testimony presented during tribal consultation, CB strongly encourages tribal leaders to comment in writing through the comment methods identified in the 2019 NPRM:

- 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: [CBCComments@acf.hhs.gov](mailto:CBCComments@acf.hhs.gov). Include RIN number 0970-AC72 in subject line of the message.

The deadline for the receipt of comments in response to the 2019 NPRM is **on or before June 18, 2019**.

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Additional Information on the AFCARS 2019 NPRM is available on the Children's Bureau website at: <https://www.acf.hhs.gov/cb/laws-policies/whats-new>.

Additionally, Information Memorandum [ACYF-CB-IM-19-02](#), dated April 19, 2019, informs state and tribal title IV-E agencies of the publication of the AFCARS 2019 NPRM and where to submit comments.

If you have questions regarding the upcoming briefing webinar or tribal consultation teleconference calls, please contact Cheryl Speed at [Cheryl.Speed@acf.hhs.gov](mailto:Cheryl.Speed@acf.hhs.gov).

Sincerely,

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

Jerry Milner  
Acting Commissioner  
Administration on Children, Youth and Families





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:** Lynn A. Johnson  
Assistant Secretary, ACF

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

**DATE:** July 25, 2019

**SUBJECT:** Decision Memorandum for Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule

**REQUEST**

I am requesting approval to promulgate a rule to finalize the notice of proposed rulemaking (NPRM) published on April 19, 2019, ([84 FR 16572](#)). We proposed in the 2019 NPRM to streamline the data elements from the 2016 final rule ([81 FR 90524](#)) to reduce the burden on title IV-E agencies.

**BACKGROUND**

In response to [E.O. 13777](#) (February 24, 2017) and the Department's Regulatory Reform Taskforce direction, the Children's Bureau (CB) solicited specific feedback on the AFCARS data elements, costs to implement, burden hours to complete the work required to comply with the 2016 final rule, and listed questions for which we sought a response in an Advanced Notice of Proposed Rulemaking (ANPRM) ([83 FR 11449](#), March 15, 2018). 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 line with the E.O.

In response to the ANPRM, 36 of 38 states that commented overwhelmingly expressed support to reduce and streamline the data elements from the 2016 final rule. 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. A third of those states expressed concerns with the sexual orientation data elements and recommended they be removed. States commented that if this information is important to decisions affecting the child, the information would be gathered and documented in the case file. However, when it is not pertinent to the case, states said that asking for sexual orientation may be perceived as intrusive and since this would be a mandatory conversation a worker must have in order to complete the data elements, mandating such a conversation may be contrary to the well-being of children and families. States overwhelmingly expressed support to reducing the ICWA-related data elements because they felt the information was too qualitative for a national data set, most elements reported on actions of the court, and many elements were redundant.

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(AFCARS) Final Rule  
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## **DISCUSSION**

### **CB's approach for decision making on the elements to propose in the 2019 NPRM approved by leadership**

CB reviewed and analyzed all of the ANPRM comments, tribal consultation, costs, and burden estimates and considered them as it related to meeting the requirements of E.O. 13777.

CB 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. The group's 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 group agreed that many of the standard data elements should be streamlined.

CB also reviewed the 2016 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. This paper provides considerations for Federal agencies when choosing sexual orientation and gender identity (SOGI) questions for inclusion in Federal surveys and administrative databases. 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 database should be validated with qualitative techniques and question validation efforts should include both the SOGI and non-SOGI groups. Validation efforts on SOGI information did not occur prior to issuing the 2016 final rule.

CB also consulted with representatives of the Department of Interior (DOI) regarding the ICWA-related data elements to retain in AFCARS. During this consultation process, CB proposed partnering with DOI on an alternative qualitative review process to review and assess ICWA, outside of AFCARS reporting. CB officials presented this proposal to DOI officials but did not receive feedback.

CB considered the concerns and interests of all stakeholders and after careful consideration, proposed to streamline the AFCARS out-of-home care data elements to what CB believes is a reasonable amount, reduces redundancies in the regulation, and meets the requirements of E.O. 13777.

### **2019 NPRM Proposal – Summary**

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

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(AFCARS) Final Rule

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- The out-of-home care data file in the 2016 final rule requires approximately 272 items that require title IV-E agencies to report information. We propose to reduce these items to approximately 183, representing 170 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.
- We propose to remove the data elements asking for 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 ICWA-related data elements to only information that is essential for identifying nationally the population of children to whom ICWA applies. This proposal was informed by the information sessions held with tribal members in May 2018, ANPRM public comment, and DOI.

We provided specific guidance in section V. Public Participation of the 2019 NPRM on the type of comments that would be most useful to ACF in making decisions on the final rule. We believe that the approach we took in determining the data elements to propose was comprehensive and inclusive of the purposes for which we will use the AFCARS data. We posed specific considerations for commenters and for title IV-E agencies:

- Whether the information proposed is readily available or collected as part of the title IV-E agency's casework.
- Burden hours 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.
- How reporting the data elements in this NPRM will specifically enhance their work with children and families.

Since stakeholders who are not title IV-E agencies are not able to offer specific estimates regarding the burden or cost placed on title IV-E agencies for reporting AFCARS, we stated that it would be appropriate and helpful for those commenters to address:

- Why AFCARS is the most effective vehicle for collecting the data proposed in this NPRM and why no other current method is feasible to collect the information.
- Coordinating with title IV-E agencies in collecting and reporting data for AFCARS.

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- How AFCARS data, which is aggregated at the national level, would help their specific work with title IV-E agencies, children, and families.

The three attachments provide analyses on the comments we received in response to the 2019 NPRM, whether the commenters followed our guidance for commenting and presented new evidence, specific suggestions, or insight into why information must be reported to a federal database for aggregation, and our recommendations with rationale.

- Attachment A is on the standard data elements.
- Attachment B is on the ICWA-related data elements.
- Attachment C is on the sexual orientation data elements

**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, agencies and the Department may experience a potential cost savings over the 2016 final rule requirements (for example, state costs for system development are eligible for an enhanced method of federal financial participation). With the review of ASPE, we estimated that the 2019 NPRM would result in an estimated \$39.2 million in total annual savings. This rule, if finalized as proposed, is expected to be an [E.O. 13771](#) deregulatory action.

## ISSUES

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 (D-OR) 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. We are also aware of the memo sent to you by the Administration for Native Americans that essentially reiterates the comments we received from Indian tribes.

In drafting the 2019 NPRM, we balanced the advocates' desires with the need to minimize burden and focus on improving quality of services and achieving outcomes for children and families. We examined each data element, asking two questions: (1) Why are we collecting this information? and (2) How are we going to use this information? We proposed only those data elements for which we can answer these questions. Additionally, the action that precipitated another look at AFCARS was E.O. 13777 and adding data elements back into the proposal would not comport with the E.O. nor be supported by the majority of state commenters.

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**RECOMMENDATION**

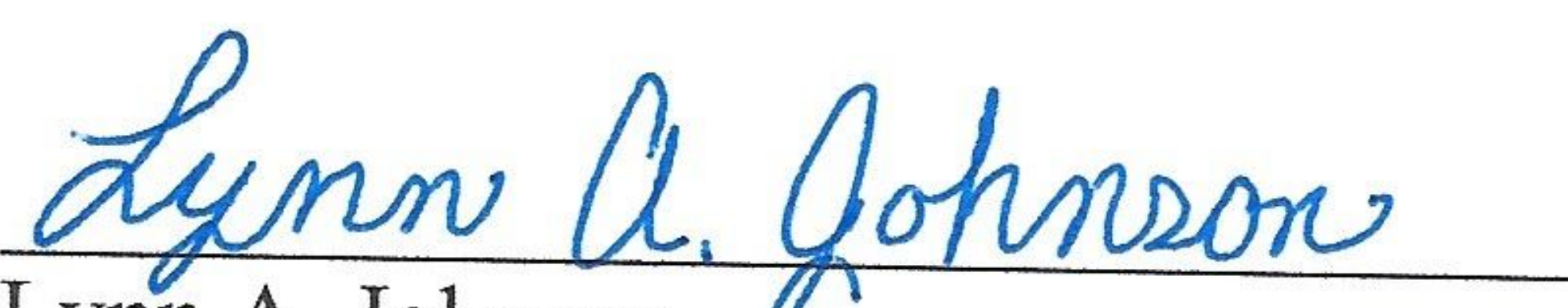
I recommend you approve this request to develop a rule that finalizes the data elements in the 2019 NPRM as proposed.



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

**DECISION**

Approved  Disapproved  Need More Information



\_\_\_\_\_  
Lynn A. Johnson  
Assistant Secretary

**AUG 02 2019**  
\_\_\_\_\_  
Date

**Attachments**

- Attachment A is on the standard data elements.
- Attachment B is on the ICWA-related data elements.
- Attachment C is on the sexual orientation data elements.

**Attachment A – Standard Data Elements****What we proposed in the 2019 NPRM:**

We proposed a simplification of the out-of-home care 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 on children in out-of-home care and who exit to adoption or legal guardianship. We proposed to remove the following out-of-home care 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 statutory requirement 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
- inter-jurisdictional adoption or guardianship jurisdiction (name).

**Comment Summary on Standard Out-of-Home Care Data Elements:**

Support streamlining: 19 (of 24) State and local agencies that commented; 3 anonymous or private citizens

- In general, supporters agree with the streamlining we proposed in the 2019 NPRM citing alleviated burden and that the proposal kept essential information for national reporting. Some states made suggestions to further streamline the data elements, however, we received very few comments on each specific data element, most often only one or two states offering suggestions to modify or remove a specific element.
- States noted that AFCARS is not the best tool for collecting some information, such as the data elements we proposed to remove, and expressed the opinion that AFCARS is turning into a research tool, rather an instrument used for federal compliance and continuous quality improvement.
- Three states did not explicitly express support or opposition to streamlining, but did offer comments on specific elements or provide burden estimates.

Oppose streamlining: 2 (of 24) State and local agencies that commented; 32 (of 45) Other national advocacy organizations; 1 Member of Congress (Sen. Wyden); 4 anonymous or private citizens

- In general, opponents to streamlining requested that we re-institute the 2016 final rule in its entirety. Their common arguments for doing so indicate:
  - It will provide a comprehensive data set that will help us track outcomes and address disparities.
  - ACF did not consider that the information gleaned from the additional data would lead to lower costs in the future because families would get the help they need.
  - Many organizations cited back to previous preambles as their reasons why data elements are needed (e.g., citing to 2015 NPRM preamble of using the health assessment data to track compliance with the IV-B health care coordination plan).
  - It will promote visibility for marginalized groups and help us understand their particular experiences in foster care.

**Attachment A – Standard Data Elements**

- Sen. Wyden specifically opposed removing the following data elements:
  - Educational stability (tracking the reasons why a child may change schools, from a list of reasons provided) because it will provide information on impacts to educational outcomes and without it, the ability to understand the educational trajectory of youth and develop legislation is jeopardized.
  - Private agency living arrangement (whether the child’s placement is either licensed, managed, or run by a private agency that is under contract with the title IV-E agency) because privatization is a growing trend and removing it “flies in the face” of future congressional oversight as “national-level change is the role of congress”.

**Analysis on whether commenters followed the approach to public comments in section [V. Public Participation](#) of the 2019 NPRM:**

State title IV-E agency commenters indicated that the information proposed in the 2019 NPRM can be, or is, currently collected as part of the title IV-E agency’s casework. Twelve states spoke to the burden of implementing the 2019 NPRM by providing estimates for hours and costs to complete the work or by speaking to the tasks that they would need to complete for the 2019 NPRM to be fully implemented. States that supported streamlining felt that the reduced data reporting proposed in the 2019 NPRM would enable caseworkers to spend more time working with families and engaging in case planning, rather than data entry.

The stakeholders who are not title IV–E agencies did not address these questions at a level of detail that was useful. Instead, the commenters made broad statements: 1) AFCARS is the most effective vehicle for collecting data to inform compliance and national legislation, and this could not be done without the 2016 final rule in its entirety; and 2) ACF overstated the burden on those required to report AFCARS, as they believe the information is in the agency’s case files, and stakeholders can use this information to advocate for the well-being of children and families. Commenters did not elaborate on why AFCARS is the most effective vehicle for collecting all of the information in the 2016 final rule, describe any work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS, or specify how the data removed would help their specific work with children and families served by the title IV-E agency.

**Recommendation:** After reviewing suggestions from commenters and conferring with CB staff that analyze AFCARS data for CB monitoring and reports, we recommend no changes to the 2019 NPRM. States overwhelmingly supported the streamlined proposal and they constitute the majority of the entities that must submit AFCARS data. The commenters that opposed streamlining reiterated similar arguments that they made in response to the ANPRM, essentially expressing a “need” for all of the data in the 2016 AFCARS rule for research and legislation but failing to provide any additional evidence as to why the removed data elements must be reported at a federal level. We do not recommend modifying any of the standard data elements because in some cases the data elements are required by statute to be in AFCARS and in other cases, further simplification would render the information unusable. We believe these recommendations will appropriately meet the goal of E.O. 13777 to streamline and reduce burden on the American public, and specifically title IV-E agencies.

**Attachment B – ICWA****What did we propose in the 2019 NPRM?**

We proposed to simplify the ICWA-related data elements to only 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 we proposed 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 ICWA statute, and
- Tribal membership of mother, father, foster parents, adoptive parents, and legal guardians.

**Comment Summary on ICWA-Related Data Elements:**

Support streamlining: 9 (of 24) State and local agencies

- In general, the states that supported streamlining the ICWA-related data elements agreed with the arguments in the NPRM that:
  - those data elements were based on DOI regulations;
  - burdensome to report particularly for states with few American Indian/Native Alaskan children in foster care;
  - many requirements are the responsibility of the courts; and
  - states will be penalized for failing to report or accurately report information related to DOI requirements.
- Five states agreed with streamlining to only those elements that are essential to understanding nationally the ICWA-applicable population and said they could report the information proposed in the NPRM.
- Two states expressed a desire for further reduction due to an extremely low population of American Indian/Native Alaskan children in foster care.
- One state, that is part of the *Brackeen v. Bernhardt* (formerly *Zinke*) court case, expressed that the ICWA-related elements should be removed completely because “considering there is current federal litigation concerning the applicability of ICWA and its provisions, eliminating, at this point in time, all ICWA elements would be a better course of action” and “Having states modify their informational systems prior to resolution of this lawsuit could prove to be an unnecessary expenditure of resources for states”.

Oppose streamlining: 2 (of 24) State and local agencies; 33 Indian tribes, tribal organizations or consortiums; 10 Advocacy organizations representing tribal interests; 21 (of 45) Other national advocacy organizations; 1 Member of Congress (Sen. Wyden); 5 anonymous or private citizens

- In general, opponents requested that we re-institute all of the ICWA-related elements from the 2016 final rule because:
  - the 2019 NPRM was too drastic in streamlining and the information is needed to assess ICWA compliance;
  - section 422(b)(9) in title IV-B include processes regarding ICWA;



**Attachment B – ICWA**

- ACF has established relationships with states and the federal system in place to receive data and DOI is not a better federal agency to collect ICWA data because DOI “does not have a relationship with state child welfare agencies and does not have an operational data base or resources to collect data on Indian children in state foster care systems”;
- monitoring through the Child and Family Services Reviews (CFSR) “is not feasible” because the reviews do not support this type of data (meaning from the 2016 final rule);
- national information is important to address disparities, analyze outcomes, and help in working with children and families and it will promote visibility for marginalized groups;
- ACF overstated the burden, because the majority of the ICWA-related data elements from the 2016 final rule apply to a small number of children; and
- Sen. Wyden stated the 2019 NPRM oversimplified the ICWA-related elements, “brushes the goals of ICWA aside” in favor of streamlining, and like other commenters, stated that CB did not calculate the possible benefits to American Indian/Native Alaskan children (e.g., improved outcomes, stable family environment) against the burden faced by agencies.
- Specifically, they expressed the opinion that ACF is responsible for ICWA compliance:
  - “ACF will continue to be guessing at whether states are implementing ICWA properly.”
  - “...they are long overdue, they are necessary for ACF to fulfill its duty to oversee title IV-E agencies’ ICWA compliance and they are the most effective tool to gather data on ICWA compliance and to secure greater compliance with the law.”
  - “...data on ICWA compliance is urgently needed to improve outcomes for Indian children in state foster care and adoption and to carry out ACF’s congressionally-mandated duty to oversee ICWA compliance among title IV-E agencies.”
- The two states that opposed said they will collect the information from the 2016 final rule regardless of what CB publishes in a subsequent final rule and outlined steps they are taking to engage tribes and comply with ICWA in their state.
- The opponents identified the below data elements from the 2016 final rule as being important to restore for the reasons iterated above:
  - Whether the state sent notice to the parent and Indian custodian and the date of the notice;
  - Whether ICWA’s placement preferences were met, whether or not a good cause determination was made to deviate, the basis for the good cause, and in which preferred ICWA placement is the child is placed, e.g., a home approved by the child’s tribe.
  - Whether tribal court requested a transfer to the tribe, whether it was granted, and if denied, the reason.
  - Whether there was a court finding that active efforts were made prior to an involuntary termination of parental rights (TPR) and whether notices about TPRs were sent to the parents within ICWA timeframes.
  - Information on active efforts.

**Attachment B – ICWA****Analysis on whether commenters followed the approach to public comments in section [V. Public Participation](#) of the 2019 NPRM:**

Most of the states that commented on the ICWA-related data elements expressed that the information proposed in the 2019 NPRM can be collected as part of the title IV-E agency's casework. Only a few provided burden hours specific to the ICWA-related data elements on adjusting existing ways to comply with AFCARS requirements. States expressed they will have the ability to use the ICWA-related data elements to enhance their work and accountability with children and families.

The stakeholders who are not title IV-E agencies did not provide specific reasons as to why AFCARS is the most effective vehicle for collection of the data proposed in the 2019 NPRM. They did not speak to how the streamlined version proposed in the 2019 NPRM would enhance their work, nor did they provide reasons or explanations other than related to ICWA compliance and allowing tribes to know “where our children are”. They did not describe any work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS.

**Recommendations:**

1. We recommend keeping the streamlined proposal and not adding any ICWA-related data elements because:
  - ACF is not the cognizant authority over implementing, overseeing, or assessing compliance with ICWA.
    - Section 422(b)(9) of the Act requires the title IV-B, subpart 1 plan to “contain a description, developed after consultation with tribal organizations...in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act”. This does not, by its own terms, require ICWA compliance. States and tribes that submit a five-year Child and Family Services Plan (CFSP) and annual updates provide these descriptions. The goal of the section 422(b)(9) requirement is to preserve children’s connections with their families, heritage, and communities. States cannot be found in or out of substantial compliance and/or penalized for failure to comply with ICWA. Through its regular title IV-B and IV-E compliance reviews, HHS assesses whether states are following certain best practices with regard to Indian children in foster care, such as notification to tribes and placement preferences. Those reviews are not designed or intended to measure states’ conformity with specific ICWA provisions. Titles IV-B and IV-E of the Social Security Act and their implementing regulations do not condition federal child welfare funding on states’ compliance with ICWA.
    - Several tribal commenters noted that ICWA is under DOI’s authority but said that ACF should collect ICWA-related data because DOI doesn’t currently have a mechanism for collecting the information or any relationship with state child welfare agencies. DOI’s authority cannot be conferred upon ACF to cure shortcomings in DOI’s ability to enforce compliance with ICWA. Additionally, ICWA compliance determinations are not under the purview of the title IV-E program, therefore, using title IV-E funds to measure compliance, collect data, or report information for the purpose of ICWA compliance is an in appropriate and unauthorized use of title IV-E funding.

**Attachment B – ICWA**

- In the 2019 NPRM preamble, we said that due to the low numbers of children in the out-of-home care reporting population where ICWA applies, and to protect their confidentiality, 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. AFCARS data is de-identified, meaning that it does not include names, numbers, or other information that would make directly identifying the children possible. This means that ACF would not be able to release information to other entities that they are assuming could be used for ICWA compliance.
- 2. We recommend only conforming changes proposed in the 2019 NPRM to remove citations to DOI regulations because:
  - ACF's existing authority under 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 who are adopted with state involvement. This is the authority that allows ACF to require title IV-E agencies to report information that can be used to provide national, aggregate data on children in foster care who are afforded the protections of ICWA. However, collecting this information is not for the purpose of ensuring the child's ICWA protections are met, rather it informs whether children's connections to their communities are preserved and other issues pursuant to title IV-B/IV-E monitoring. This 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.
  - We are aware of the fifth circuit appeal for the *Brackeen v. Bernhardt* (formerly *Zinke*) but this pending litigation does not constitute sufficient reason to remove all ICWA-related data elements from AFCARS.

## Attachment C – Sexual Orientation and Sex/Gender

### What did we propose in the 2019 NPRM?

We proposed to keep within the data element “circumstance at removal” a response for title IV-E agencies to indicate whether family conflict related to the child's sexual orientation, gender identity, or gender expression was a circumstance at removal and to rename the data element “gender” to “sex”. The 2016 final rule included data elements asking title IV-E agencies to report for children age 14 or older, foster parents, adoptive parents and legal guardians whether they self-identify as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don't know,” “something else,” or “decline”.

### Comment Summary on Sexual Orientation Data Elements:

*Sexual orientation of youth, foster parent, adoptive parent:*

Support removing: 6 (of 24) State and local agencies.

- In general, and consistent with comments on the ANPRM, the states that support removal of the sexual orientation information agree that AFCARS is not the appropriate vehicle for collection. They said that they do not see how having this information in a government database will result in support services for children, and expressed that this information should be tracked separate from AFCARS.

Oppose removing: 4 (of 24) State and local agencies; 1 (of 33) Indian tribes, tribal organizations or consortiums; 1 (of 10) Organization representing tribal interests; 39 (of 45) Other national advocacy organizations; 1 Member of Congress (Sen. Wyden); 18 anonymous or private citizens.

- In general, the opponents argued that:
  - Knowing a child's sexual orientation feeds into permanency and case decisions, thus at a national level, ACF should use data to analyze outcomes for youth in foster care and address disparities. It will promote visibility for marginalized groups and help us understand their particular experiences in foster care.
  - Having national data on the sexual orientation of the child will “allow congress to legislate appropriately at the national-level”.
  - ACF did not consider that the information gleaned from the data would lead to lower costs in the future because families would get the help they need.
  - Sen. Wyden also said that knowing a providers sexual orientation will enhance recruitment of foster homes, especially in light of South Carolina being granted a “religious exemption...allowing state-contracted child welfare agencies to legally turn away otherwise qualified parents.”

*Circumstance at Removal – Family conflict at removal related to the child's sexual orientation, gender identity, or gender expression:*

There was overall support from commenters, including states and national advocacy organizations to keep the circumstance at removal regarding whether there was family conflict related to the child's sexual orientation, gender identity, or gender expression for such reasons: 1) this information directly related to service needs and case planning and 2) this data provides enough information for a national data set.

*Gender/sex:*

Two states expressed they want the ability to report a third gender option because other agencies within the state have this ability (e.g., motor vehicles), so it promotes consistency. One of the two states suggested adding a “gender expression” element but did not explain why this would

**Attachment C – Sexual Orientation and Sex/Gender**

be beneficial beyond stating that a national discussion cannot occur without the data. Sixteen national advocacy organizations also want to add elements for gender identity.

**Analysis on whether commenters followed the approach to public comments in section [V. Public Participation](#) of the 2019 NPRM:**

States generally acknowledged that inquiring 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. However, those that supported removing the sexual orientation data elements explained that they do not see how reporting this information to a national database would enhance their work with children and families. No states provided burden hour estimates specific to the sexual orientation elements.

Most of the stakeholders who are not title IV-E agencies (including the one tribe) felt that AFCARS is the most effective vehicle for collection of this data because it is a national data set on children in foster care and providers. However, they did not speak to why no other current method is feasible to collect the information. These stakeholders, which amounted to the opposition, said that the removal of these elements equates to an “erasure” of this population from the national spotlight. However, the stakeholders did not describe any work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS. The commenters that opposed reiterated similar arguments that they made in response to the ANPRM, essentially expressing a “need” for sexual orientation data for research and legislation but failing to provide any additional evidence as to why the removed data elements must be reported at a federal level.

Some of the national advocacy organizations cited in their comment letters to a particular article for their rationale to include the sexual orientation elements in AFCARS: *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, by Shannan Wilber (2013). [Link](#). We examined this article to see if it provides instruction for federal agencies that is different from the 2016 OMB document we cited to in the 2019 NPRM, *Current Measures of Sexual Orientation and Gender Identity in Federal Surveys* by the OMB Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys. After a thorough review, we determined that it is not a relevant substitute for the OMB document for collecting this information through AFCARS because:

- The article does not provide guidelines for collecting sexual orientation information through a federal administrative data collection. Rather, the article largely provides best practice guidelines related to client/caseworker/agency interaction in gathering and managing sexual orientation and gender identity (SOGI) information from clients. The article is a practice guide, or set of professional standards, for child welfare staff and child welfare agencies on how they interact with clients, gather and manage SOGI information at the case/local/state level.

**Recommendation:** We recommend no revisions to the 2019 NPRM for the reasons described above, because the commenters who opposed did not provide a viable alternative for collecting SOGI information in a federal administrative data set. Further, state commenters supported our proposal to report the circumstance at removal regarding whether there was family conflict

**Attachment C – Sexual Orientation and Sex/Gender**

related to the child's sexual orientation, gender identity, or gender expression because this information directly related to service needs and case planning.

# Moving a Child Welfare System to Be More Affirming of the LGBTQ Community: *Strategies, Challenges and Lessons Learned*

INITIATIVES FROM 2009 THROUGH 2016



June 2018

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### A NOTE FROM THE AUTHORS

This report is our best effort to concisely and honestly summarize Allegheny County's Department of Human Services' work to better serve the LGBTQ community over the last few years so that others can learn from it. We have provided a list of resources that were developed during this process at the end of the report. Please reach out if you think any of these documents — or a conversation with us — would be useful.

### A Note About Language

Sexual orientation, gender identity and gender expression (SOGIE) are elements of identity that all of us possess. Lesbian, gay, bisexual, pansexual, asexual, queer and heterosexual are some of the terms used to describe identities related to sexual orientation. Transgender, gender diverse, genderqueer, gender fluid, agender, cisgender, man, woman and Two-Spirit are some of the ways people describe their gender identity. Terms related to gender expression include androgynous, feminine, masculine, etc. To simplify the use of language in this document, we use SOGIE to represent the broad frame of all possible sexual orientations, gender identities and gender expressions. LGBTQ (lesbian, gay, bisexual, transgender, queer and questioning) is an acronym that is used throughout this document to refer to all individuals who are not heterosexual or cisgender. In places where the 'Q' is left out of the acronym, this is done to reflect the actual name of a group or committee. Select terms related to sexual orientation, gender identity and expression will be defined in the glossary that starts on **page 4**.

### ACKNOWLEDGMENTS

Working with fellow staff and community members to bring about change over the last several years has been a tremendously rewarding experience. Change is evident in Allegheny County, and we would not be on our current path without the effort and support from so many in our community. We cannot possibly list every person who helped us along the way. However, some of the groups and organizations we would like to recognize include Department of Human Services (DHS) leadership and staff, the Center for the Study of Social Policy, members of the Child Welfare getR.E.A.L. Steering Committee, the SOGIE Community Training Team, DHS LGBTQ Advisory Council members, DHS LGBTQ Champions, DHS LGBT Work Group, participants in our DHS LGBTQ Community of Practice and all of our wonderful community partners!

A special THANK YOU to the individuals who served as part of the project team during this time period, as interns, staff members or in some other role: Jean Bartholomew, Lynn Bottoms, Kelsey Branca, Heather Burgess, Dezrea D'Alessandro, Matthew Gemberling, Aaron Gray, Alex Heit, Anna Klahr, Ja'Quayy Love, Alexander McCarthy, Miranda Miller, Erik Peterson, Tresa Rollison and Kell Wilkinson.



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## GLOSSARY

**Agender:** A person who identifies as having no gender or being without any gender identity

**Asexual:** A person with little to no interest in sexual activity or attraction

**Administration for Children and Families (ACF):** A division of the U.S. Department of Health and Human Services

**Affinity group:** A group of people linked by a common ideology or purpose. Affinity groups promote an inclusive environment where all members are empowered to participate and succeed.

**Allegheny County Human Relations Commission (HRC):** Investigates discrimination complaints with the goal of ensuring equal opportunities for employment, housing and use of public accommodation facilities for all

**Androgynous:** A person who has a combination of masculine and feminine gender expression or the lack of gender identification; neither clearly masculine nor clearly feminine in appearance

**Bisexual:** An umbrella term for people who recognize their potential for sexual and/or emotional attraction to more than one gender

**CSSP:** The Center for the Study of Social Policy

**Cisgender:** Having a gender identity that aligns with a person's sex assigned at birth

**Community Care Behavioral Health:** A nonprofit Behavioral Health Managed Care Organization (BH-MCO), which manages the Allegheny County HealthChoices program on behalf of DHS

**DHS:** [Allegheny County] Department of Human Services, also referred to as "the Department" in the document

**Gay:** An identity term used by some men who are attracted to male-identified people; sometimes used by the general public to refer to all people who are attracted to people of the same gender

**Gender diverse:** Behavior or gender expression that does not match societal norms for people perceived to be male or female based on sex assigned at birth. (Other terms describing the same concept are gender nonconforming, gender variant, or gender expansive.)

**Gender expression:** The ways in which a person communicates gender identity to others through such things as behavior, clothing, hairstyle, voice, body characteristics, roles and other aspects

**Gender fluid:** A term used by some individuals whose gender identity may vary at different points in time

**Gender identity:** A person's internal sense of being male, female, some combination of male and female, or neither male nor female

**Genderqueer:** A term used by some individuals who identify as being between and/or other than male or female. They may feel they are neither or a little bit of both, or may simply feel restricted by gender labels.

**getR.E.A.L.:** (Recognize. Engage. Affirm. Love.) A CSSP initiative designed to help transform child welfare policy and practice to promote the healthy development of all children and youth. Sexual orientation, gender identity and expression (along with race, ethnicity and disability) are part of the identity formation that occurs in adolescence. CSSP focuses on needed improvements that are critical to ensuring that attention to healthy sexual development and gender expression is part of the framework child welfare agencies use to promote the healthy development of all children and youth.

**Intersectionality:** The theory that the overlap of various social identities, such as race, gender, sexuality and class, contributes to the specific type of systemic oppression and discrimination experienced by an individual

**Lesbian:** An identity term used by some woman-identified individuals who are attracted to other woman-identified people

**LGBT(Q,A):** Lesbian, gay, bisexual, transgender (queer or questioning, ally)

**Non-binary:** Describes genders that do not fall into male or female categories

**Pansexual:** An identity term used by individuals who recognize and honor their capacity to be attracted to others regardless of gender identity

**PERSAD Center:** A Pennsylvania-based human services organization whose mission is to improve the well-being of the LGBTQ (lesbian, gay, bisexual, transgender, queer and questioning) communities, and the HIV/AIDS communities. The center serves its target populations and their loved ones across western Pennsylvania, with service centers in Pittsburgh and Washington, Pa.

**Queer:** A historically derogatory word in the process of being reclaimed by the LGBTQ community as an umbrella term for LGBTQ identities. The term may also be used to describe an individual identity in which one experiences a fluid or flexible gender and/or sexuality, or rejects the use of other labels.

**RFP:** Request for proposals

**Safety, Permanency and Best Practice Specialists (SPBPSs):** A child welfare position that is responsible for mentoring staff on implementation of policies, procedures and standards of practice. They conduct a thorough review of individual cases and outline practice concerns, along with recommendations on ways to enhance practice. SPBPSs also make recommendations to child welfare administration for policy change or enhancement, along with identifying ongoing training and educational needs.

**Safe(r) Spaces:** A training designed to help individuals build self-awareness and explore their own internal biases in an effort to become a safe(r) space for work colleagues and others. The phrase “safe(r) spaces” is intended to denote the idea that very few, if any, spaces are completely safe for everyone and that we must continue to work toward creating spaces that can be as safe as possible, recognizing the potential for a space to become unsafe at a moment’s notice. A Safe(r) Space designee is an individual who has completed the training and has pledged to work toward creating an inclusive and equitable environment that is free of bias, judgment, and potentially threatening actions, ideas or conversations.

**Sexual orientation:** An enduring pattern of romantic or sexual attraction (or a combination of these) to people of a different sex or gender, the same sex or gender, more than one gender, or none

**SOGIE:** Sexual orientation, gender identity and (gender) expression

**Trans, trans\* and trans+:** All three of these terms are used as abbreviations of transgender and/or as ways to more explicitly communicate inclusion of the full breadth of people whose gender identities are something other than was expected of them at birth. Trans\* came about in the 1990s and had a huge but relatively brief spurt of popularity in the early 2010s. Trans+ is a more recent variant that plays on the trend of adding a plus sign to terms like LGBTQ to denote greater inclusion.<sup>1</sup>

<sup>1</sup> The Radical Copyeditor's Style Guide for Writing About Transgender People. Available at <https://radicalcopyeditor.com/2017/08/31/transgender-style-guide/>

**Transgender:** Having a gender identity that does not align, according to societal expectations, with a person's sex assigned at birth

**Two-Spirit:** An identity term used by some individuals who have both a masculine and a feminine spirit; used by some First Nations people to describe their sexual, gender and/or spiritual identity

## SUMMARY

In an effort to work toward providing culturally responsive and affirming services and supports to LGBTQ communities involved with Allegheny County's Department of Human Services (DHS), the first Department-wide LGBTQ work group began at DHS in June 2009. At the time, gender and sexuality were not openly discussed as a part of practice at DHS and the experiences and needs of LGBTQ communities were not well-understood.

Fast forward to the summer of 2016. At this time, DHS was three years into a partnership with the Center for the Study of Social Policy (CSSP) to pilot guidelines for managing information related to gender and sexuality. The initiative, getR.E.A.L., is aimed at improving healthy sexual and gender identity development for youth in the child welfare system. A full-time project manager dedicated to improving practice and with stronger relationships throughout the LGBTQ community led the effort. In addition, DHS:

- Began to address bias in the workplace
- Established an Advisory Council, later disbanding it and replacing it with other methods of engagement
- Developed written practice guidance related to gender and sexuality
- Implemented a train-the trainer program for the entire child welfare network, including partner agencies
- Provided case consultations
- Changed information systems to collect data related to gender and sexuality

This report is our attempt to honestly share our experiences during this time, as we worked to better understand and serve the LGBTQ communities of Allegheny County, with the hope that others can learn from our work. While progress was made, we still have a long way to go. As we report out in the midst of our journey, we will share with you some of our priority strategies, challenges and lessons learned from 2009 through 2016.

## Foundational Elements

The following are some of the strategies and priorities we share in the full report. They are also the building blocks we believe are necessary to a successful change effort that addresses the diverse needs of LGBTQ communities.

- **Leadership buy-in** is required to make change in a meaningful way. Leaders who are truly bought in provide active support to facilitate project success. Examples of this type of support include: signaling an affirming agency stance, prioritizing project initiatives, providing resources, supporting policy change, holding staff and contracted organizations accountable to established standards, and providing project staff access to key stakeholders.

- **Dedicated staffing** provides the capacity for staff to develop expertise and thoughtfully implement an action plan through a process that is collaborative and well-communicated. This is necessary because this effort requires focused attention and energy on planning and strategy, engagement, content development, training, providing individual consultations and various other activities. It also enhances accountability since there is someone who holds responsibility for moving the work forward and is able to monitor tasks and actions for which others are responsible.
- **Guidance around practice** in the form of policies, procedures or standards of care is essential for supporting practice change. Clear, written guidance is critical for communicating expectations and holding staff and contracted organizations accountable to best practices. It also serves as the foundation for training materials and a consistent resource for staff as they encounter new or challenging circumstances in their work with children and families.
- The value of authentic **relationship-building** cannot be overstated. Investing the time and resources to build relationships with a wide variety of stakeholders is mutually beneficial and improves the quality and relevance of the work prioritized within a government body.
- **Integrating SOGIE into existing practice models** and systems is a must-have strategy for the work to be sustainable. In government systems, especially child welfare, there are numerous special initiatives and reform efforts that fade over time. The chances of efforts to improve practice related to SOGIE being taken seriously, resulting in better outcomes for children and youth, and being sustained over time, improve if best practices can be woven into the fabric of the core practice model and infrastructure, rather than being perceived as another add-on project.
- **Resources** are scarce in the human services sector, but they are necessary. Resource investments are needed both internally (staffing, supplies, training, outreach) and externally (contracting and investment in community-based services).
- **Commitment.** Finally, both personal and organizational commitment are needed to make real and lasting change. Transformation often comes through conflict, and progress is not always steady. Sometimes great strides follow on the heels of significant setbacks, and real commitment is needed to get through the challenging periods.

## THE FRAMEWORK

This report describes the challenges, successes and lessons learned that came with the work of shifting perspectives about LGBTQ communities in a local government organization. Much of the work was focused on affecting change in the child welfare system, but progress in that arena created ripple effects that continue to foster change in other areas of DHS.

The report is organized into five sections. The first describes the organizational structure of the DHS and the social climate of the region. Each subsequent section reflects a different period of time during which the nature of the culture-change work occurring within DHS was substantively different, though the stages were not deliberately planned ahead of time.

The first four sections describe work that occurred in the past, while the fifth is forward-looking. The title of each section is a present-day reflection on what occurred during that time and how it contributed to the progress achieved over the last several years.



The **Background** section describes Allegheny County and its Department of Human Services to provide context for the later sections.



The section titled **Laying the Groundwork** outlines the early activities happening at a Department-wide level from 2009 through 2011. DHS's first LGBT work group, representing all DHS offices, investigated and formed recommendations for how DHS should address a number of priorities presented by leaders within the community.



**Building Momentum** describes efforts during 2011–2013. Lessons are shared from DHS's experience with its LGBTQ Advisory Council and the early efforts to develop a stronger base of knowledge within the Department.



**Tippling Child Welfare** encompasses 2013–2016 and focuses on activities accomplished within the child welfare system under the getR.E.A.L. initiative. The grant-funded pilot project allowed for the hiring of a dedicated staff person to lead culture and practice improvements related to gender and sexuality. We highlight key strategies and lessons learned from our assessment, engagement and implementation activities.



**Sustaining & Growing** lays out future opportunities and challenges to be addressed across DHS. This section highlights the work that remains, and we reflect on the key challenges that surfaced as we attempt to take the work to scale and expand into other service systems.

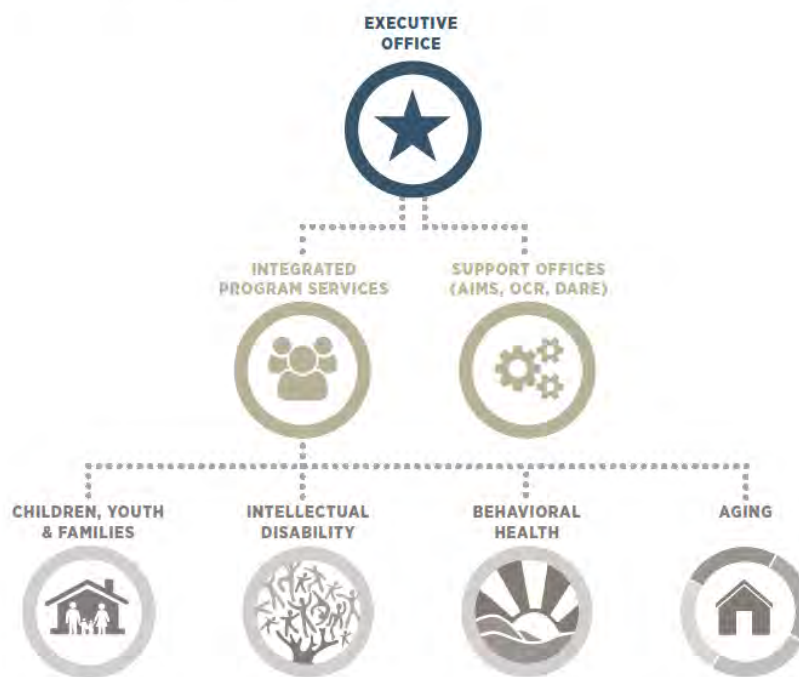


## Background

### ALLEGHENY COUNTY DEPARTMENT OF HUMAN SERVICES (DHS)

The Allegheny County Department of Human Services (DHS) was created in 1997 to consolidate the provision of human services across Allegheny County. In addition to its Executive Office, DHS encompasses Integrated Program Services, three support offices, and four program offices (displayed below).<sup>2</sup>

<sup>2</sup> During most of the time covered by this report, DHS consisted of five program offices. Consolidation in May of 2017 resulted in four program offices.



DHS is responsible for providing and administering publicly funded human services to Allegheny County residents and is dedicated to meeting these human services needs, particularly for the County’s most vulnerable populations, through information exchange, prevention, early intervention, case management, crisis intervention and after-care services.

DHS provides a wide range of services, including: services for older adults; mental health, and drug and alcohol services (includes 24-hour crisis counseling); child protective services; at-risk child development and education; hunger services; emergency shelters and housing for the homeless; nonemergency medical transportation; and services for individuals with intellectual and/or developmental disabilities.



In any given year, DHS serves about 200,000 individuals (approximately one in six County residents) through an array of approximately 1,700 distinct services. Most services are administered through a network of about 300 contracted provider agencies.

### ALLEGHENY COUNTY, PENNSYLVANIA

Allegheny County, home of the City of Pittsburgh, is one of 67 counties in the Commonwealth of Pennsylvania. The population size is approximately 1.2 million people, with about 300,000 living within city limits. The County's population is 82 percent white and 13 percent black. The percentage of people of color is higher within the City of Pittsburgh at 34 percent (26% black).<sup>3</sup> The City is ranked among the top 20 most segregated cities based on analyses of 2010 Census data.<sup>4</sup> The LGBTQ communities are geographically segregated by race in the same way as the general population.

<sup>3</sup> U.S. Census Bureau. "Community Facts." 2015 ACS 5-Year Population Estimate. Available at [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml)

<sup>4</sup> Baird-Remba, Rebecca and Gus Lubin. 25 April 2013. "21 Maps of Highly Segregated Cities In America." *Business Insider*. Available at <http://www.businessinsider.com/most-segregated-cities-census-maps-2013-4#pittsburgh-penn--black-people-stick-to-a-few-areas-on-the-east-side-4>.

Pittsburgh does not have an area that is recognized as the "LGBTQ neighborhood." Although many LGBTQ-serving bars and service agencies are in neighborhoods in the eastern part of the city (which are generally considered to be more "open"), there are not clear geographically safe spaces, particularly for queer people of color.

A countywide anti-discrimination ordinance inclusive of protections based on sexual orientation, gender identity, gender expression and marital status was passed on July 1, 2009, by the Allegheny County Council. As of May 2018, no statewide protections from discrimination based on sexual orientation, gender identity or gender expression (SOGIE) exist. The five counties immediately surrounding Allegheny County do not provide any legal protections from discrimination on the basis of SOGIE.

#### Allegheny County Anti-Discrimination Policy

The Allegheny County Department of Human Services does not discriminate against anyone on the basis of a protected class including: race; color; religion; national origin; ancestry or place of birth; sex; gender identity or expression; sexual orientation; disability; marital status; familial status; age (40 and older); use of guide or support animal because of blindness, deafness or physical disability.

Marriage equality came to Pennsylvania on May 20, 2014, after a U.S. federal district court judge ruled that the ban on recognizing same-sex marriages was unconstitutional.



## Laying the Groundwork



### THE LAUNCH OF DHS-WIDE EFFORTS

<sup>5</sup> Betty Hill (PERSAD Center), Emilia Lombardi (University of Pittsburgh), Marty Seltman (Metro Family Practice) and Adrienne Walnoha (Community Human Services)

In June 2009, a group of community stakeholders<sup>5</sup> approached DHS leadership to request that the Department examine and respond to a 14-point list of community questions and recommendations for serving LGBTQ individuals. Leadership agreed and assembled a work group consisting of volunteers from each DHS office to review the list of recommendations provided by community members. The work group was also charged with developing additional recommendations and action steps to be presented back to DHS leadership.

This was the official launch of Department-wide efforts to understand and address the needs of the LGBTQ communities. Prior to this, individuals working in various areas of the agency made efforts to influence services and office culture to be more inclusive, but there was not collaboration or agenda-setting across the Department. While not included in the scope of this report, their contributions made an impact and helped ready the Department for changes to come. This section outlines the activities, successes, challenges and lessons learned through the early process of beginning to examine responsiveness to LGBTQ communities across the Department.

<sup>6</sup> LGBT was the widely accepted acronym at the time the 14 points were drafted.

### The 14 Points<sup>6</sup>

Community leaders submitted the following recommendations to DHS for consideration. These points served as the scope of work for the DHS LGBT Work Group from 2009 through 2011.

1. Investigate the inclusion of transgender people within homeless shelters.
2. Schedule transgender trainings for all DHS staff as well as program staff providing services within the community.
3. Reinforce the knowledge that Pittsburgh has an anti-discrimination law that includes sexual orientation, gender identity and expression.
4. Establish an LGBT advisory board.
5. Utilize signage to communicate that the safety and well-being of LGBT people is taken seriously.
6. Utilize measures that will allow people to identify themselves as LGBT, including in DHS data systems.
7. Develop written policies covering issues of respect, confidentiality, housing placements, bathroom and shower policies, harassment, and topics for intake conversation.
8. Develop policies regarding the confidentiality of people's LGBT status, which includes referrals made on behalf of that person.
9. Dress codes, if necessary, should be implemented fairly and be supportive of people's lives.
10. Examine LGBT people's usage and comfort with services. Examine the experiences of LGBT youth within child welfare; how are experiences of bullying and harassment handled?
11. Identify whether providers are available to provide for the community's needs.
12. Identify relationships with LGBT organizations.
13. Make available material that is inclusive of LGBT individuals.
14. Work to renovate bathroom and shower areas to allow for the privacy of ALL people as well as the provision of hygiene products to respond to a diversity of needs.



### Staffing

The LGBT Work Group was led by the Senior Policy Manager who reported directly to the DHS Director. A call for work group members was sent out to leadership of each DHS office, and 21 staff volunteered or were selected from the eight DHS offices.

### WORK GROUP PROCESS AND RECOMMENDATIONS

The 21 work group members split into subcommittees, each focusing on one or more of the 14 points. Items were grouped into like categories, which included: Advisory Group, Data Collection, Education and Training, Experiences of Consumers and Providers, Housing, and Policies and Procedures.

Staff engaged in research to address the issues but struggled to gain traction on several items because group members did not have enough direct experience to understand the current challenges of LGBTQ individuals within the community and the DHS service system.

#### **Staff engaged in research to address the issues, but struggled to gain traction on several items.**

The activities of this work group extended over a two-year period before their recommendations were presented to DHS senior leadership in July 2011.

The recommendations issued to DHS leadership through the course of the process included:

- Broadening the DHS non-discrimination statement to include marital status, sexual orientation, gender identity and gender expression
- Establishing an LGBTQ Advisory Council
- Collecting SOGIE data in DHS case management systems
- Educating DHS staff and the provider network on the protections included in the Allegheny County Anti-Discrimination Ordinance
- Training all DHS staff on how to provide services in a manner aligned with the anti-discrimination ordinance
- Developing policy or memoranda clarifying best practices and expectations for DHS staff and providers
- Supporting ongoing efforts of the work group to better understand consumer experiences and best practices

DHS leadership accepted some of the recommendations, including broadening the DHS non-discrimination statement, establishing an Advisory Council, and committing to continuing to support the work. Members of the work group recruited for and selected individuals to serve on the DHS LGBTQ Advisory Council, and two group members were identified to serve as Council facilitators. One would also serve as the LGBTQ Affairs Manager to continue to do the work at a DHS-level moving forward; at this time, the original work group was disbanded.



### Challenges

- Group members lacked connections to, and an understanding of, our local LGBTQ communities. We explored the research but lacked local knowledge that extended beyond our personal experiences.
- Very few work group participants were openly LGBTQ.
- Work group members did not have sufficient knowledge of best practices for serving LGBTQ individuals, nor how they compared to the status quo within the DHS service system. As a result, we were not well-positioned to make substantive recommendations for improvements.



### What Worked Well

- Work group members were primarily those who self-selected to help and were committed to the project. Members continued to serve as resources following the work, and were an early version of a network of advocates (called LGBTQA Champions) across DHS.
- The work group included members from each program area, bringing a range of perspectives.
- The executive director of the PERSAD Center provided LGBTQ 101 training for DHS senior staff and work group members.
- The process made DHS staff realize how little we knew and how much we had to learn.
- When the work group disbanded, a staff person was given the opportunity to continue the work moving forward.

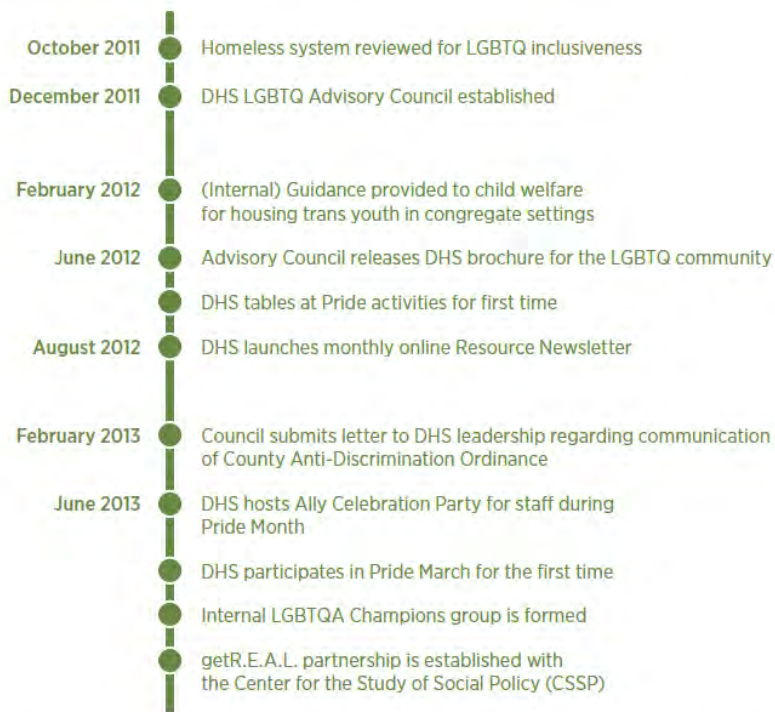


### Lessons Learned

- Establishing strong connections to the community is necessary for gathering information about the conditions in the community, best practices and how best to move forward.
- Capitalize on community leaders' interest in working with us, and actively involve them and invite them in to strategize about how we could work together.
- Intentionally keep internal work group members engaged in the work in following years.
- Be inclusive and intentionally maintain an intersectional frame (considering all aspects of identity), even when doing LGBTQ-focused work. For example, when the work group recommended to DHS leadership that the DHS Non-Discrimination Statement language be updated, the updates did not include language for all identities that had recently gained legal protections. The language had to be revisited and revised later, creating confusion and missing opportunities to educate people about their full protections.
- It is important to have committed and designated leadership to push this work forward. Even though we had a team of dedicated and interested staff on the work group, the work lagged when the staff managing the work was absent. As a result, it took two years to produce recommendations.



## Building Momentum



In the two years following the work group's recommendations to DHS senior staff in 2011, many activities occurred that built the momentum to shift the DHS culture to be more affirming and open to discussing gender and sexuality. During those years, progress seemed slow and minimal. In hindsight, the activities that occurred were critical to developing the organizational readiness to launch deeper work in the following years.

The DHS LGBTQ Advisory Council, established in December 2011, played a key role in suggesting and motivating the actions that occurred during that period. This section begins by featuring the Advisory Council, and follows with an outline of the strategies used to deepen knowledge within the Department about health disparities and best practices.



### Staffing

One staff person was designated to manage the DHS-wide efforts to improve services for LGBTQ clients. This staff person was located within one of DHS's support offices. No internal work group existed during this time, and the designated staff member did not experience any alleviation of daily work duties to dedicate time to this work. Most activities were staffed through intern support, fluctuating from one part-time to one full-time intern, depending on the time of year. A second DHS staff person assisted to co-facilitate the DHS LGBTQ Advisory Council.

### DHS LGBTQ ADVISORY COUNCIL

The DHS LGBTQ Advisory Council was established to advise DHS Senior Staff on the human services needs of LGBTQ county residents. The three primary charges to Council members were:

- Bring human services needs of LGBTQ communities to the attention of the Council.
- Develop recommendations for how DHS should address issues of concern.
- Share information about DHS with the LGBTQ communities.

The member selection process was designed to form a council that was diverse across age, race, gender, sexual orientation, role and type of human services experience. Similar to other DHS advisory bodies, at least 51 percent of members were to identify as LGBTQ, 40 percent were to be recipients of DHS's services, and the remainder, except for one or two positions, were to be staff from the DHS network or service providers. The two open slots were filled by community members who brought strong, unique perspectives not represented by other Council members. Representatives of community groups not contracted with DHS were not eligible to participate unless they met other eligibility criteria.

**The member selection process was designed to form a council that was diverse across age, race, gender, sexual orientation, role and type of human service experience.**

The first few Council meetings were structured to provide members with a common foundation of knowledge and to gather their input to inform Council activities. DHS staff presented an educational overview of DHS, and a basic overview of health disparities, terminology and concepts related to gender and sexuality. The Council then participated

in several activities to elicit concerns and priorities for issues to address, including grouping these priorities into categories. A final narrowing of categories informed the formation of three subcommittees: Needs Assessment, Cultural Competence Education/Training, and Outreach.

From the beginning, the Council struggled to gain traction and a clearly defined, shared sense of purpose. Despite its struggles, however, the Advisory Council's accomplishments and impact were significant. For example, the Council was responsible for encouraging DHS to participate in Pittsburgh Pride<sup>7</sup> activities and strengthen its community presence, members challenged DHS and spoke their truth even when it was critical of DHS, and members challenged each other and DHS staff to build their awareness and understanding of intersectionality. The Council can take credit for much of DHS's progress in this area, and its impact continues to be felt.

<sup>7</sup> Pittsburgh celebrates LGBTQ Pride each June with many events, including marches and community festivals.

While individual Council members had much to contribute, the Council as a whole did not have a clear sense of direction, and subcommittees did not take ownership of their focus areas. Meeting attendance was low, and members were of the opinion that the DHS facilitators spent an inordinate amount of time discussing ways to recruit and engage additional Council members. Recognizing the deficits in the model, DHS staff made the decision to dissolve the Council and replace it with a different avenue for engagement and community input (called the LGBTQ Community of Practice). This decision was not a reflection of the strength of the Council members, but rather a recognition that the Council was not positioned or designed appropriately to effectively engage with and influence DHS practice given the organizational structure at the time.

At one of the Council's final meetings, a member said to the DHS facilitators, "I am tired of talking to you. We know you are supportive. I came here to change hearts and minds, and we can't do that if we aren't interacting with other people." This message, taken to heart, helped to shape the development of the DHS LGBTQ Community of Practice. (See **page 30** for more details.)

### Council Accomplishments

- Hosted a Town Hall meeting in which community members shared their concerns with a panel of DHS staff
- Published a brochure for the LGBTQ communities that spelled out how LGBTQ individuals should expect to be treated by service providers, and what to do if they were not served appropriately
- Encouraged DHS participation in Pittsburgh Pride and staffed an information booth
- Advocated for leadership to address challenges in the workplace, including strengthening communication about anti-discrimination protections
- Elevated issues in the DHS consciousness (e.g., the need for inclusive contract language, inadequacy of homeless shelters) that, while not immediately addressed, informed discussions and later resulted in program modifications





### Challenges

- The Council structure was not an effective way to engage key stakeholders since many LGBTQ community groups did not hold a contract with DHS (and were therefore not eligible to serve on the Council).
- Some Council members and facilitators had less experience with discussions around intersectionality and systemic oppression. This was reflected in the language we used, and in how we approached and prioritized issues.
- Despite the effort and time commitment required to support the Council and LGBTQ-related efforts, no compensation or reduction in regular workload was provided to the DHS Council co-facilitators.



### What Worked Well

- Participants were passionate and knew the needs of the communities.
- The Council provided a voice when staff within DHS did not feel comfortable speaking out.
- Members were willing to make themselves vulnerable by speaking their truth to each other and to DHS, despite a challenging power dynamic.



### Lessons Learned

- Challenge traditional Council requirements and structures in order to get the right people to the table.
- Actively integrate the Council more closely into DHS work, rather than it serving as a stand-alone group with two DHS facilitators.
- Empower and provide the support necessary for Council members to lead.
- Provide staff who are facilitating or interfacing with the Advisory Council appropriate support, preparation and/or training to enhance their ability to effectively serve in their designated role.
- Rethink effective engagement, exploring how to approach all work from an intersectional lens that is informed by an understanding of oppression of marginalized groups.
- Hold more forums for conversation and community feedback.

### SHARING RESOURCES AND CREATING AN INTERNAL NETWORK OF CHAMPIONS

DHS was encouraged by Advisory Council members to consider forming an affinity group for DHS staff. In 2012, we hosted an internal meeting to discuss the possibility; invited were all internal applicants to the Advisory Council, participants in the first work group, and other individuals who had expressed interest in the work. The atmosphere in the room was one of hesitance and fear. Several staff members said they did not feel safe enough in the workplace to participate in an affinity group or even an email group that would have a mailing list visible on the work email server. There was not a critical mass of LGBTQ staff interested in forming a group. Instead, the LGBTQ Affairs intern researched other possibilities, and the *DHS LGBTQ Resource Newsletter* was launched through MailChimp. This platform allowed us to communicate with everyone in a confidential manner, and people could subscribe or unsubscribe from the list as they desired. This strategy allowed us to share information with a wide network, but it did not provide the opportunity to build relationships or create an effective feedback loop.

#### Designed intentionally to address prior concerns, the LGBTQA Champions group was formed with an explicit invitation to allies.




In 2013, the concept of an affinity group was revisited. Designed intentionally to address prior concerns, the LGBTQA Champions group was formed with an explicit invitation to allies (the A at the end of the acronym) to participate. This explicit invitation was designed to serve two purposes: to let allies know they were welcome, and to provide a sense of safety for the LGBTQ staff who wanted to engage but were still worried about being outed in the workplace.

The invitation to participate was also introduced in an intentional manner. Staff were invited to join the Champions group at the same time that DHS hosted events within the main office building to celebrate Pride for the first time. We held an Ally Celebration Dessert Party to celebrate everyone who had contributed to a more positive environment at DHS, and hosted a table in the lobby of the building to invite staff to join us in the Pride March and sign up to be a Champion.

The invitation to participate in the LGBTQA Champions group was a success, and the energy in the room during the first meeting was one of excitement and openness — a marked change from just the year prior!

Members of the DHS LGBTQA Champions group were charged with taking an active role in the work being done across DHS to improve the workplace environment, as well as supports for recipients of service, with respect to sexual orientation, gender identity and expression. Activities have included the following:

- Promoting events, webinars and other opportunities for learning more about serving LGBTQ individuals to colleagues
- Educating colleagues about internal and external DHS efforts that promote inclusion of LGBTQ populations
- Identifying areas in which LGBTQ individuals are not receiving culturally responsive services from DHS
- Participating in community events to promote DHS efforts in this area

 <p><b>Challenges</b></p>	<ul style="list-style-type: none"> <li>DHS staff work from several different sites, yet all on-site activities occurred at the main administrative building downtown due to limited capacity and resources. This made engaging staff from other DHS locations more challenging.</li> </ul>
 <p><b>What Worked Well</b></p>	<ul style="list-style-type: none"> <li>The online platform for information sharing allowed users the ability to participate confidentially, unsubscribe or change preferences as desired.</li> <li>Taking time to understand group members' experiences and goals and growing with people over time developed members' ownership of the group.</li> </ul>
 <p><b>Lessons Learned</b></p>	<ul style="list-style-type: none"> <li>It is important to design spaces or communication channels for affirming individuals to network with each other or communicate back with the staff member leading the work.</li> <li>Share resources that include actionable guidance that people can apply to their work. Provide structured support, such as learning groups or training, to increase the utilization of resources that require staff to set time aside to digest, such as lengthy written pieces or webinars.</li> </ul>

#### KNOWLEDGE- AND RELATIONSHIP-BUILDING

One of the key lessons learned by the LGBT Work Group was that we had significant gaps in knowledge at DHS about what issues LGBTQ individuals faced in our service systems, how prevalent those issues were, and the best practices for addressing them. From 2011 to 2013, team members (LGBTQ Affairs Manager and graduate school interns) invested a great deal of time and energy in addressing these gaps through the following research and planning efforts.

##### Knowledge-Building

One of the first activities team members engaged in was creating an internal resource bank with the latest research on more than a dozen topics. This was used to identify best practices and draft informational briefs that highlighted key health disparities relevant to DHS consumers who are, or are perceived to be, LGBTQ. Briefs were shared with DHS senior staff and other stakeholders, as appropriate, to build awareness.

Most communication and information-sharing with stakeholders occurred through the monthly *DHS LGBTQ Resource Newsletter* (established in August 2012). The newsletter contains information about upcoming webinars and events, along with relevant research, news articles and resources. A static set of resources was also compiled and shared on DHS's public-facing website.<sup>8</sup> In 2013, a Resource Guide was added, developed by compiling all of the local resource guides we could find.

<sup>8</sup> <http://www.alleghenycounty.us/Human-Services/Resources/LGBTQ.aspx>

### Research

In addition to collecting information, the team invested time in research about ways to assess our environment, educate a workforce and change our systems. We visited several homeless shelters and developed a report of our findings, including suggested improvements based on best practices. We investigated the data fields in our information systems and identified opportunities for improvements. We evaluated several workforce surveys that had been implemented in other jurisdictions to determine which elements would be most relevant to include in a local survey. We also researched Train-the-Trainer models and methods for assessing and developing a list of “competent” service providers.

At the time, most of the efforts ended with a brief write-up of suggestions, stalling due to a lack of interest or staff capacity to implement recommendations. However, the research and information-gathering involved in those projects engaged DHS staff in thinking about LGBTQ populations and informed future work when the projects re-emerged with the implementation of the getR.E.A.L. initiative. (See **page 25**.)

### Relationship-Building

Early relationship-building primarily occurred with members of the Advisory Council, organizations they represented and other institutional partners. For example, the project team connected with Community Care Behavioral Health, the Allegheny County Human Relations Commission, and professors engaged in research related to the LGBTQ communities at the University of Pittsburgh's Schools of Social Work and Public Health. We also connected with providers of housing services during an initial review of the homelessness system. These connections provided a good foundation, but the relationships were not maintained over time or actively built upon. See **page 28** for more information on the important role relationship-building played in the expansion of this work.



### Challenges

- There was not any demand to drive the work. DHS staff did not reach out to ask for help, and the individual leading the work was not connected to direct practice staff or the community well enough to become aware of issues when they arose.
- Team members lacked expertise, especially related to serving individuals who identified as transgender.
- Staffing:
  - Interns were the primary staffers, which meant a lack of consistency and slow lead times to get projects off the ground. Part of that was by design, so that interns could focus on areas of interest to them, but time was lost in this process, and individuals were not able to make as much progress.
  - Without dedicated staff time from a project manager, interns and other temporary team members operated with minimal support, and follow-through on their projects lagged when they transitioned in and out of positions. Ongoing relationships with stakeholders remained weak because the temporary staff did most of the relationship-building.



### What Worked Well

- A lot of research and information was gathered, building a foundation of knowledge that positioned the team to take advantage of opportunities to educate people when they arose.
- The effort and planning that went into several of the projects during this period (survey, Resource Guide, etc.) eased the workload when a full-time project manager was hired.
- While projects during this period were low-profile, they planted seeds throughout DHS, beginning to normalize conversations about gender and sexuality, and raising awareness among staff.



### Lessons Learned

- Re-engage members of former work groups to help build the capacity of the team.
- Provide interns with more support and direction in the early stages of their projects to help them build momentum in their short-term placements.
- Have stable members, rather than interns, lead engagement activities to establish strong, ongoing relationships.
- Prioritize participation in more external engagement activities to help build and maintain relationships over time. Ensure engagement includes both community and institutional partners.



## Tipping Child Welfare



In February 2013, the Center for the Study of Social Policy (CSSP) offered DHS the opportunity to serve as the pilot jurisdiction for the getR.E.A.L. initiative. The initiative was designed to help transform child welfare policy and practice to promote the healthy sexual and gender identity development of all children and youth.

As the pilot site, DHS received a moderate amount of funding and technical assistance to implement and test the “[Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems](#)”<sup>9</sup> (see **Appendix A on page 52** for a list of the guidelines). The goal was to field-test the Guidelines to determine what it would take for a child welfare system to be able to implement them successfully before releasing them as best practices. An evaluation team has been using the implementation science framework since the project launch to assess the implementation of the Guidelines and identify the core implementation drivers necessary for sustainability.

The initiative launched in July 2013, the same month that Allegheny County’s child welfare system experienced a transition in leadership with a change of deputy directors. The project kicked off through the transition, and the incoming leadership team was supportive of the work.

**This investment signaled the tipping point for creating change in Allegheny County’s child welfare system.**

In summer 2013, project funding was used to hire a project manager for the getR.E.A.L. initiative who also serves as the advisor for all of DHS’s sexual orientation, gender identity and expression (SOGIE) work (hereafter referred to as SOGIE Project Manager). This investment signaled the tipping point for creating change in Allegheny County’s child welfare system. With a dedicated staff person came the opportunity for someone to develop expertise, engage community stakeholders, plan and coordinate work, and establish a dedicated team focused on SOGIE projects. While focused primarily on child welfare policy and practice, the activities of the SOGIE project team (see Staffing callout for details), impacts all of DHS because the child welfare office is one of four integrated program offices within DHS, and the team itself is positioned in one of the support offices serving all of DHS.

The project team developed a strategic plan at the outset, which evolved over time as the team learned new information and encountered unanticipated opportunities and obstacles. The initial plan included the following sections:

- Needs Assessment
- Readiness to Implement (HR issues, etc.)
- Implementation Activities (training, etc.)
- Quality Assurance
- Communication

New activities were added over time, but the primary changes to the plan were to implementation timelines. Some activities simply took longer than expected, and others were delayed due to competing priorities. With new leadership in child welfare came dozens of system changes.

<sup>9</sup> The guidelines and other LGBTQ-related child welfare resources can be found at [www.cssp.org/reform/child-welfare/get-real/what-we-do/publications](http://www.cssp.org/reform/child-welfare/get-real/what-we-do/publications).

While the changes delayed some implementation activities, such as training, they also presented opportunities for SOGIE to be integrated into agency priorities.


Much of the first year of work under the getR.E.A.L. initiative was dedicated to community engagement, needs assessment and planning activities. The project team dedicated time to building relationships, educating stakeholders about what to expect, learning about the current state within child welfare, and preparing for early implementation activities.

Early in the process, we established the getR.E.A.L. Steering Committee, which included representation from multiple roles and areas of practice within child welfare, as well as system partners such as the courts, child advocates, parent advocates, juvenile probation and contracted providers, as well as young adults who identified as LGBTQ and an adult with lived experience as the parent of an LGBTQ youth.

The purpose of the Steering Committee was to ensure that implementation activities were informed by the perspectives and expertise of multiple stakeholders within the child welfare system, and that there was a channel for communication between the SOGIE Project Manager and stakeholder groups.

A Request for Proposals (RFP) for a Community Training Team was released toward the end of the first year to support the development of a training curriculum for child welfare staff that focused on the basics of SOGIE. The Community Training Team worked with the SOGIE project team to develop a Train-the-Trainer curriculum, which was piloted and implemented throughout years two, three and four of the getR.E.A.L. initiative.

### Staffing



The full-time SOGIE Project Manager was hired to focus primarily on work related to piloting guidelines for the management of information related to SOGIE in the child welfare system. She was located in a DHS support office, reporting to the LGBTQ Affairs Manager who had served as the lead for the DHS-wide LGBTQ work in the prior two years. With the onboarding of a full-time SOGIE Project Manager and the acquisition of the getR.E.A.L. grant, the LGBTQ Affairs Manager's work duties were adjusted to allow her to dedicate more time to this work, but she still contributed in a part-time capacity. In combination with continued intern staffing, the SOGIE project team was now staffed at about the equivalent of two to three full-time employees on a consistent basis. The team also had the support of the getR.E.A.L. Steering Committee to assist with essential tasks such as helping to develop the Standards of Practice and informing the training curriculum and implementation.

In addition to the development of the training curriculum, second-year activities focused heavily on developing practice guidance and preparing for training implementation. Requests for case consultations increased, and the SOGIE Project Manager worked to integrate SOGIE into other child welfare activities.



In year three and the early part of year four, all staff in child welfare received training while the SOGIE project team prepared to implement changes to the IT system to include SOGIE-related fields, continued providing case consultations, developed tip sheets, and managed several ongoing projects related to incorporating SOGIE into the child welfare structure.

### **LEADERSHIP BUY-IN**

Support from the director of DHS, the child welfare deputy director and the rest of the child welfare leadership team is what made this work possible. Beyond matching the CSSP grant funding to engage in the getR.E.A.L. pilot, they provided support throughout the implementation process. The following are a few of the key activities that could not have happened without leadership backing. Many are discussed in more detail on following pages:

- Addressing issues with workplace behavior, including taking action through Human Resources
- Funding the Community Training Team and case consultation services
- Establishing a child welfare diversity officer position
- Providing access to the right people to move the work forward
- Adding anti-discrimination language related to SOGIE to provider contracts

One factor worth noting is that the SOGIE Project Manager took action that facilitated leadership support. For example, when she asked individuals in leadership to issue a written communication to staff or provider agencies, she also offered to draft the communication.

Other actions that facilitated leadership support included:

- Providing local data to validate the appropriateness of the recommended action
- Making change seem less scary by demonstrating where similar work had been implemented in the past
- Reminding people of the impact of inaction
- Making clear requests for what was needed and why

### **NEEDS ASSESSMENT**

Needs assessment activities are ongoing and have occurred throughout the getR.E.A.L. project implementation; however, they were heavily concentrated in the first year of the initiative. Early findings helped to inform which strategies to prioritize, and data collected throughout the process confirmed why specific actions were necessary.

Methods included a caseworker survey; stakeholder interviews (including community members); focus groups with youth, caseworkers, supervisors and families; assessments of the office spaces; and case reviews.

The CSSP team assisted in leading focus groups and key stakeholder interviews since they needed to collect baseline information for the evaluation. At the request of the SOGIE project team, they also engaged in additional activities, such as case reviews, to conduct a more thorough Institutional Analysis.<sup>10</sup>

<sup>10</sup>An Institutional Analysis is a set of qualitative diagnostic tools that seek to understand and address organizational and structural contributors to poor outcomes for children and families involved in the child welfare, juvenile justice and other systems. Using data and qualitative interviews, the Institutional Analysis examines how workers are organized to know and understand families and effectively intervene to support them. In other words, this approach makes visible the structures that shape, direct and determine workers' actions. It also shows how those structures can produce disparity and inequity based on race or SOGIE and overall poorer outcomes for certain subsets of children and families.

Key findings from the Needs Assessment include:

- LGBTQ staff reported perceiving the work environment to be less welcoming, affirming and responsive to incidents than cisgender and heterosexual staff.
- LGBTQ youth in out-of-home care consistently experienced issues at school related to safety.
- There was a complete lack of recognition of SOGIE within case records for LGBTQ youth.
- Staff self-reported a lack of understanding related to gender.
- There was minimal understanding of how SOGIE intersects with race to shape the experiences of youth differently.
- Workers were unsure how to talk about or address concerns related to SOGIE with youth, and some of those who were affirming did not think we should be talking about SOGIE.
- Some individuals in management positions were not sure how to talk about the getR.E.A.L. initiative, its purpose and why it was important.

## ENGAGEMENT

In Pittsburgh, it is all about relationships.

Early on in our getR.E.A.L. implementation, we made it a priority to talk with everyone who had a vested interest in the work we were embarking on around sexual orientation, gender identity and expression in child welfare. We met with LGBTQ-focused community organizations, contracted providers, individual community members, faith leaders — anyone who was willing to have a conversation about the work. And our community outreach was not always through traditional channels of community meetings and town hall events. The SOGIE Project Manager would meet anyone, anytime. Meetings were both informal — breakfast, lunch, dinner — and formal — business meetings, community events, affiliation meetings.

Building these relationships helped us on all levels of program implementation: needs assessment, planning, resource development, implementation, evaluation and continual quality improvement.

### Community Engagement

Understanding the role of the community in DHS's work was paramount to moving the work forward and starting to shift culture. Allegheny County is fortunate to have a host of community resources that serve LGBTQ individuals. Unfortunately, many of them were not widely known within the system, and with limited resources, they did not always work together effectively. Building relationships with people holding a diversity of roles and experiences elevated DHS's awareness and connections to community supports, and created opportunities for community-based groups to learn more about each other.

Relationships we developed and strengthened over time have proven critical for learning about community needs, resources available to support individuals and families, current initiatives with which DHS could partner, and meeting people whose lived experience and expertise are critical voices and perspectives that we need to include in our work.

Engagement is not only important for DHS, but for the community as well. LGBTQ populations are less likely to trust governmental bodies, and it has only been through demonstrating that we are genuinely invested in making progress and better supporting communities that trust has strengthened and relationships have flourished. It is also helpful for navigating politics within the LGBTQ community. When segments of the community are at odds, we have been able to continue to work effectively with a diversity of individuals and groups because they see our investment in the whole community.



#### Challenges

- Building and maintaining relationships is time-consuming. While critical, this component of the work is hard to maintain with only one full-time staff person who has competing responsibilities.
- Government systems are not well-structured to participate in mutually beneficial relationships with individuals or grassroots organizations.
- DHS's engagement with LGBTQ organizations and individuals was not as strong prior to the SOGIE Project Manager demonstrating the value of connecting with the community.
- Meaningful engagement required substantial effort and resources from the SOGIE Project Manager.



#### What Worked Well

- The SOGIE Project Manager made relationship-building within LGBTQ communities a priority, regardless of institutional support.
- We emphasized transparency throughout the process (e.g., public posting for the SOGIE Project Manager position, issuing an RFP for the first training contract, development of Standards of Practice).
- The SOGIE project team learned more about contracting policies and procedures.



#### Lessons Learned

- Actively engaging people and organizations throughout the community is essential to this work.
- Engagement requires work activities that are non-traditional in local government settings, such as meeting people for lunch, dinner or drinks, and attending their events. Such activities need to be supported, and staff need to be able to flex their time.
- Be careful not to rely too heavily on word of mouth and/or networks of colleagues as a means for meeting new people; intentionally seek out people engaged in the work who are disconnected from your systems, and develop deeper relationships with communities of color early in project work.




### DHS LGBTQ Community of Practice

The DHS LGBTQ Community of Practice (CoP) was the revamped structure of the original DHS LGBTQ Advisory Council, which was established to advise the director and senior staff of DHS on issues related to the human services needs of LGBTQ populations. The CoP served a similar purpose, but was also designed to be a space that fostered relationship-building and collaboration among stakeholders (with or without DHS involvement).

All DHS staff, provider agencies, LGBTQ community organizations and other interested individuals were welcome and invited to participate in the Community of Practice. CoP meetings were held quarterly with topical agendas announced in advance, and attendance ranged from 50 to 90 people. Each meeting included dinner, a presentation of educational information on the topic, presentations from individuals with lived experience, and discussion and action-planning in small groups. The CoP model effectively supported relationship-building, networking and shared learning among a diversity of community groups, providers and DHS staff.

### Engaging System Stakeholders

Families served through child welfare are impacted by numerous stakeholders who are outside the purview of County child welfare services — attorneys, judges, psychiatrists, therapists, school administrators, juvenile probation, etc. Ignoring the role these stakeholders play in youth's and families' lives is not an option when trying to achieve system change, and as groups over whom DHS has no authority, engagement and resource sharing are the primary mechanisms for influencing policy and practice. Strategies to engage these groups included early information sessions to communicate openly about our efforts and how they played a role in improving outcomes for families; partnering with external experts to provide basic training from a shared professional perspective (legal); and joining work groups led by and including external system stakeholders to ensure that SOGIE considerations remained on people's radar.

 <b>Challenges</b>	<ul style="list-style-type: none"> <li>• DHS has no formal authority over important system partners (attorneys, judges, juvenile probation, etc.).</li> <li>• Being an external partner makes it more challenging to elevate items on an agenda when there are competing priorities and busy schedules.</li> </ul>
 <b>What Worked Well</b>	<ul style="list-style-type: none"> <li>• We were able to identify an ally or champion of the work in each stakeholder group.</li> <li>• Relationships that the SOGIE Project Manager fostered with system partners helped open doors to conversations with additional stakeholders at the local and state levels.</li> </ul>
 <b>Lessons Learned</b>	<ul style="list-style-type: none"> <li>• Strong partnerships are essential to improving systems for kids, and engaging partners early in the process is important for both relationship-building and the quality of work products.</li> <li>• The messenger matters. Similar to most professions, people are more likely to respect and value messages communicated to them by individuals in similar roles (attorney, judge, etc.), rather than people who do not have a shared experience or perspective.</li> <li>• Taking the time to respect and address concerns and challenges raised by partners facilitates successful implementation.</li> </ul>

**EDUCATING THE WORKFORCE**

A value that we try to keep central in our work is the belief that staff are doing their best to serve people well. Each of us is working with a different set of information and experiences that shape how we think, feel and act, so that desire manifests differently with each person. However, that shared value among workers in the social services field provides common ground from which to build. Our approach for educating the workforce about gender, sexuality and the experiences of youth in our system has been one in which we attempt to step away from personal values and to source the information we communicate from credible, social science research.

The process to engage the child welfare workforce began with brief, one-hour overviews presented at staff meetings throughout the regional offices.<sup>11</sup> These sessions were designed to introduce staff to the work, letting them know what to expect, providing them with information about basic terminology, and sharing information about resources available to them when they had questions.

System partners, such as County solicitors, child and parent advocates, and judges, were also provided with short presentations that included an overview of the pilot guidelines and provided opportunities to ask questions. The author of the guidelines, a member of the getR.E.A.L. grant team, led several of these discussions.

<sup>11</sup> Child welfare staff are situated in five locations throughout the County.

After the initial outreach, most of the ongoing communication occurred with representatives of the workforce, through the child welfare getR.E.A.L. Steering Committee, updates at occasional supervisors' meetings, and email updates to the regional office directors. The expectation was that these representatives would share information with their colleagues.

One exception to this was the write-up of results from the child welfare staff survey completed in the first year of the grant period. A copy of the results was shared with all staff as a means of being transparent and letting them know their input was valued, but also as an educational tool so interested staff had access to some of the same information we were using to plan our strategies.

More formal communication increased in August 2015 when DHS issued its first round of written guidance for DHS and provider agency staff through a set of Standards of Practice. Shortly thereafter, child welfare staff were instructed to sign up for the mandatory daylong training about sexual orientation, gender identity and expression that was developed by the Community Training Team. The Standards of Practice and the training are described in more detail on following pages.

Staff were able to gain support and learn best practices through case consultations. Two different options were made available to child welfare staff. They could contact the SOGIE Project Manager, who had experience in child welfare and could help workers understand and carry out best practices. In addition, child welfare established a contract with the PERSAD Center enabling CYF workers to consult with a PERSAD staff member through various means as they address the needs of LGBTQ youth and their families.

### **Educating the Workforce – Practice Guidance**

Putting practice expectations into writing was one of the most important actions taken to support workers. It was necessary because knowledge about best practices related to SOGIE is limited, and the culture within child welfare is one that is heavily policy-driven. In the absence of written guidance, workers are reluctant to change their practice. That reluctance can be fueled by both a lack of clarity and fear of being reprimanded for acting out of alignment with agency practice.

The effort to put guidance into writing was not easy. Members of the getR.E.A.L. Steering Committee came with differing views. There was a clear tension between wanting to push our system to appropriately serve LGBTQ youth and families, which requires knowing who they are, and a desire to protect LGBTQ youth from harm, which sometimes means holding information about their identity in confidence. We held several passionate and challenging conversations with child advocate attorneys about concerns related to confidentiality and striking the appropriate balance.

Ultimately, we knew as a group that inaction was not an option, so the task was to work together to carefully craft language that established the Standards for what was expected of practitioners, even if we knew people were not yet ready to provide that level of care. At the same time, we planned for how to implement the standards in such a way that youth would not be harmed in the process of educating staff.

**If there is no written statement from agency leadership or practice guidance in writing, there is no standard to which contract monitors can consistently hold provider agencies accountable.**

The process to develop guidance was rigorous. Starting with samples of policies developed in other jurisdictions, the SOGIE project team drafted guidance based on the Guidelines being piloted and existing best practices, tailoring them to suit the structure of our local child welfare system. The drafts were reviewed and revised multiple times over the course of several months based on discussion and feedback from a diverse set of stakeholders.

In addition to meetings within DHS, feedback was solicited at a public Community of Practice meeting that was dedicated solely to reviewing the Standards. Stakeholders included the child welfare getR.E.A.L. Steering Committee, DHS staff outside of child welfare, provider agency staff, DHS leadership and community members.

The Standards were approved and issued to DHS staff and contracted provider agencies in August 2015. Contract monitors<sup>12</sup> did not receive formal training on the Standards, but they were offered support from the SOGIE Project Manager if they needed help to understand and/or enforce them. Since that time, the Standards have been used to educate workers internal and external to DHS about best practices and hold them accountable to engaging in those practices.

In response to questions from workers, tip sheets continue to be developed to supplement the Standards of Practice. The tip sheets provide more detailed guidance about how to implement the Standards. Among others, topics include how to talk to a caregiver about the dangers of conversion therapy, and how to secure name and gender marker changes on public records and legal forms of identification.

#### **Questions We Needed to Address**

The following questions were some of the most challenging tackled by the project team in the process of developing the Standards:

- How do we balance the need to address and document SOGIE with the reality that some people may use this information in a way that harms youth?
- Is the written guidance a recommendation, expectation or requirement? How is it enforced?
- How do we craft language that is generic enough to apply to all populations and services, yet specific enough to be useful?

#### **Educating the Workforce — Training**

Training is the primary mechanism through which the Standards of Practice and baseline information about gender and sexuality are communicated to child welfare staff.

The Allegheny County child welfare network includes more than 500 County staff, staff of approximately 30 community agencies, attorneys, parents and child advocates. Training the network was a daunting task, but it was an opportunity to address a gap in our network, which was the capacity to offer and sustain up-to-date training on gender and sexuality.

<sup>12</sup>DHS contract monitors provide oversight of contracted providers by periodically conducting on-site reviews and record reviews to assess adherence to the provider's contract, safety of clients, licensing, service quality, etc.

**Train-the-Trainer**

With an eye toward sustainability, we issued an RFP for a Community Training Team to serve as an external body that would train, co-facilitate and certify County and provider agency trainers to deliver the curriculum. The selected Community Training Team worked collaboratively with the SOGIE project team to plan for and implement the training and certification process.

The Community Training Team referenced existing curricula, but ultimately developed a new curriculum for this training in collaboration with the SOGIE project team. The SOGIE project team simultaneously worked to finalize the SOGIE Standards of Practice, which were embedded into the curriculum.

The training was piloted with the child welfare getR.E.A.L. Steering Committee and other system stakeholders. Multiple adjustments were made, including moving the section on health disparities to the front of the training because it helped all staff, particularly resistant staff, understand why there might be value in participating in the training.

**Implementation**

Participants were provided with two and a half days of instruction on the curriculum and were paired with a member of the Community Training Team, who served as their coach and co-facilitated their first training. Trainers were offered coaching prior to the training, feedback following the training, and, if necessary, additional coaching for a second session. The assigned coach then issued a recommendation as to whether or not they should be certified to train independently. This process moved more quickly among contracted provider agencies than within child welfare because of competing training priorities for child welfare staff. This effort resulted in the certification of 55 trainers.

Training for all child welfare staff did not begin until a year after the trainers were initially trained. Because of the length of time between the trainers' own training and the rollout to child welfare staff, trainers were offered support to refresh themselves on the content of the curriculum. Trainings within child welfare were led by three members of the child welfare training unit, who had been certified as trainers on the curriculum, and other child welfare staff who had participated in the Train-the-Trainer process served as co-facilitators. These additional staff participated in part to build their own capacity to serve as resources to other staff within their offices on an ongoing basis, but also to provide co-facilitation for the child welfare trainers from people who were currently working on the ground.

Regional office directors, supervisors and specialists were trained prior to casework staff so that they were prepared to serve in a supportive role when the majority of staff were trained and began to try and implement some of the new information into their daily practice. The SOGIE curriculum was then added to New Hire Orientation Training to ensure that all incoming child welfare staff receive this information.





### Challenges

- Competing priorities due to the volume of other system changes happening in child welfare resulted in training being pushed back by more than a year.
- Establishing a Standard of Practice for Documentation proved to be challenging, and guidance for workers was delayed.
- It was challenging to balance how to keep people informed and involved from the beginning, but not lose momentum when we were not able to provide training right away to people who wanted it.
- Achieving racial and gender diversity among trainers was difficult.



### What Worked Well

- Investing in a Train-the-Trainer model broadened the base of staff equipped to deliver training.
- The Train-the-Trainer opportunity was offered to contracted provider staff at no cost.
- Engaging a diverse group of stakeholders in the development of the Standards of Practice contributed to success.
- Piloting the training prior to launch.



### Lessons Learned

- Make clearer asks of those receiving briefings to report back to their offices. It may have been helpful to provide some talking points in writing.
- Prioritizing the completion of written guidance is critical.
- Some written guidance may be too high level to offer practical guidance to workers. Supplement with detailed tip sheets where necessary.
- Be more intentional about ensuring that there is racial diversity within training teams.
- Explicitly weave intersectionality throughout the training content to ensure that diverse perspectives and experiences are considered, even if the training teams are not diverse.
- Develop rigorous Train-the-Trainer selection and certification processes that assess individuals' generic training skills, allowing for better screening of applicants who are not strong trainers.
- The development of processes to support trainers and others leading culture-change efforts is imperative. Repeatedly facing opposition and resistance is draining, leads to burnout, and reduces a person's ability to be effective.

## DOCUMENTATION

Changing the child welfare case management system to capture data related to gender identity and sexual orientation was at the heart of the getR.E.A.L. initiative. Forms and information systems either reinforce or get in the way of good practice. Most information systems are not designed to capture information related to gender, sexuality or family structures in an inclusive manner. Changing those systems is resource-intensive since factors such as an individual's name and gender often form the foundation of complex systems. To change one of those elements can have significant ripple effects.

Likewise, failing to make appropriate changes often causes ripple effects that negatively impact the people we serve. This is why prioritizing these changes is important in spite of the cost. When a system does not have the appropriate options to document someone's identity, the implicit message we send to that person and the worker serving them is that their identity, or relationship, is less valid than others. We also increase the chances that information central to someone's identity will be misplaced or misused, which can inflict harm (e.g., someone being addressed by the wrong name/gender).

The original hope was to update the case management system and begin collecting data in the third year of the work, but it became clear early on that changes would not come so quickly. The real challenge related to data collection has been determining what guidance should be given to workers about how and when to document, and how that guidance then impacts system design.

As we engaged with stakeholders and collected people's concerns, we realized that aligning our systems with desired practice was more complex than simply changing drop-down values in an information system. Early conversations to plan for case management system changes were bogged down by concerns that a youth's SOGIE information would be mishandled, and stakeholders struggled to separate concerns related to disclosure from those related to documentation, because documentation is a form of disclosure.

The practice implications were numerous, particularly at a time when more and more information is electronic and available to, or shared with, external entities. For example, guidance existing at the time did not address how to manage information for LGBTQ people who are not out to everyone who has access to the information system.

## Questions We Needed to Address

The following list highlights some of the prominent questions stakeholders grappled with as we developed practice guidance and requirements for the design of the information system:

- **Who is informing the changes being made in the information system?** Is the youth voice represented? Are trans voices represented? Are people of color represented? Are non-binary individuals represented? Do the final requirements reflect their voices?
- **Who has access to the information system?** What is their level of education/savviness? Will they be trained? Will they know how to use the information? Are they aware of any existing guidance? Are they bound by it?

- **Will there be functionality built in to mark information as confidential** if necessary? Is it implemented in a way that does not automatically out the client?
- **What guidance is provided to workers?** Are they to always document, unless there is a compelling reason not to? Or are they to document only when they feel there is a compelling reason to do so? What are the pros and cons of that approach?
- **How do you manage safety risks related to outing the youth?** How should workers handle a situation where safety risks related to disclosure should be documented, yet documenting them increases the risk?
- **How will workers be held accountable for the proper use of documented information?**

### IT Requirements

Changing an information system to be more inclusive around gender and sexuality requires more than changing a couple of drop-down lists. References to an individual's name, gender and relationships are embedded throughout systems and in documents generated from them.

The following recommendations are a highlight of some of the processes and requirements implemented in Allegheny County:

- Be thoughtful about the process of designing the changes for the system. Ensure that you have adequate input from diverse stakeholders in order to understand what is important to clients and workers.
- Collect information about gender and sexuality in a space that normalizes the information and makes it clear that it should be collected for all youth.
- Collect legal sex, sex assigned at birth and gender identity separately.
- Collect gender pronouns for all documented names, not just chosen names.
- Be thoughtful about which fields are mandatory, balancing the desire to collect information with the desire to collect accurate information.
- Identify when and where information from one screen feeds into other screens or forms. Make conscious decisions about which name, gender, etc., should auto-feed into those spaces.
- Collect information about when to use chosen name vs. legal name, and the associated pronouns, at an individual level so communication can be tailored to individual needs (e.g., court documents, case plans, communication with family, mailings to home).



### Challenges

- Developing guidance related to documentation is complicated by the fact that other, external stakeholders have access to the information system (e.g., parent and child advocates, out-of-home placement providers). Some stakeholders whose role it is to serve the parents were open about the fact that they would out children to their parents if they saw the information documented (in violation of DHS Standards of Practice), leading to a re-evaluation of the level of access different stakeholders have to information.
- Changes to the data collection system — such as removing the assumption that all children have a mother and a father — are complicated (and therefore expensive).
- In a large institution with multiple information systems, changes frequently occur that impact SOGIE-related information, and a single project manager does not have the capacity to be involved in all activities (assuming they even learn about them in a timely manner).



### What Worked Well

- Providing practice guidance and training prior to determining IT requirements for changes to the information system helped to ensure that changes were more thoughtful.
- We talked with trans community leaders who had collected information for their own programs and learned about what information to capture and which collection methods were most effective.
- The terms that were included in drop-down lists were more authentic because they were populated with results from our community surveys.
- Accountability from an external party (getR.E.A.L. funders) helped to prioritize changes that otherwise would have been challenging to get prioritized.



### Lessons Learned

- Put best practices for the design of information systems into writing and disseminate diligently among individuals involved in IT requirements and change request processes.
- Try to leverage the opportunity to improve IT design related to other aspects of identity while modifying systems to better capture SOGIE-related information (e.g. race, disability).

## GARNERING MORE RESOURCES AND SUPPORT

Implementing culture and practice change requires resources, and it is highly unlikely that resources will appear without efforts to seek them out. Two strategies that proved to be effective in Allegheny County were to boldly make the ask, and to not be discouraged by barriers.

### Make the Ask

It is not always as simple as asking for something, but sometimes it is. After we laid the groundwork for culture change and began to see small shifts within our agency, additional resources and supports came in ways that we did not expect — but we still had to ask for them.

#### We asked:

- To hang a rainbow flag in the building lobby during the month of Pride
- For a customized professional banner and company T-shirts for the people walking in the Pride March, to show that we had institutional support for our presence
- For a member of the senior leadership team to provide welcoming remarks at each quarterly LGBTQ Community of Practice meeting
- For the DHS Director to send a memorandum to our contracted agencies stating his and DHS's support for the LGBTQ community
- To train our senior leadership team on how to be a Safe(r) Space<sup>13</sup>
- For funding to launch a Train-the-Trainer initiative within our child welfare system

<sup>13</sup>A Safe(r) Space is someone who commits to actively making their environment more inclusive for all people. After individuals complete a Safe(r) Space training, they may elect to be designated as a Safe(r) Space within their workplace.

#### And leadership said “Yes.”

### Turn Barriers into Opportunities

Sometimes the answer will be “No” when you ask for something. Be creative. Some of our most significant accomplishments came from turning challenging moments into an opportunity.

#### Policy

The Department was in the early stages of integrating policies across all program offices and creating “DHS policy” rather than policy specific to individual offices. In an effort to manage the scope of this undertaking, we were not permitted to create a “population-specific” policy.

Instead, we worked with the Policy team to figure out how we could still provide guidance and a clear agency position on issues related to sexual orientation and gender identity. The result was the creation of Standards of Practice. In the end, the Standards were a better fit since we were able to include more guidance, and DHS staff and providers are held accountable to them, just as they are to policies.

**Pushback from Invested Stakeholders**

As we began the work, some of our greatest pushback was from colleagues we expected to be our biggest supporters. Fortunately, we had developed relationships with a few of them, which helped us to understand the root of their concern. Often the resistance was due to people feeling left out, or a fear that children and youth would be hurt because the system was ill-

**As we began the work, some of our greatest pushback was from colleagues we expected to be our biggest supporters.** prepared to serve people well. Identifying the reasons for their concern was critical in our ability to work together to develop solutions.

**SUSTAINABILITY AND BUILDING EXPERTISE**

Having a dedicated full-time staff person is critical in many ways to influencing practice, but the capacity of one person is limited when you are trying to create change within a system that includes dozens of agencies and hundreds of staff. This section describes our efforts to build a network of advocates beyond our team, and what we have learned from that experience so far.

**Integrating our Work**

Our primary method for building sustainability has been to try to integrate SOGIE into existing projects or processes. Normalizing the conversation and embedding considerations related to SOGIE into other quality improvement efforts has been challenging, but each time it happens, the work feels less like an extra project or add-on, and more like agency practice.

A few examples of this integration include:

- Explicitly identifying the need to address how agencies will serve LGBTQ youth when responding to RFPs for foster care and psychiatric services
- Including the Introduction to Sexual Orientation, Gender Identity and Expression training in child welfare's New Hire Orientation
- Deliberately including LGBTQ teens as a focus population for the County's plan to recruit, engage and support resource families for teenagers (funded through the Administration for Children and Families' Diligent Recruitment of Families for Children in the Foster Care System program)
- Incorporating considerations related to SOGIE into the County's Quality Service Review process
- Asking questions related to gender and sexuality in youth surveys

**Diversity Officer**

In 2015, child welfare leadership created a new role and appointed its first Diversity and Inclusion Officer. The Diversity and Inclusion Officer is responsible for overseeing practice issues related to race, SOGIE, and immigrants and refugees. There is now clear, central ownership and authority within the office. This signals to staff who they can go to with any issues, and that inclusion is taken seriously and is not a temporary project. This role promotes both sustainability and integration, as the Diversity Officer is part of child welfare's senior leadership team.

### Training of Trainers

Described in more detail on **page 34**, a Train-the-Trainer model was used to implement training within the child welfare system. While this model relies on trainers who have less experience, it was selected because it increases the capacity of our network to be able to meet the ongoing educational needs of staff over time.

### Practice Specialists

In Allegheny County, casework staff are supported by units of staff who have specialized expertise, such as Safety, Permanency and Best Practice Specialists (SPBPSs); Quality Assurance staff; and Behavioral Health Specialists. These staff participate in family and child planning meetings, offer practice guidance on challenging cases, and conduct case reviews. Given the role of specialized units and their spheres of influence, the SOGIE Project Manager worked with these units to ensure that staff were trained early in the process, and that each unit has a SOGIE point person to participate in ongoing capacity-building activities.

### LGBTQA Champions

The LGBTQA Champions are a group of staff across the Department of Human Services who self-selected to be “active allies” in the workplace. Asked to commit to attending at least two quarterly meetings per year, the Champions are offered opportunities to socialize and learn from each other, receive additional education and training, staff and participate in Pride activities, and support other LGBTQ-related efforts as needs arise. The group expands the SOGIE team’s reach by serving as a network across all of DHS.



### Challenges

- Staff who are interested in being supportive but are not equipped with the knowledge and language to do so effectively
- A general lack of command in the workforce of information about gender and the identities in the middle of the gender and sexuality spectrums



### What Worked Well

- Integrating SOGIE into multiple, large child welfare reform initiatives helped to accelerate adoption.
- The structure of the LGBTQ Champions meetings was changed to include a training element each quarter.



### Lessons Learned

- Invite guest trainers to speak on topics that are least familiar to the LGBTQA Champions group.
- Make it a priority to bring others in (to train, educate, etc.) to build relationships and diversify the perspectives to which people are exposed.
- Provide our Champions with clear “asks” and delegate responsibility (even when it is harder, if it will pay off in the long run).
- Build professional development and training into meetings.
- Integrate SOGIE into other projects whenever possible because it strengthens the work when others own it rather than it being perceived as one person’s agenda.





## Sustaining & Growing

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Building momentum, gaining buy-in and being able to observe tangible changes in the workplace climate and practice are extremely rewarding. So you celebrate! People see the value in this work, they want it to happen, and so the toughest part is over! Right?

Not quite.

Reaching this point is like running up a long hill, and just when you think you are about to reach the top, you realize it was a false summit, and you still have a long way to go. So what do you do? You take a deep breath, dig deep and plow on. And you hope you make it. That is what this section is all about. We highlight the challenges and opportunities we face as we move forward with trying to institutionalize the progress made to date and expand it into other service systems.

### **INSTITUTIONALIZING CHANGE**

We have made progress. Now we are trying to tackle how to make it stick, and how to help it grow so that affirming, culturally responsive practice related to gender and sexuality is embedded within the child welfare system. In this section, we share some of the existing gaps that we view as critical to address if we are to ensure that continual progress is not reliant on any specific individuals.

#### **Expanding the Network: De-Centralizing Ownership**

It is one thing to be assigned as your team's representative or point person for a project. It is entirely different to take ownership of a challenge and take personal responsibility for helping to develop solutions. One action is passive and often requires external accountability to ensure movement, while the other is active and driven by personal accountability.

To successfully expand our network, we need the latter. We need individuals throughout the organization who are self-motivated to take the initiative to be engaged, and to serve as leaders from wherever they are in the organization. This is important for two reasons. First, terminology and best practices are ever evolving, and individuals who want to help lead change efforts will need to seek out new information rather than rely on others to keep them educated. Second, new challenges and nuances to serving children, youth and families in a way that promotes healthy gender and sexual identity formation arise regularly. We need people as part of our extended team who are identifying and thinking critically about how to address challenges as they arise.

### Expanding the Network: Reaching Supervisors

On a daily basis, supervisors influence caseworker practice through modeling, instruction and coaching. When caseworkers learn something at a training, the likelihood that it will stick is significantly impacted by whether that practice is reinforced or rejected by their superiors.

Individuals in management often have stronger experience with tackling tough practice issues than their staff, but they do not inherently have a stronger understanding of concepts related to gender and sexuality. For this reason, creating structures to support supervisors in growing their comfort and competencies related to SOGIE is essential to strengthening culturally responsive practices across the agency.

### Expanding the Network: Moving into Other Program Areas

The need to enhance competencies within child welfare related to gender and sexuality is pressing, but so are needs in other service areas, such as homelessness, behavioral health and aging. The good news is that much of what has been accomplished to inform child welfare, such as the Standards of Practice and needs assessment tools, can be applied or adapted for another area. Still, some activities must start from the beginning, and leadership buy-in is a

**As we move forward with limited resources and no shortage of need, we choose to invest energy where efforts have the greatest chance to make progress.**

critical building block. As we move forward with limited resources and no shortage of need, we choose to invest energy where efforts have the greatest chance to make progress, which is where individuals in leadership champion this progress.

Expanding into a new program area requires an additional investment in resources, and the type of ownership discussed earlier in this section is necessary. While experience and knowledge are transferable from one system to another, new resources must be dedicated to support training, staff time, case consultations, and potentially new contracts or funding for culturally responsive and affirming services. If additional dedicated staff are not hired or assigned to this work, the current system must be strengthened by decentralizing ownership and building supervisor support.

### Expanding the Network: Case Consultations

Offering case consultations is an important role the SOGIE Project Manager plays because hands-on technical assistance on a real case both supports the individual or family we are serving and allows the workers to learn and grow from the experience, informing their future work.

However, it is not practical or sustainable to rely on one or two people to serve in this role. Some of the challenges to expanding this network include identifying individuals with the capacity to dedicate part of their time to conducting the consultations, and making sure those individuals understand the issues enough to provide appropriate support.

### Community Capacity to Meet Diversity of Needs

As we educate the human services field, workers gain a greater awareness and are able to more readily identify LGBTQ clients who need support, but there are not clear pathways for how to

make appropriate connections for them. In addition to individual and family support for addressing conflict directly related to SOGIE, LGBTQ people need access to affirming providers across the full array of human services (e.g., in-home supports for older adults). For the majority of our system, it is within this array where there is a lack of information about where LGBTQ clients can turn for support.

**Challenges become more apparent when we focus on the fact that the LGBTQ community is diverse, and culturally responsive services must be able to embrace and address all aspects of an individual.**

Challenges become more apparent when we focus on the fact that the LGBTQ community is diverse, and culturally responsive services must be able to embrace and address all aspects of an individual. For example, we were recently asked by a community member, “Where can I go for mental health services where I will be understood and affirmed as a spiritual, black, same-gender-loving woman with a trauma history?”

We had no answer, and to be able to answer this question and others like it requires us to transform how we evaluate and understand our system.

And once we know the unmet needs, how do we address them? Two of the most critical gaps for families involved with child welfare include support for parents and families of transgender children, and a pool of psychiatrists and psychologists with an understanding of gender identity to properly evaluate and treat children and youth.

Where there are resources in the community, they are often not well-known, well-funded or structured in a way that supports direct referrals. Figuring out how we build the capacity of our network is going to require effort from community stakeholders who understand the opportunities and challenges from multiple perspectives.

### Contracts

As an administrative government body that contracts out the majority of its services to community agencies, DHS’s primary role is in awarding and overseeing contracts. At the time of this publication, there is no language in the contract template forbidding providers from discriminating on the basis of sexual orientation, gender identity or expression, or language to hold provider agencies responsible for carrying out best practices as stated in the Standards of Practice.

While there is an anti-discrimination ordinance for the county, adding this language to contracts is important because it sends the message to providers that they will be held accountable to the County ordinance contractually, and the Standards provide clear agency positions on expectations for service provision.

In 2015, language was added to the specifications manual<sup>14</sup> for child welfare contracted providers, requiring them to comply with the Standards of Practice, and specifying that all service providers are “responsible for providing services to children, youth and families regardless of their sexual orientation, gender identity or gender expression. All sexual orientations, gender identities and expressions are to be affirmed, and no efforts shall be made to change any client’s identity or expression thereof. The provider is responsible for ensuring that all staff will be trained on sexual

<sup>14</sup>Specifications manuals describe program-specific requirements that providers must adhere to in order to contract with DHS.

orientation, gender identity and expression within 6 months of employment.” This addition was only possible because of strong leadership support. Staff were also mindful to minimize the burden on agencies to meet the new mandate, and the opportunity for provider agency staff to participate in the Train-the-Trainer program for free was offered in 2015 at the time contracts were issued.

An influential practice that is becoming more common within DHS is including SOGIE considerations in solicitations for services. Increasingly, proposing entities must identify in their bid how they will meet the needs of LGBTQ populations. This requirement provides important signaling and helps selection committee members be more mindful of inclusion when awarding contracts.

### Adding SOGIE to Information Systems

One lesson learned, and a continuing challenge to address, is to work with the individuals responsible for building and maintaining information technology (IT) infrastructure so that

**One lesson learned, and a continuing challenge to address, is to work with the individuals responsible for building and maintaining information technology (IT) infrastructure so that they understand why inclusive changes are important and how to appropriately design the fields.**

they understand why inclusive changes are important and how to appropriately design the fields. Their role is critical since IT is rapidly changing, and it is unlikely that a SOGIE team member could be constantly engaged in all IT design projects. This is especially challenging because the staff working on the IT system may not be within the organizational structure, or they may transition from project to project. Since this information shows up in different formats throughout a system, it is essential to go beyond handing key staff a list

of drop-down field values, and instead help them understand why the current recommendations are what they are, and how and when to seek additional consultation.

### PRACTICE CHALLENGES

The following ongoing challenges surfaced while training child welfare staff, and they are likely to surface in other service areas as well. How and when to address the challenges are part of ongoing planning efforts.

#### From Awareness to Action

Introductory training alone has a limited effect on practice. Often, participants walk away with a new awareness, saying, “You won’t believe it! We just had this training last week, and I just got this child on my caseload who is transgender. What a coincidence?!” And that is a win, because now our children who were there all along are being seen. But their next question is, “Now what do I do for this family?”

While workers developed more awareness, they are not likely to have developed the skills necessary to address issues that now come to their attention due to their new awareness. With the awareness may also come pain, as they think back on kids who slipped through the cracks.

Supporting workers at this stage is essential, and full of questions: Do we develop more training? If we do, how quickly could we get back on the training calendar? Is it the best use of our time? Should we focus instead on training supervisors and clinical staff? How much can we rely on case consultations and staffings? How do we support workers when the challenges they face are not easy to address, such as the lack of community resources to refer families to?

### **Skill Reinforcement and Supervisor Support**

Staff learning to incorporate new information into their daily practice is best reinforced and supported through quality supervision. While we work to address the SOGIE-related competencies of supervisors (addressed on **page 44**), a challenge that remains is that not all supervisors are equipped to provide effective supervision. The reasons for this are varied, and the impact extends beyond issues related to SOGIE. However, it is a challenge to successful implementation because staff who do not feel supported or are not given honest, productive feedback will find it harder to achieve personal growth.

### **Addressing Sensitive Matters**

One challenge we encountered as we trained casework staff was the general discomfort some staff had talking about sexuality with clients at all, regardless of the client's sexual orientation. The SOGIE Overview training provided staff an opportunity to become familiar with and practice some terminology, but it did not address how to engage youth in a conversation about sexuality because we assumed those skills were addressed elsewhere in a worker's training.

We also encountered a common myth in which staff believed they were not supposed to talk with clients about some aspects of their identity that could be considered sensitive, such as religion. Trainers clarified that, while it would be inappropriate for a worker to impose their own faith on a client, they could absolutely explore a client's faith with them since it is often a source of strength. However, the prevalence of this misconception left cause for concern and raised questions about what else this belief may include (e.g., race), and is an area where staff could likely benefit from additional support.

### **STAFF SELECTION AND WELLNESS**

Staff selection and support are critical to any change effort. It is especially critical when the nature of a position is to promote inclusion and best practices for populations that are marginalized in our communities and workplaces. Staff interactions around their work are often personal, by the nature of the work. Wellness must be intentionally monitored and cultivated to appropriately respect and value staff, prevent burnout, and continue to achieve progress through the intended processes and relationships. This section includes reflection on what we have learned and challenges we have yet to successfully tackle.

### Staff Selection

Many people are passionate about culture change, but passion alone is not enough to make an individual the best choice to lead change efforts within a government system. Given our experience, we recommend seeking out a project manager (or leadership team) with the following qualities:

- Proactively and continually seeks information, knowledge, new understanding
- Strong writer and communicator
- Strong interpersonal skills
- Recognizes their own limits and triggers and is willing to connect individuals with other people when they are not the best person to assist
- Able to motivate others to join the effort
- Empathetic, good listener, meets people wherever they are in their understanding and acceptance of LGBTQ identities
- Organizationally savvy — able to evaluate and navigate environments and relationships strategically

**When utilizing a team, it is important to ensure that all members or representatives of the work have a shared understanding of the vision and message.**

Even with a great leader, the work cannot be accomplished by only one or two people. There are roles and opportunities for many to lead in different aspects of the change effort. When utilizing a team, it is important to ensure that all members or representatives of the work have a shared understanding of the vision and message.

It is also important to build a team that is racially diverse. We struggled to do this in the first few years of our work, and improving remains a priority. While there are many aspects of identity that shape what it means to experience life as an LGBTQ person, race is a powerful factor, so as a team that lacked racial diversity, we missed opportunities to connect with people in a more robust way.

### Inclusive Workspace

The ability for staff members to be their true, authentic selves in the workplace is one of the most important and powerful factors that shapes an organization's culture. Creating equitable and inclusive environments for our workforce requires an intentional focus.

Efforts to make workplace environments more LGBTQ-inclusive must necessarily address inclusion more broadly. This requires more than non-discrimination hiring (though that's a good place to start), and includes intentionally ensuring that all staff identities are affirmed and celebrated within the workplace. If we do not address bias or barriers to access and promote understanding across race, ancestry, language, ability, gender and faith, then we are not creating a safe and inclusive workplace. And we certainly do not create safe places for LGBTQ employees, because LGBTQ people are black, Latino, women, disabled and Muslim.

### **Bias Exposure**

One challenge we have encountered that we do not yet have strategies to address is how to best support staff experiencing repeated or chronic exposure to bias. Promoting affirming workplace environments and the use of best practices related to gender and sexuality is taxing work. There is often a personal significance or connection to this work for the individuals doing it, and creating change within systems requires that leaders continue to push boundaries and challenge the status quo while striving to genuinely understand others' perspectives. This includes interfacing with beliefs, values and people that are uninformed, offensive, triggering and sometimes deliberately hostile.

While we do not have the answers yet, there are a couple of things we have learned. First, it is better to have someone with you than to do the work alone. If only one person is charged with leading the change, it is a lonely place to be, even if there are allies in the organization. This is because the work is so personal and hard. To feel truly supported, someone else needs to be there in the fight with you, feeling the grind each day. This relationship is helpful for processing, providing support, and being afforded the space to step up and back as necessary to effectively engage. Second, desirable traits for the supervisor of a person leading culture change include supporting that staff person and having their back, helping to strategize, and promoting their self-care as much as you support the work they are doing.

It is also important to remember that leaders of this work are not the only ones impacted by bias. Our planning for how to support staff needs to include trainers, training participants and other bystanders who experience rejecting messages, particularly LGBTQ staff and others who have marginalized identities.

### **Impact of and Response to Current Events**

When we come to work, we bring all parts of ourselves with us. We might try to mentally put aside the anxiety of a troubled relationship, or the grief of losing a loved one, but it is still with us — displayed or hidden, acknowledged or not. We often do not know the personal struggles each of our colleagues or staff members carries. The impact of some of these challenges may be mitigated if we are creating inclusive environments, reminding staff of resources available to them, and promoting wellness.

Yet the impact is different when events within the community result in shared loss, tragedy or triumph, particularly if it differentially impacts a historically marginalized segment of the population. Colleagues often have different reactions, and as people process what has happened, they navigate the workplace, carefully assessing with whom it is safe to share which emotions. It is our belief that organizations have an opportunity to demonstrate leadership by responding in these moments. They have a choice to clarify their stance and promote inclusion, or remain silent and allow existing tensions to simmer.

We believe this choice can have a profound impact on staff wellness and organizational culture, and that such responses could come in more forms than just issuing public statements. For example, what language was used to signal changes in human resources practices following the Supreme Court ruling on marriage equality, and what message did that send to all staff? Or, when public discourse is heavily charged with outrage over police brutality and racially charged hate crimes, what would be the impact of a message clarifying the agency's commitment to racial equity and sharing information about resources available for staff who need support? Creating a plan for when and how to communicate with staff in response to external events is an important opportunity to seize.



## Conclusion

THANK YOU for taking the time to learn about our journey. Each community's dynamics are unique, yet we hope that you found aspects of our story and lessons learned that are applicable to your organization or community.

As we reflect on the progress we have made and the challenges that remain, several different elements surface as critical to moving the child welfare system to a place where LGBTQ youth and families are supported. These elements are outlined in **Figure 1**, with those where we have made significant gains to date highlighted in green. We have not achieved full implementation of our strategies and best practices, but progress has been made and processes are in place to sustain progress related to culture change, practice guidance, engagement and IT system alignment.

The elements highlighted in yellow are gaps in the system that we plan to address moving forward. Throughout implementation, we struggled to effectively engage youth in planning processes, and improving on this remains a priority. Additional needs that stand out include support for project staff; support for families of origin, particularly families of color; access to affirming resource families; and treatment services and supports that simultaneously affirm both SOGIE and other aspects of identity, such as race, ethnicity and faith.

**FIGURE 1: Critical Elements of Change in the Child Welfare System**



## APPENDIX A: GUIDELINES FOR MANAGING INFORMATION RELATED TO THE SEXUAL ORIENTATION & GENDER IDENTITY AND EXPRESSION OF CHILDREN IN CHILD WELFARE SYSTEMS<sup>15</sup>

<sup>15</sup> Wilber, S. (2013). "Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems," Putting Pride Into Practice Project, Family Builders by Adoption, Oakland, Calif. Available at <https://www.cssp.org/reform/child-welfare/Guidelines-for-Managing-Information-Related-to-the-Sexual-Orientation-Gender-Identity-and-Expression-of-Children-in-Child-Welfare-Systems.pdf>

Summary of the Guidelines field-tested in Allegheny County, with support from the Center for the Study of Social Policy.

*In the last decade, the child welfare profession has made significant progress toward the goal of developing competence to serve children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender presentation. Despite this commendable progress, however, the field has not arrived at consensus about how and when to elicit or collect information related to young people's sexual orientation, gender identity or gender expression. Similarly, there are no clear guidelines navigating the tension between the need to disclose the information to appropriately serve children and the need to guard their privacy.*

*In November 2011, the Putting Pride into Practice Project staff at Family Builders joined with Legal Services for Children to convene a two-day meeting of 25 individuals with broad child welfare experience to examine the circumstances under which child welfare personnel should seek, record and disclose information related to a child's sexual orientation or gender identity. The objective of the convening was to gather expert opinions that would guide the formulation of a set of professional guidelines. This document represents the culmination of those efforts.*

### Guidelines

#### Collecting Information for Individual Case Planning

1. Intake forms and protocol should require child welfare personnel to document each child's biological sex, gender identity and gender expression.
2. Child welfare personnel should assess the extent to which each child's expression of gender matches or diverges from cultural and social expectations in the child's family and community.
3. Child welfare workers should document the gender identity of every child three years of age and older.
4. Child welfare personnel should determine the most appropriate time and manner of identifying each child's gender identity and expression, based upon the child's age, stage of development, cognitive abilities and personality, as well as the level of trust developed between the worker and the child.
5. Child welfare workers should document the sexual orientation of every child 10 years and older who can understand and discuss these issues.

**Appendix A***(continued)*

6. Child welfare personnel should identify the most appropriate time and manner of documenting the child's sexual orientation, based upon the child's age, stage of development, cognitive abilities, personality and readiness to discuss the issue.
7. Child welfare personnel should ensure that their understanding, and any documentation, of the child's sexual orientation and gender identity and expression remains current.

**Collecting Information for Agency Assessment and Planning**

1. Child welfare agencies should include sexual orientation and gender identity in the demographic data collected for each child.
2. Child welfare agencies should provide all youth in protective custody with the opportunity to complete an annual confidential survey evaluating the services they have received.

**Recording Information**

1. Child welfare personnel should record relevant and reliable information related to the child's sexual orientation, gender expression or gender identity in the case file.
2. Child welfare personnel should record information related to a child's sexual orientation or gender identity or expression in a court report only when the information is directly relevant to the issue to be decided by the court, the worker preparing the court report has discussed the matter with the child and obtained his or her authorization, and the worker has taken precautions to minimize unnecessary disclosure of the information to third parties.

**Disclosing Information**

1. Child welfare professionals should regard children as the principle owners of information related to their sexual orientation and gender identity and expression, and should actively involve them in decisions related to any disclosure of this information.
2. Child welfare professionals should identify and document a specific rationale related to the child's interests for every decision to disclose information related to the child's sexual orientation or gender identity.
3. Policies governing the management of information related to the sexual orientation or gender identity of children should be consistent with state and federal confidentiality laws, as well as agency policy and rules of court.
4. Child welfare agencies should consider adopting additional measures to prevent inappropriate or harmful disclosure of information related to children's sexual orientation, gender identity or gender expression.

**Institutionalizing Practice**

1. Agency policies, practices, training and supervision related to children's sexual orientation, gender identity and gender expression should be explicitly grounded in credible social science research and the foundational objectives of safety, permanency and well-being.

**Appendix A**

*(continued)*

2. Child welfare agencies should have written policies and procedures governing the management of information related to the sexual orientation, gender identity and gender expression of children and youth under their care.
3. Child welfare agencies should provide pre-service and ongoing training to all child welfare personnel regarding the agency's policies governing the management of information related to children's sexual orientation, gender identity and gender expression.
4. Child welfare agencies should ensure that all staff receive ongoing supervision and technical assistance on the management of information related to the sexual orientation, gender identity and gender expression of children and youth under the agency's care.

**APPENDIX B: RESOURCES AVAILABLE FROM THE ALLEGHENY COUNTY  
DEPARTMENT OF HUMAN SERVICES**

- Staff survey instrument
- Memorandum from DHS director to DHS staff and contracted agencies
- RFP for Community Training Team
- Child welfare SOGIE Overview training curriculum & trainer manual
- Safe(r) Space Training curriculum & trainer manual
- Guidelines for adding SOGIE data elements to IT systems
- Standards of Practice
  - Expectations
  - Communication
  - Serving
  - Disclosure
  - Housing
  - Referrals
  - Documentation
- Tip Sheets
- Brochure for the LGBTQ community
- “We support LGBTQ youth” poster designed by a young person
- Sign-up for *DHS LGBTQ Resource Newsletter*

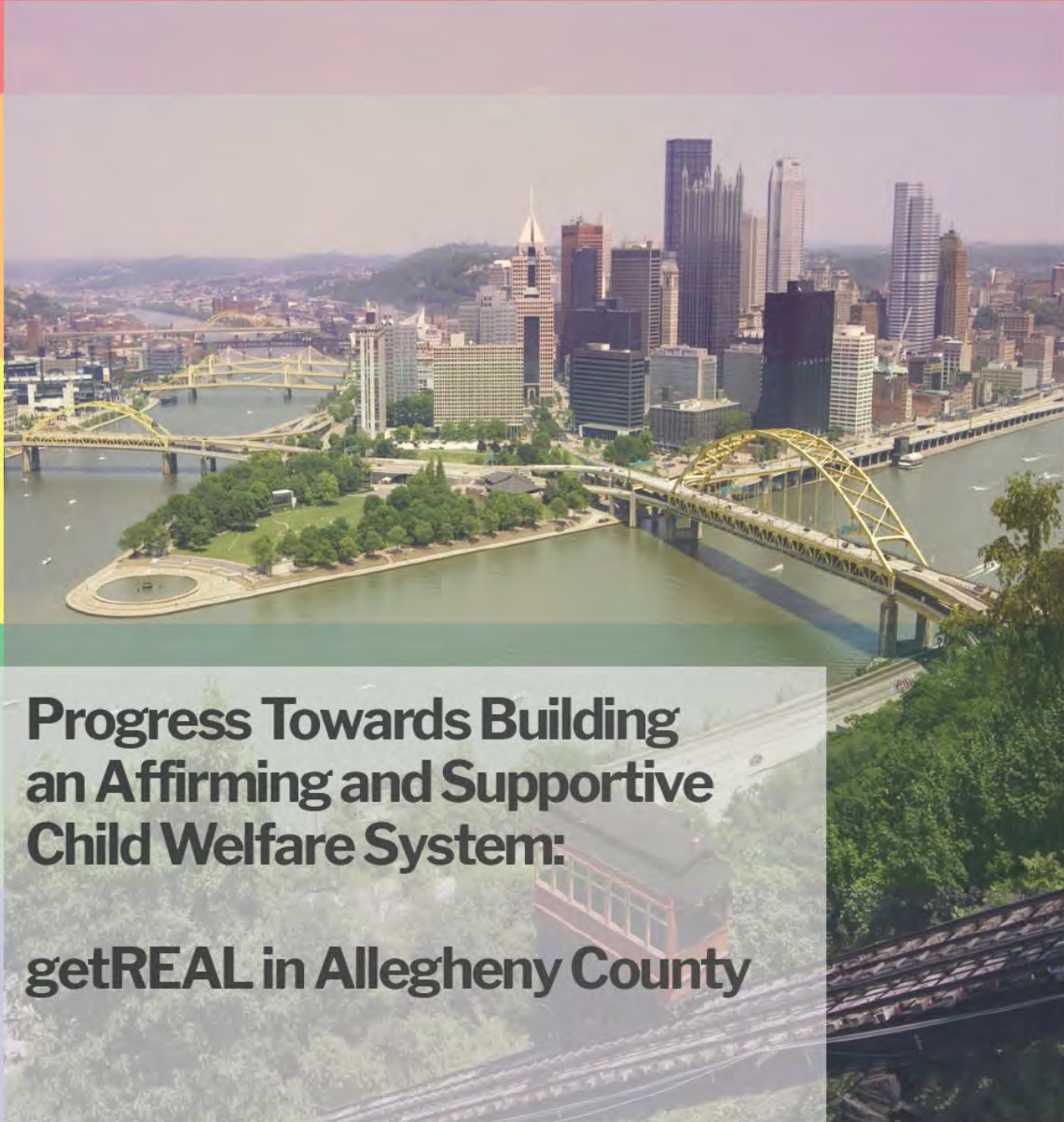
**APPENDIX C: FULL TIMELINE**



**Appendix C**

(continued)





**Progress Towards Building  
an Affirming and Supportive  
Child Welfare System:  
getREAL in Allegheny County**

**FINDINGS FROM AN INSTITUTIONAL ANALYSIS**

**APRIL 2019**



**Center for the  
Study of Social Policy**  
Ideas into Action



## Introduction

In July 2013, the Center for the Study of Social Policy (CSSP) and the Allegheny County Department of Human Services (DHS) entered into a three-year effort to better support children and youth achieve healthy sexual and identity development. Recognizing that information was a critical piece of effectively improving practice, the County agreed to field test the *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems (Guidelines)*. The field testing was intended to show the broader child welfare field what it takes to shift practice towards regularly gathering information related to sexual orientation, gender identity, and expression (SOGIE) and how using the information appropriately can improve practice and outcomes. Allegheny County was approached to work on this partnership with CSSP's getREAL initiative because the County is viewed as a "model child welfare system;" has had long-term, stable leadership; and has a data warehouse and staff organization that managed data effectively. This three-year effort turned into a six-year effort with the generous support of the Wellspring Philanthropic Fund and Allegheny County.

In the first year and the fifth year of this effort, CSSP conducted an Institutional Analysis (IA). The first use of the IA analyzed the ways in which DHS was organized in 2013-2014 to support the implementation of the *Guidelines* and improve practice to support the healthy sexual and identity development of youth, with a particular focus on LGBTQ+<sup>1</sup> and gender expansive youth. Most recently, in June 2018, CSSP conducted a second IA. The intention of this IA was to examine institutional changes that have occurred on the journey to implement the *Guidelines* and what, if any, practice changes have occurred. The IA also captured some of the current experiences of LGBTQ+ children, youth, and families who interact with the child welfare system since the implementation of getREAL.

Allegheny County DHS leadership committed at the very beginning of this project to transparency and in sharing their journey more broadly with the field. This IA report is one piece of information about their journey. The County itself published accounts of their efforts to affirm and support LGBTQ+ children, youth, and families. The University of Houston, Graduate College of Social Work, has evaluated the implementation of the *Guidelines* and will also be publishing information about the effectiveness and impact of implementing the *Guidelines*. We are grateful for Allegheny County DHS leadership's commitment to taking the bold steps to implement the *Guidelines* and to share their lessons learned with the field.

## Institutional Analysis

The IA is grounded in a branch of sociology known as institutional ethnography. This method produces "accounts of institutional practices that can explain how workers are organized and coordinated to talk about and act on cases."<sup>2</sup> In child welfare, each "case" includes an individual child or children and their family members (usually their parents or other formal or informal caregivers and other children living in the home). The data collection and analysis used in the IA attempts to uncover the experience of individuals as they encounter institutions and provide an understanding of how the institutions are organized to act in certain ways and recognizes that sometimes these ways are not aligned with their desired outcomes. The IA is grounded in the viewpoint of family members—children, fathers, mothers, and other primary caregivers.

The IA is a process used to understand how systems contribute to or exacerbate positive or negative outcomes for particular populations.<sup>3</sup> The focus of the IA is on the policies and practices implemented by institutions, and their unintended consequences for families, *not* on the behaviors of individual actors such as judges, police, or social workers. By examining *how* something comes about, rather than looking at individuals involved in the work, the IA process aims to reveal systemic progress and challenges, and to produce recommendations for systemic change. IA findings have to be supported by multiple data sources to be considered valid. Although specific case examples are used to illustrate particular findings, they represent common occurrences, not rare events.

A trained IA Review Team, consisting of four members, conducted data collection both on- and off-site. In June 2018, the IA team conducted focus groups with and interviewed youth who identified as LGBTQ+; interviewed caseworkers, supervisors, judges, attorneys, and community providers; and reviewed 18 case files of youth who had been identified by workers in the KIDS computer system as something other than cisgender and/or heterosexual. A full list of activities appears in the table found at the end of this report.

## Lived Experience

The first aim of an IA is to gain an understanding of the experiences of the individuals and families needing help and who have come to the attention of public systems and their community-based partners.

Based on case files, interviews, and observations, the IA found the following about the lived experiences of youth who identify as LGBTQ+ in Allegheny County:\*

- Youth who identify as LGBTQ+ and are in out-of-home placement settings continuously reach out to parents and family members even when these family members are rejecting of their sexual orientation and/or gender identity. Youth often visit with their family and want to have phone calls or otherwise interact with their parents, siblings, and extended family. Some have found a way to have a relationship with their family, some have not.
- Youth involved with Allegheny County Office of Children, Youth, and Families (CYF) value case workers who are authentic and accepting. Some youth have such workers. One youth described feeling affirmed by her worker and comfortable enough to text pictures of herself to her worker when she dressed “as a girl publicly for the first time” and went to her first PRIDE parade.
- Youth have a variety of experiences in congregate care. However, youth and attorneys reported there are some affirming congregate care placements. One transgender girl reflected on her stay at a group home saying “there was love there.” She described being placed with girls and that staff helped her style her hair.
- Youth feel a burden to proactively disclose their sexual orientation and/or gender identity, rather than responding to a question from a worker. Case files show that workers are not consistently talking with youth about SOGIE even in cases where youth disclose their sexual orientation and/or gender identity.
- Youth are having encounters with adults in the community that are high risk. For example, workers documented in some case files that youth reported meeting older men on Grindr and in the community to have sex. Three youth interviewed for the IA reported experiences in the community of being asked by adult men to have sex for money.<sup>4</sup> Two youth interviewed reported they had been raped in the community and one youth disclosed being stalked by an older man on her way back and forth to school. For example, a case note from a team meeting about a youth who identified as gay stated: “he has met [older men] online for potential sexual encounters and that [youth] is exhibiting signs of other dangerous behaviors in regards to his lifestyle choice.” In a different case of a youth receiving support services in his home, the mother called the worker for help because she “discovered [on Grindr] several conversations with adult men that indicated [youth] had been having sexual relationships with them as well as sharing nude pictures.” This information was reported to the police, but it was unclear what additional supports were provided to this family regarding this high-risk situation.
- Youth are getting some support related to their SOGIE. For example, in three different cases there was documentation of lawyers actively advocating for youth around their SOGIE needs. Youth are fairly consistently getting linked to Persad Center, a community-based provider specializing in services and supports for LGBTQ+ children, youth, and families.
- Youth are coming into care due to “parent-child” conflict. Examples detailed in case files include: a mother who kicked youth out of home “due to being transgender;” a mother who choked youth because of SOGIE; both parents physically violent with youth; youth reported parents made “anti-gay comments” and ultimately kicked the youth out; step-father physically abusive about the youth’s gender expression; and “mom says sexuality is a choice and doesn’t agree with [youth’s] choice.”
- Youth have interrelated and often complex needs. For example, 10 youth from the case files had documented significant mental health issues, with at least three youth making suicide attempts. Three youth had significant cognitive delays impacting their ability to learn, process information, and function.
- Youth are experiencing harassment at school and in the workplace. Sometimes youth and parents are not clear if the harassment is racial discrimination or transphobia or both (specific to cases involving African American transgender female youth).
- Parents are concerned about youth’s education but not considering how SOGIE issues may be impacting school, e.g., attendance, performance, bullying, etc.
- Two youth experienced efforts at conversion therapy by their families before coming into care. For example, father “admits to realizing [youth] was gay by the time [youth] was 7 and attempted to take [youth] to a program in ‘attempt to get the gay out of him.’”
- Youth are looking for supports. Two youth were looking for gay friendly churches. Youth

\* This report honors the identities of youth by using the pronouns which youth themselves identify. The singular “they” is used where a youth has not identified their pronouns to their caseworker.

in focus groups stated: “[we] wish we had a space or a group where we could just talk about relationships.” CYF is not currently organized in ways that support these needs.

Again, these findings are limited due to the scope of the IA. More detail behind some of these findings will be included later in the report. We also encourage CYF to continue to find ways to regularly obtain feedback from youth about their experiences receiving support with their healthy sexual and identity development.

## Findings

### System Progress

As mentioned previously, CSSP conducted an initial IA in 2013 - 14 to support the planning for the implementation of the *Guidelines*. In 2018, CSSP found several positive improvements, including:

- Cultural shifts within CYF so that SOGIE is recognized and discussed;
- Beginning efforts to collect data about SOGIE;
- Improvements in CYF and DHS infrastructure to support SOGIE of children, youth, and families served;
- Innovation/adaption into other areas of practice to support assessment and services related to SOGIE; and
- Stronger partnership with Persad Center.

Each one of these elements is further described below.

#### Cultural shifts

The IA found culture shifts at DHS, and CYF in particular, in two primary ways. First, the work force, as a result of mandatory training, case consultations, and other information sharing events, have a *common*

*language* to talk about sexual orientation and gender identity and expression (SOGIE). The workforce is aware of and uses the acronym SOGIE and knows of the getREAL project. Staff in different offices describe feeling more able to have respectful discussions about SOGIE among each other and especially with those having different viewpoints and perspectives.

Second, the IA team found many *visible signs of welcome and affirmation* for LGBTQ+ individuals. At the DHS Smithfield office, a poster now hangs in the lobby stating “We support LGBTQ+ youth.” This poster, designed by a youth involved with CYF, has a prominent place in the lobby, but isn’t the only sign of welcome and affirmation. Brochures with information about supports for LGBTQ+ youth are also in the lobby and at different points throughout the year either a rainbow pride flag, showing support for diverse sexual orientations, or a transgender pride flag, showing support for diverse gender identities, is hung in the lobby. Gender neutral bathrooms have been built in all offices. These single staff bathrooms are also accessible for people with disabilities.

#### Beginning efforts to collect data about SOGIE

The KIDS data system has been amended to include methods for ensuring that the youth’s SOGIE is documented. Workers are required to engage with children and youth about their gender identity; for older youth, workers are expected to also engage with youth about their sexual orientation. There are mandatory data entry fields for sexual orientation and gender identity in KIDS. However, workers are in varying stages around documenting SOGIE—at the time of this review less than 25 percent of cases had these fields filled out, with many selecting “did not ask” as an option. In 13 of the 18 cases reviewed for the IA, the youth’s sexual orientation or gender identity was recorded correctly; in three cases the worker had

### Positive Engagement with Youth and Documentation of SOGIE

In one of the cases the IA team reviewed, the case worker documented several discussions she had with the youth about SOGIE. Initially, she asked the youth their gender identity and the youth stated, “it’s confusing right now but I guess I would rather be a guy but I’m fine being addressed as a girl.” The case worker recorded that she told the youth she will address the youth any way they want her to and asked the youth if they have a male name they use, which the youth then provided. The case worker then asked the youth how their parents are with their gender identity and the youth stated that their parents are fine with it but the youth does not bring it up a lot because “it’s awkward.” The case worker clarified whether it is awkward for the youth or the youth’s parents, and the youth stated it was awkward for themselves. The case worker let the youth know of some community resources (i.e. PERSAD and GLCC). The youth stated that they were unaware of these resources. The case worker let the youth know of some of the services they offer and pulled up the website to show them. The case worker stated she could reach out to them if the youth would like her to, and the youth “appeared interested”. The case worker asked the youth whether they are sexually active, and the youth stated they are not. The youth told their case worker that they are interested in girls.

accidentally entered the data incorrectly and in two cases the worker had mislabeled transgender youth (one was labelled gender fluid and one was mistakenly identified as male/lesbian). Further, in case notes, there was minimal evidence that workers are talking to children and youth about their SOGIE. In cases involving gender fluid or transgender youth, some workers are using chosen name and pronouns in case files and others are not.<sup>5</sup> Additionally, it appeared in case files and from interviews with youth that workers engaged once with youth about their SOGIE, but not on an ongoing basis.

### **Improvements in CYF and DHS infrastructure to support the SOGIE of children, youth, and families served**

In order to ensure accountability around welcoming and affirming children, youth, and parents who identify as LGBTQ+ or gender expansive, DHS wrote and disseminated several *Standards of Practice* related to LGBTQ+ youth including:

- Communication Related to Sexual Orientation, Gender Identity and Expression (August 2015);
- Expectations for Serving LGBTQ Individuals (August 2015);
- Understanding Disclosure Related to SOGIE Information (August 2015);
- Working with LGBTQ Individuals: Professional Expectations (August 2015);
- Making LGBTQ appropriate referrals (August 2015);
- Housing and placement with LGBTQ individuals (August 2015); and
- Documentation of Information related to Sexual Orientation, Gender Identity, and Expression (SOGIE) (January 2017).

In addition to Standards of Practice, numerous tip sheets have been created. Workers knew that they were supposed to follow the Standards of Practice, however, most did not appear to know about the tip sheets that had been created. Many of these tip sheets answer the ongoing questions workers have about how to engage youth about their SOGIE.

DHS also enhanced their contracts and the knowledge of the contracted providers. Now when DHS contracts with providers, each contract contains nondiscrimination language related to SOGIE. Contracts also required all providers to receive training on SOGIE. Further, three of the contract monitors have achieved the training and knowledge to be trainers on SOGIE for the department. As a result of this increased infrastructure, contract monitors have been able to rectify situations when youth have been harassed or discriminated against in group care settings.

All CYF workers received *training on SOGIE* and

### **Accountability through Contract Monitoring**

A youth shared his sexual orientation with other youth in his group home over lunch. The cafeteria worker shared information related to his SOGIE with others in an inappropriate manner. When this came to the attention of the contracts monitor, DHS realized that all staff needed SOGIE training, not just those who work more directly with youth, and required the agency to ensure everyone received SOGIE training and knew about the Standards of Practice.

supervisors and Human Resources ensured that those who resisted the training understood that the training was a requirement of their job. CYF now has SOGIE champions in every regional office. By having this training, most staff report a shared understanding and language around SOGIE. Although staff still want support in engaging youth around their SOGIE, for the most part, staff confirmed the need for and importance of the training to their work. Some staff reported an increased competence or reflected they were more open to increasing their competence to support LGBTQ+ children, youth, and families.

*Staffing to support SOGIE work* has changed over the last five years. The getREAL Project Manager has been a consistent presence through the duration of this initiative. Many reported that she is particularly talented at building relationships across DHS and in the community to spread the getREAL work. Although the Project Manager's supervisors have changed, she has been able to continue this work without interruption. She has looked for and taken advantage of opportunities to make visible LGBTQ+ and gender expansive children and youth involved with child welfare, she has consulted on numerous cases with SOGIE concerns, and she has coached many case workers and supervisors in their understanding, assessment, and delivery of services related to SOGIE. Her influence and knowledge have left a remarkable imprint on the policy and practice work, particularly within CYF. However, as addressed later, there are concerns about how the work will be sustained if she leaves.

There are other staffing opportunities that have the potential to greatly impact this work. The Project Manager has built a cadre of SOGIE champions located in every regional office. CYF created the position, Diversity and Inclusion officer, who is responsible for overseeing racial equity, SOGIE, and immigration efforts. This position shows an institutional commitment to this work. As of yet, most of this officer's time has been focused on analyzing and supporting

new strategies to deal with racial inequities in the child welfare system. The getREAL Project Manager has thus largely been solely responsible for the SOGIE work. Recently, in 2018, DHS hired a new Senior Leader of Equity and Inclusion for the entire Department of Human Services. This person has responsibility for providing strategic direction for all equity efforts including SOGIE, racial equity, and immigration across all the DHS and reports directly to the DHS Director.<sup>6</sup> This is a structural change that has elevated the work to a higher level and bodes well for sustaining and institutionalizing the work.

### **Stronger partnership with Persad**

Over the last several years, DHS has built a strong relationship with Persad Center, a community-based agency supporting LGBTQ+ children, youth, and families. Everyone interviewed knew about Persad Center and several workers talked about the benefits of Persad services for their clients. In addition to working with children, youth, and families struggling around SOGIE, Persad is a community partner with DHS for trainings on SOGIE and has contracted to recruit homes that will be affirming of LGBTQ+ children and youth.

While the work with Persad has deepened, the getREAL Project Manager recognizes the need to have stronger relationships with other community-based agencies that are comfortable and welcoming for LGBTQ+ youth of color. The IA team heard the need for such a community partner also from two LGBTQ+ youth of color, who in particular mentioned working with Project Silk.

### **Innovation/adaption into other areas of practice to support assessment and services related to SOGIE**

As part of implementing the Guidelines, the getREAL Project Manager worked with other managers to improve practice. When the IA was conducted in 2013, the Child and Adolescent Needs and Strengths Assessment (CANS) tool did not have a way of recognizing the dynamic of a youth's SOGIE in the case. The only area where anything related to SOGIE might have been identified was in one item, "sexual development." The review team found that the only SOGIE issue documented were recorded as "gender dysphoria" for youth struggling with their gender identity or who identified as transgender. Since that time, the getREAL Project Manager and others worked to amend the CANS tool so that those conducting the assessment had a means of assessing if SOGIE was a dynamic in the case. This revised tool was piloted in the fall of 2017 and staff using the tool reported an initial struggle in engaging with youth around SOGIE,

but then an ease in having the conversation, and that the tool assisted them in having "conversations we would never have had."

Allegheny County also periodically conducts Quality Service Reviews (QSR) to assess the quality of their practice with children, youth, and families. The getREAL Project Manager joined the team of individuals that conducted these reviews and representatives from the Commonwealth of Pennsylvania to develop guidance on how to inquire about the SOGIE of children, youth, and families and determine whether SOGIE was an element in the case. It was determined that the QSR team was not yet ready to do this more intensive inquiry so the 2017 pilot directed the QSR team to inquire about whether parents and youth when age appropriate had been asked by system actions about their SOGIE, faith, and race and if these clients had not been asked, would they like to have been asked. Some reviewers reported having no problem engaging youth in conversations about SOGIE, while others struggled and wanted more practice. These innovations require pacing and ongoing support to be sustained and hold promise in supporting practice change to better assess and service LGBTQ+ and gender expansive children and youth.

All of these efforts have made some positive impacts on youth. Youth in focus groups described being placed according to their gender identity. A transgender youth talked about her placement in a shelter and that "there is love there." She felt supported by staff who talked and joked with her, and helped her with her hair and clothes. Youth felt affirmed by their lawyers and described their lawyers advocating for them specifically around issues related to SOGIE. One youth talked about his foster parents saying negative things about people who are gay. "I told my lawyer and my foster parents stopped."

Widespread knowledge and visibility of SOGIE also has resulted in changes to the courts. The IA team heard from multiple sources that the courts are better at supporting transgender youth as exemplified by using correct pronouns and chosen names as well as understanding the need for timely approvals for medical treatments.

Other changes that are important to youth include amending the policy regarding clothing vouchers. Previously, in an effort to prevent fraud, a foster family was given a clothing voucher for the youth. The receipts for clothing were expected to correspond to the youth's sex assigned at birth. Now clothing vouchers are no longer linked to gender and, for example, a youth whose sex assigned at birth is female can buy boxer shorts from the boy's department. This may



seem like a minor systemic change but the impact on the young person is huge in terms of affirming who they are and healing the trauma they have experienced.

## System Challenges

System transformation that results in consistent and improved outcomes for children, youth, and families is a multi-year endeavor. While much progress has been made in shifting the culture and policies of DHS and CYF, and youth interviewed have noted improvements, more work still remains to implement the Guidelines and ensure SOGIE is inquired about, recognized, and affirmed. Change in child welfare is a long and ongoing journey and no one understands this better than the Director, Marc Cherna, who is unique in his long-term tenure as director. Stable leadership is critical to successful, sustained improvements.

### Continuing to improve DHS and CYF infrastructure to support full implementation

The workforce still struggles to have developmentally appropriate conversations with children and youth about SOGIE. Thus, the workforce is not capturing accurate and comprehensive SOGIE data which compromises the ability of DHS and community partners to ensure all children and youth are adequately supported and affirmed. Efforts to educate the workforce and hold staff accountable for accurate and consistent data entry of SOGIE are still needed.

As Allegheny County has continued to reduce the use of congregate care, there is a need for an increased number of affirming and supportive homes. The IA found that youth have a mixed experience in relative and nonrelative foster home placement. One

youth described living in a conservative, religious (nonrelative) foster home that “said bad things about being gay”. This youth told his lawyer and worker, the foster parents stopped. However, this youth still experienced punishment around his gender expression, e.g., having his cell phone taken away for dying his hair blue. In case files, workers documented the rejection that youth experienced by family members with whom they were living with or visited, but the work to support youth in these circumstances was not there (or at least not consistently documented). Workers expressed concern about how best to honor family belief systems that may run counter to affirming LGBTQ+ youth and still support and affirm these youth. Some workers also expressed concerns that foster homes are documented as affirming, but below the surface are not supportive of LGBTQ+ or gender expansive children and youth.

Frontline staff still need adequate support to assess how the SOGIE of children and youth may be a dynamic in the family and relevant to supporting safety, permanency, and well-being of children and youth. The CANS pilot and the QSR tools are promising means of supporting the workforce in improving practice related to SOGIE. Other efforts should include seeking and incorporating case consultation in planning and services when needed and getting adequate supports from supervisors.

### Continuing work to support community partners

The IA review team met with some, but not all, community-based providers and heard reflections on their effectiveness from other stakeholders. Overall, community partners are aware of CYF’s commitment to learn about and support the SOGIE of all children and youth. Community partners have received training on

SOGIE, however some work remains in order to build the practice of engagement on SOGIE issues when children and youth are living with family. The IA heard that one community-based agency's leader does not support workers asking about SOGIE for children and youth. In part, this leader has concerns about the child welfare system becoming too involved with a family system and undermining family functioning. Repeatedly, some of the workers in this community-based agency are willing to work with families to support the SOGIE of children and youth, but are following the lead of the director. More work between CYF and this particular agency is needed. The work must require more than training but rather conversations and a deepening partnership to fully implement the changes needed. The issues that drive the reluctance need to be heard and addressed so that the lives of children and families can be supported effectively.

Community-based partners who conduct home studies indicated that the current format is not helpful in giving a worker a sense of whether a family will be affirming, let alone what concrete support they will need even if they want to be affirming. Agencies are resistant to using a new home study assessment because they receive payment to do the SWAN assessment used throughout the Commonwealth. The owners of this assessment are reportedly resistant to adapting it in order to meet the need to assess if a family will be affirming and what kind of support they will need. Hopefully this can be resolved soon. The need for affirming families and the support they need to care for LGBTQ+ children and youth is even more critical with the move to reduce the use of congregate care embedded in new federal legislation. LGBTQ+ youth are often overrepresented in congregate care, in part because of the lack of affirming family homes and supports that has resulted in multiple failed placements and unfortunately often increased behavioral issues for the young people as a result. Persad Center is a key committed community partner and has the potential to support the SOGIE work

on a long-term basis. With adequate resources they can have the capacity to recruit, support, and retain the affirming families needed. Currently with a very limited staff, Persad provides training to DHS and the community, case consultations when needed, and is recruiting foster homes that will be affirming of LGBTQ+ youth. However, the county recognizes that one community-based agency with a small number of dedicated staff is not sufficient to meet the myriad of needs. That said, this is part of a larger strategy to build capacity within all of the contracted providers so that youth and families can have culturally responsive supports wherever they go.

Finally, work is needed with community partners to increase safety of LGBTQ+ youth in the community. The IA found that youth are not consistently safe in school. Information in case files and from youth themselves show that LGBTQ+ youth experience bullying and harassment at school. While some schools have supportive and affirming spaces, Gay Straight Alliances, and effective administrations, other schools in Allegheny County do not. Some workers and foster parents work to support LGBTQ+ youth in school when they are unsafe, but this is not consistently done. Youth expressed frustration that some group homes are in neighborhoods where they felt unsafe and experienced harassment. Youth described feelings of safety in the group homes. When walking or taking public transportation in the community they described being unsafe and targeted because others know that they are foster youth and vulnerable. Some older youth also experienced discrimination and harassment in the workplace and expressed the need for information and support about how to navigate and address employment discrimination.

### **Increased Accountability for DHS and community providers**

Further progress to transform the child welfare system to implement the Guidelines and transform



practice requires building on the improved mechanisms of accountability. The IA found pieces of accountability—e.g., Human Resources and leadership supporting all workers in getting SOGIE training and a significant increase in the completion of performance evaluations. Human Resources and leadership worked through issues of employees’ resistance to being trained on SOGIE. In addition, Human Resources is working with supervisors and staff to improve the performance evaluation tool. There is a continued need for further mechanisms of professional development and accountability to be explored in order to ensure all workers and agencies are given the resources to provide consistent quality practice and are held accountable. The guidance provided and improvement must include enhanced supervision and stressing continuous quality improvement with the workforce and community providers based on results from qualitative reviews and feedback from LGBTQ+ clients.

### Attending to race and SOGIE

DHS is working to address racial disproportionality and disparities, particularly of African American children and youth in the child welfare system. The County is also designing and providing supports for immigrant children, youth, and families. These three strands of work—getREAL (SOGIE), racial disparities, and immigration—are largely siloed efforts despite being located under one person at CYF. This position and this work is new and innovative. New York City and Los Angeles have recently developed similar positions/offices of equity and it may be helpful for Allegheny County to connect to these jurisdictions for cross learning, specifically learning about when to focus separately on these different, but interrelated aspects of identity and experience, and when to be looking holistically at how they impact children, youth, families, and communities.

Attention must also be paid to the larger racial dynamics and history of racism at play with individuals, organizations, and communities. For example, the IA team heard that white SOGIE trainers and workers encountered push back from some African American workers and community providers and these trainers did not feel equipped to talk about race and SOGIE. The IA team heard from informants that talking about LGBTQ+ issues is a “white norm;” “not part of our religious tradition;” that “African American families don’t talk about this, [it’s] not something you bring up, in our church that’s not ok.” Some African American workers were frustrated by their white peers’ inability to counter this and their reliance on African American workers to address their peers. This needs to be addressed and white SOGIE trainers and workers need additional support to handle these dynamics in training sessions and in practice.

## Recommendations

During the course of the IA, the review team heard many recommendations freely offered by youth and workers involved with CYF. This alone is progress in that these recommendations were given openly and honestly, with the hope that they would be heard as progress has been made but there is more work to do.

DHS has multiple means of collecting feedback from youth including surveys, Quality Service Reviews, and conversations with Youth Support Partners. These efforts are important, however, the youth we spoke to in a focus group ask for additional and more regular opportunities, such as focus groups, to provide feedback to the Department. Four key recommendations from youth were:

1. Youth wanted workers to initiate conversations about sexual orientation and gender identity and not always feel like they had to be the ones to proactively tell the worker about their identity.
2. Workers in Independent Living programs and caseworkers should talk about and teach regularly information about sexual health. “Nobody is talking about it.” This could occur in the context of youth discussions about sexuality and relationships.
3. “Workers or someone should be talking with us about healthy relationships—sexual and platonic.” Youth wanted to engage in discussion beyond just safe sex.
4. Transgender youth wanted more information about how to access hormones. “I didn’t know the system could pay for hormones until my roommate told me so I asked the worker [to help me].”

Workers also offered feedback about resources they needed to accomplish better SOGIE work to benefit children, youth, and families. Workers recommended:

1. More opportunities to practice engaging children, youth, and adults about SOGIE. Suggestions included: “lunch and learns,” reinforcement in trainings, and reminders in supervision and in written materials.
2. Booster trainings about SOGIE and how to engage on SOGIE—suggestions included short one-hour trainings in small groups; well-designed and tailored to adult learners; more interactive trainings.
3. Incorporating stories of youth into other materials so there is more exposure to youth voice and experience.
4. Finding opportunities for LGBTQ+ youth to be involved in other work with staff—panels, speaker’s bureaus, other initiatives—so that staff develop knowledge, empathy, and relationships with these youth.
5. Providing workers with a protocol about talking



- with parents about their child's SOGIE.
6. Continued efforts to recruit and support affirming homes for LGBTQ+ youth, especially youth who are transgender.

Allegheny County has made significant system changes moving toward system transformation. In order to sustain the changes made to date and continue efforts to transform policy, practice, and partnership, the following is recommended:

### **Focus on helping workforce understand gender (vs. sexual orientation)**

From the information collected, IA reviewers determined that CYF staff and professional partners have become more comfortable thinking about and having conversations about sexual orientation. However, most still struggle with understanding gender, especially when someone's gender does not match their sex assigned at birth. Workers and others also expressed confusion about individuals who do not identify as either male or female, or who may identify as gender fluid.

### **Continuously communicate about SOGIE data collection to workforce and partners**

Workers were not clear about the purpose of collecting data about the SOGIE of youth. People interviewed by the IA were concerned about what was the purpose of gathering this information, if and how the information was being protected and, in general, the safety (for the youth) of having this information documented. Other partners expressed frustration that documentation would result in labeling children and youth and follow them in a detrimental way throughout their time involved with CYF. Others expressed concern that this was private information and that only families should have these conversations with children and youth, not workers. These are elements of conversations that need to continue and develop and reflect the progress made and the opportunity for real transformative change in this area.

### **Continued support for staffing getREAL and other efforts to affirm SOGIE**

Many individuals interviewed were worried that the getREAL efforts and other efforts to support inquiry into and affirmation of SOGIE would not be sustained if the current getREAL Project Manager left. DHS and CYF should consider how to increase the role and support of current SOGIE champions and case practice specialist in each of the regional offices, and to ensure that the position of getREAL Project Manager is institutionalized.

### **Enhancing SOGIE Training**

In addition to the overall recommendations of staff about enhancing their learning and competency around SOGIE, several informants provided specific feedback about how to improve the current SOGIE training. These suggestions included:

- Targeted training and interventions to those still not inquiring or documenting SOGIE;
- Adding more simulations (to practice what is taught);
- Spending less time on terminology and more on enhancing practice, especially on supporting workers' ability to ask about SOGIE; and
- Building in a self-care group for the SOGIE trainers and space to debrief.

As mentioned earlier, the SOGIE trainers need to be supported in dealing with racial dynamics in the training. All SOGIE trainers need to be supported in speaking up and countering when those being trained invoke culture as a reason to not discuss SOGIE or to be rejecting towards children, youth, and families.

### **Continuing to build mechanism for professional development and accountability at all levels**

As previously described under system challenges, DHS needs to ensure that strong mechanisms to support professional development go hand-in-hand with systems of accountability. This is needed for both agency staff and community partners. DHS and its partners need to develop a similar supervision model grounded in tools that assess professional development of staff along with resources for staff to improve. Periodic reviews should measure professional development, provide work plans for improvement, and—when improvement still does not occur—steps should be taken to ensure accountability for lack of development. This kind of process needs to be grounded in outcome measures to ensure all children, youth, and families achieve equitable services and outcomes.

## **Conclusion**

The IA found that Allegheny County made remarkable strides to change their child welfare system to better affirm and support LGBTQ+ children and youth. Allegheny County's commitment to transparency and sharing their journey to transform their system is commendable and will help advance the work of others in the field.

## Acknowledgements

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## Citations

<sup>1</sup> LGBTQ+ is used in this report to refer to lesbian, gay, bisexual, transgender, and queer individuals; the plus symbol is included to recognize those for whom these labels do not accurately describe their sexual orientation or gender identity such as two spirit, gender expansive, and gender nonbinary individuals.

<sup>2</sup> Pence, Ellen and Smith, Dorothy. (unpublished). *The Institutional Analysis: Matching what institutions do with what people need*.

<sup>3</sup> Typically, an Institutional Analysis includes pinpointing problematic outcomes for families through reviewing data such as the disproportionate representation of children of color in child welfare and the outcome disparities they experience. The data analysis is followed by a range of qualitative information gathering activities including interviewing a small set of caregivers and their system helpers to get a deep sense of their experiences and their needs, and directly observing daily interactions with families in their homes, child welfare offices, in juvenile courts, and in the provision of services. Interviews and focus groups are also conducted with system and community leaders and staff. Policies, procedures, and a sample of case files are

examined. The IA application in Allegheny County omitted some of this process. For example, outcome data were not examined, and families were not directly interviewed or observed in interactions with staff.

<sup>4</sup> These incidents are particularly concerning given the high risk for youth in foster care to experience sexual exploitation/sex trafficking. Nationally, over half of children and youth who have experienced commercial sexual exploitation/trafficking were involved with child welfare systems (estimates range from 60% in California to 85% in New York City and 98% in Connecticut). Child welfare systems across the country are still learning and testing best practices to prevent the sexual exploitation of children and youth in their care.

<sup>5</sup> Of these 18 cases, six children were identified as white, 10 as African American, and two had the race/ethnicity missing.

<sup>6</sup> After completion of this IA, the getREAL Project Manager and the Diversity and Inclusion Officer now report to the Senior Leader of Equity and Inclusion for DHS.

<sup>7</sup> For a more thorough description of these core standardizing methods, see the forthcoming article from Ellen Pence and Dorothy Smith, *The Institutional Analysis: Matching what institutions do with what people need*. Publication forthcoming.

<sup>8</sup> For example, in an IA study in a different jurisdiction, the IA found that as a result of numerous tragic child deaths, subsequent media coverage, and the impact of this on agency leadership and workers, workers' behavior was driven by a culture of fear. That is, based on multiple interviews with a wide variety of professionals, workers felt compelled to remove children or were hesitant to return children to their families not because the children were unsafe or at high risk of maltreatment, but because they feared liability should something happen to that child as a result of their actions or inactions.



## The Institutional Analysis Methodology

The body of work supporting the IA suggests that there are at least eight primary, or core standardizing methods<sup>7</sup> of child welfare systems that organize how workers get to know families, work with them, and have the capacity to act in a way that supports safety, reunification or alternative permanency, and nurturance. Problems in any one or combination of these methods can interfere with achieving positive outcomes for all families. The methods explored in an IA include:

1. **Mission, purpose, and job function**—Agency missions translate into case management practices and worker job descriptions. The IA examines how mission statements, worker’s job descriptions, tasks assignments, and defined job functions match the reality of what will work for individuals and families who are being “processed as a case” within and across systems.
2. **Rules and regulations**—The IA examines how laws, regulations, and other governmental requirements and local policy drives workers’ practices. The IA looks to see how regulations act to enhance or limit the worker’s ability and capacity to intervene effectively with families.
3. **Administrative practices**—Administrative practices coordinate the relationship between the institution (represented by the worker) and the client; as such, they can enhance the worker-client relationship or impede it. These practices include internal administrative policies, protocols, and procedures such as team decision making meeting protocols, assessment tools, decision making panels, formats for case plans and court reports, and case recording.
4. **Concepts and theories**—Institutional values, theories of change, conceptual frameworks, and assumptions undergird and guide policy, administrative tools, and job expectations and duties. IA analysts are trained to look for the operative theories at all points of intervention.
5. **Education and training**—The IA examines how education, training, and skill development for workers and supervisors, educational requirements, mentoring opportunities, and participation in local, state, and/or national forums shape how workers think about, talk about, and act on a family’s case.
6. **Resources**—Management allocates resources to support both workers and clients. Resources include everything necessary for workers to carry out their job responsibilities and for children and families to receive effective services and supports to enhance children’s safety, permanency, and well-being. Resources are not limited to budget dollars, but also include such things as interventions to improve parenting, visits from workers, health care services, home assistance, tutoring, emergency funds, child care, substance abuse evaluation, and treatment and staff time (as measured by worker caseload).
7. **Linkages**—Organized linkages connect a worker to other practitioners with prior or subsequent involvement in the case. For example, an IA might examine how information collected by a hotline worker influences the work of the investigative worker. The IA examines how successfully management has built procedures for communication (passing along critical information about families) among workers, among providers, and with family members.
8. **Accountability**—The IA examines the accountability structures and processes in an organization to determine how workers at each point of case processing are held accountable for the well-being and success of their clients. Additionally, the IA looks for accountability to other workers and practitioners and to the overall intervention goals.

### Allegheny County Data Collection

Activity and Timing	Purpose
<b>April - June</b>  <b>Big Picture Interviews</b>  <b>(5)</b>	Interviewed DHS and CYF leadership and community leaders from the agency, courts, and partner provider agencies to obtain a better understanding of issues such as collaboration, community strengths and challenges, court structure, missions, and directives of the department and its partners.
<b>June</b>  <b>DCFS Case Review</b>  <b>18 Cases</b>	Case-based analysis was done to examine the alignment with policy and how the workers come to know families and share information about families. In addition, the case records provided a window into the lived experience of families.
<b>June</b>  <b>Individual interviews (8) and group interviews (8) with CYF staff, community partners, and youth</b>  <b>1 Group Interview with youth who identify as LGBTQ+</b>	The interviews were designed to understand the everyday case processing and managing routines of staff. Interview participants were selected to gain perspectives from the provider community, system partners, and staff who were currently processing cases as frontline staffs and who were considered by the agency to be competent staff.

# Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems

JANUARY 2013



NATIONAL CENTER FOR LESBIAN RIGHTS



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## I. INTRODUCTION

In the last decade, the child welfare profession has made significant progress toward the goal of developing competence to serve children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender presentation. Practitioners, advocates, researchers and public policymakers have contributed to a growing field of knowledge and accepted best practice (Child Welfare League of America [CWLA], 2012) (Wilber, Ryan, & Marksamer, 2006) (Mallon, 2009). Although there is a continuing need for written policies, training and technical assistance, as well as organizational culture change, child welfare professionals have made impressive strides toward achieving a better understanding of the relevance of sexual orientation and gender identity and expression to child protection and well-being.

Despite this commendable progress, however, the field has not arrived at consensus about how and when to elicit or collect information related to young people's sexual orientation, gender identity or gender expression. Similarly, there are no clear guidelines navigating the tension between the need to disclose the information to appropriately serve children, and the need to guard their privacy. Although the field increasingly recognizes the need for better data to measure outcomes and develop interventions, most systems still do not systematically collect, track or report this information. The lack of clarity on these complex issues hinders the efforts made toward increasing positive outcomes for children across the spectrum of sexual orientation and gender identity and expression. This publication will begin to bridge the gap by proposing standards governing the management of information related to sexual orientation and gender identity and expression.

This publication was developed in conjunction with the Putting Pride into Practice Project ("P4"), a three-year effort undertaken by Family Builders by Adoption, in partnership with the California Department of Social Services, to implement CWLA's Best Practice Guidelines for Serving LGBT Youth in Out of Home Care in several county child welfare systems in California. P4's objective is to increase the competence of child welfare professionals to serve children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender presentation. The project provides training and technical assistance to build agency capacity and improve organizational competency through leadership and policy development, community and constituency engagement, and recruitment, training and support of placement resources. In 2012, the P4 project engaged The Center for the Study of Social Policy ("CSSP") both

to provide additional support to the work and leadership in developing the strategy for introducing the guidelines to the field.

In November 2011, the P4 staff at Family Builders joined with Legal Services for Children to convene a two-day meeting of 25 individuals with broad child welfare experience to examine three questions:

- Under what circumstances should child welfare personnel seek information about a child's sexual orientation or gender identity if it is not otherwise disclosed?
- Under what circumstances should child welfare personnel record information about a child's sexual orientation or gender identity?
- Under what circumstances should child welfare personnel disclose information about a child's sexual orientation or gender identity?

The objective of the convening was to gather expert opinions that would guide the formulation of a set of professional guidelines. This document represents the culmination of those efforts. The CSSP will be taking the lead on field testing these guidelines. CSSP is in the process of securing funding and working with up to three child welfare jurisdictions to field-test the guidelines. Based upon the experiences and input in the field sites, project staff will refine the guidelines, if necessary, and develop a final version for national dissemination. The field-testing will also inform us what is needed in terms of tools, policies, training, and technical assistance to effectively implement the guidelines.

## II. GUIDING PRINCIPLES

The following principles provide the theoretical and philosophical underpinnings for the professional guidelines contained in this publication. When confronted with a situation not directly addressed by the guidelines, professionals should rely on these principles to guide their decisions.

1. All children deserve safety and acceptance in their homes and communities.
2. All children need support and nurturance to develop and embrace all aspects of their evolving identities, including their sexual orientation and gender identity and expression.
3. Children thrive when their caregivers affirm and respect their sexual orientation and gender identity and expression, and family acceptance both protects against health risks and promotes overall health. Conversely, children experience negative health and mental health outcomes when their caregivers reject or fail to support their sexual orientation and gender identity or expression.
4. Children perceived by others to be lesbian, gay, bisexual or gender nonconforming are exposed to the same risks as children who openly identify as lesbian, gay, bisexual or transgender.



### III. LAYING THE GROUNDWORK FOR IMPLEMENTATION

Child welfare professionals routinely collect and analyze information about the children in their care for the purposes of creating individualized case plans, monitoring agency trends and performance, guiding strategic planning, and reporting to government agencies and funders. Standard demographic data fields include gender, race, ethnicity, and age, among others. However, most assessment protocols and case management systems do not require or accommodate collection of data related to children’s sexual orientation, gender identity or gender expression. In addition to these structural and procedural barriers, many professionals are reluctant to collect, record or disclose this information and may express a range of concerns about any requirement to do so. Common reservations include:

- The private and sensitive nature of information related to sexual orientation and gender identity may make workers feel that is inappropriate to directly ask about these issues. (*“It’s none of our business.”*)
- A young person’s sexual orientation or gender identity or expression may seem unrelated to the reasons that he or she is in protective custody. (*“What does this have to do with abuse or neglect?”*)
- Many professionals feel uncomfortable talking about sexual orientation and gender identity. (*“What if I say the wrong thing?”*)
- Workers may feel that children are too young to have considered these issues or to understand or discuss them. (*“I’m supposed to ask a 5-year-old whether he likes boys or girls?”*)
- Requiring collection or documentation of this data imposes unnecessary burdens on overworked and under-resourced personnel. (*“This is just one more mandate . . .”*)
- Collecting the information poses the risk of inappropriate disclosure. (*“Don’t ask, don’t tell. What we don’t know cannot be repeated.”*)

Child welfare managers should be prepared to respond to these issues in order to ensure broad buy-in prior to implementation of the guidelines. The most important message to convey is that the information guidelines are essential to advancing the core objectives of child safety, permanency and well-being. The field must adapt to society’s evolving understanding of the relationship between children’s actual or perceived sexual orientation or gender identity and expression, and their health, social and educational outcomes. Research has established that lesbian, gay, bisexual and gender nonconforming children confront significant external threats to their health and well-being. Research has also informed the development of interventions that support children in overcoming these challenges. Child welfare leadership must give workers the

tools to understand this research and its application to contemporary social work practice. Once child welfare personnel understand that the guidelines are consistent with good social work practice, their initial objections may prove less daunting.

Child welfare managers and supervisors should support workers by reminding them that they routinely discuss sensitive issues with their clients. Learning how to perform this core function is an integral part of clinical training. The skills and knowledge necessary to sensitively and appropriately explore the issues of sexual orientation and gender identity and expression can and should be taught and integrated into existing training, policies and procedures. Protecting the confidentiality of sensitive client information is also a hallmark of good social work practice with which workers will be fully familiar. The guidelines reflect this same protection by limiting disclosure and emphasizing the importance of written policies, and ongoing training supported by skilled supervision.

That child welfare personnel confront serious workload challenges cannot be denied. However, by providing clear standards and promoting sound practices and professional support, the guidelines may prevent the types of crises that exacerbate workload issues. Again, workers are more likely to embrace the guidelines if child welfare directors and managers communicate the ways in which the guidelines promote the well-being of *all* children in the agency's care and custody.

With appropriate policies, training and support, the perceived obstacles to obtaining information related to children's sexual orientation and gender identity and expression can be addressed. More importantly, the benefits of obtaining the information outweigh the risks – especially if child welfare agencies adopt and scrupulously adhere to procedural safeguards. Information about the sexual orientation and gender identity and expression of children in care is essential to the agency's core function of developing and implementing individual case plans. Disaggregated data is also essential to adequately assess the agency's competence in serving children of all sexual orientations and gender identities, and to guide strategic planning and reform efforts.

### III. INFORMATION GUIDELINES

The child welfare profession is increasingly focused on outcomes and accountability as the framework for reforming systems nationally. The federal government routinely reviews states on a set of outcomes through the Child and Family Services Review. States are required to develop Program Improvement Plans based on these reviews and to engage in ongoing quality improvement. The field is moving toward measuring well-being through the use of evidence-based strategies and interventions. States and counties are implementing new practice models based on implementation science. All of these reform efforts hinge on the collection and analysis of client data.

At the same time, the field is increasingly aware of the correlation between children's actual or perceived sexual orientation, gender identity or gender expression and their overall well-being. Thus, the Administration of Children and Families recently issued an information memorandum emphasizing the importance of supporting and affirming LGBT children and families. It is both timely and essential that the child welfare profession create the infrastructure and policy framework for meeting this obligation, including the collection, analysis and integration of accurate data.

These guidelines are divided into five sections:

- Collecting information for individual case planning
- Collecting information for agency planning and assessment
- Recording information
- Disclosing information
- Institutionalizing practice

The guidelines provide the framework for utilizing client data to ensure the safety, permanency and well-being of children across the spectrum of sexual orientation and gender identity and expression. The commentary following the guidelines provides background information and the rationale for each standard. Prior to implementing the guidelines, agencies should develop practice tools designed to provide more detailed instruction to personnel charged with implementing the guidelines. Along with ongoing training and supervision, these tools should provide guidance to workers on how to talk to youth about sexual orientation, gender identity and gender expression, what specific questions to ask and at what intervals, and how to record the information in the appropriate paper or digital file.

**A. COLLECTING INFORMATION FOR INDIVIDUAL CASE PLANNING**

Child welfare professionals cannot adequately serve the children in their care unless they understand the strengths, needs, experiences and characteristics of each unique child. Possession of information about the child's age, development, temperament, academic achievement, physical and mental health, and many other individual characteristics is essential in assessing the child's current circumstances and developing a case plan. The child's sexual orientation, gender identity and gender expression are integral and defining aspects of his or her identity and experience, and are essential to understanding the whole child.

The child welfare profession is chiefly concerned with child safety, permanency and well-being. These outcomes are supported or undermined by the reactions of adults to the sexual orientation and gender identity or expression of the children in their care. Research conducted by the Family Acceptance Project has established the critical role that caregiver acceptance of young people's sexual orientation and gender identity in promoting health and well-being and protecting against risk. Conversely, caregiver rejection based on these aspects of a child's identity is highly correlated with serious health problems (Ryan et al., 2010) (Ryan, Huebner, Diaz, & Sanchez, 2009). Recent research has also established a clear link between gender nonconformity and childhood abuse and post-traumatic stress disorder in youth (Roberts, Rosario, Corliss, Koenen, & Austin, 2012). Thus, a child's perceived or declared sexual orientation or gender identity may be directly relevant to the alleged abuse or neglect, whether or not the connection has been expressly identified.

Even if a child's sexual orientation or gender identity or expression is not directly related to the alleged abuse or neglect, these aspects of the child's identity may have some bearing on the child's safety, permanency and well-being. A growing body of research demonstrates that sexual orientation and gender identity are important predictors of the health and social outcomes of youth due to the distinct challenges lesbian, gay, bisexual and transgender individuals confront. As such, understanding these aspects of the child's identity is essential. Conversely, failure to understand the whole child can lead to poor decisions that seriously undermine the chief aims of permanency, safety and well-being.

**1. Intake forms and protocol should require child welfare personnel to document each child's biological sex, gender identity, and gender expression.**

*Commentary: Biological sex, gender identity and gender expression are three distinct aspects of every person's identity. Biological sex refers to a person's physical anatomy and is used to assign gender at birth. In the majority of cases, a child's biological sex is either clearly male or clearly female. However, there is a range of possible variations in human anatomy and chromosomal makeup (Irby & Brown, 2011) (Brill & Pepper, 2008), necessitating a separate classification for the small percentage of children who are not clearly biologically male or female. Some individuals have medical conditions known as "differences of sex development" (DSD) in which their biological attributes (chromosomes, gonads, reproductive anatomy or genitalia) differ from what is associated with male or female biology (Malouf & Baratz, 2012). These individuals are sometimes referred to as "intersex." Child welfare personnel are not qualified to determine whether or not a child is intersex, and should not attempt to make this determination independently. However, if the child or family offers the information or it is otherwise acquired through medical screening, child welfare personnel should document the information and its source. In documenting a child's biological sex, commonly used terms include male, female or intersex.*

*Gender identity refers to a person's deeply felt sense of being male, female, both or neither. An individual's gender identity may or may not be congruent with that person's biological sex. Terms for identifying a person's gender identity may include male, female, unsure, neither or both.*

*Gender expression refers to the manner in which a child expresses or externalizes gender, through dress, mannerisms and behavior. Again, an individual's gender expression may or may not be congruent with that person's biological sex. Terms used to describe a person's gender expression may include masculine, feminine, androgynous, or both masculine and feminine.*

**2. Child welfare personnel should assess the extent to which each child's expression of gender matches or diverges from cultural and social expectations in the child's family and community.**

*Commentary: Gender expression is not exact or objective. It is a relative concept based on an individual or community's subjective perception of gender roles and expectations, which is influenced by beliefs, culture, experiences and frame of reference. For these purposes, the perception or beliefs of the child welfare worker are not as important as the child's experience and the perception and reaction of important people in the child's life. Children may be subjected to ridicule, rejection or humiliation based upon other people's perception that their mannerisms, behavior or dress diverge from that which is expected of their gender (gender variant). Child welfare personnel should not classify or evaluate any child's gender expression for the purposes of redirecting or changing the child, but to explore the child's need for support and to monitor the child's adjustment. Gender variant expression, by itself, is not problematic nor cause for concern. However, gender nonconforming children may need support to form and integrate a healthy identity. To explore the child's gender expression, child welfare personnel may rely on information from the child, family and reliable third parties, such as school and medical personnel. Child welfare personnel may also rely on personal observation supported by objective information.*

**3. Child welfare workers should document the gender identity of every child three years of age or older.**

*Commentary: Gender identity is formed at very early age, often emerging around the same time that a child learns to speak (Brill & Pepper, 2008). Everyone has a gender identity, which is internal and personally defined. Most people's gender identity is congruent with their biological sex, in which case there is little need to consciously define one's gender identity as distinct from one's gender. When a child's biological sex and gender identity are not congruent, the child often begins voicing this discrepancy between ages 2 and 4. (For example, a young boy may consistently report that when he grows up, he's going to be a woman.) It is important to identify children who experience this incongruity – children who describe or manifest a gender identity that differs from their biological sex. The purpose is not to categorize or diagnose the child, but to ensure that the child's family or caregivers have the information and support necessary to better understand and support the child's healthy development.*

- 4. Child welfare personnel should determine the most appropriate time and manner of identifying each child's gender identity and expression, based upon the child's age, stage of development, cognitive abilities and personality, as well as the level of trust developed between the worker and the child.**

*Commentary: Child welfare personnel should directly engage children who are developmentally and cognitively capable of understanding and discussing gender, in age-appropriate discussion of their preferred gender expression and the gender with which they identify. Children and youth who openly identify as transgender or use other words to indicate that they are gender nonconforming may be willing and able to discuss how they express and identify their gender. Language and conventions related to discussing gender roles may vary in different cultures. Child welfare personnel should rely on visual observation and reliable third party reports of young or incompetent children's choice of interests, activities, mannerisms and clothing, as well as any disclosures by the child about the child's gender. Family members, as well as medical and mental health professionals may provide important insights.*

- 5. Child welfare workers should document the sexual orientation of every child 10 years or older who can understand and discuss these issues.**

*Commentary: Every person has a sexual orientation that exists somewhere along a continuum ranging from exclusive attraction to the same sex to exclusive attraction to the opposite sex and every variation in between. Although the development of each person's sexual orientation is unique, studies show that children become aware of sexual attraction at about age 10 (Ryan, 2003). Compared to children of earlier generations, today's young people are self-identifying as lesbian, gay or bisexual at increasingly younger ages (Ryan, 2003). Children may be aware of same-sex attraction long before they engage in any sexual behavior and sometimes before they know the language or concepts to describe their feelings. Nonheterosexual youth may use words other than lesbian, gay, or bisexual to describe their sexual orientation. Terminology may differ across cultures or geographic locations. Youth may engage in heterosexual sex even if they identify as LGB or experience same-sex attraction. The best source of information about a child's sexual orientation is the child. Thus, it is critical for workers to develop competency to skillfully and sensitively engage children and youth in these discussions.*

*Understanding a child's sexual orientation, at every stage of development, helps child welfare professionals create and implement appropriate case plans. Competent services ensure that all children are safe and supported, and that caregivers have the tools to embrace and guide all children – including lesbian, gay and bisexual children, and children who are perceived by others to be nonheterosexual. Child welfare professionals, along with families and peers, can provide critical support to young people during the development and integration of their sexual orientation. Acceptance and support bolster resilience and counteract the health risks associated with harassment and rejection. Engaging young people in supportive discussions about their sexual orientation provides an opportunity for youth to come out, a process that boosts self-esteem and decreases health risks (Wilber et al., 2006).*

- 6. Child welfare personnel should identify the most appropriate time and manner of documenting the child's sexual orientation, based upon the child's age, stage of development, cognitive abilities, personality, and readiness to discuss the issue.**

*Commentary: Children are at various stages of awareness and comfort with their sexual orientation. Some children may not have consciously experienced same-sex attraction or become aware that they are not heterosexual. Others may be aware of attraction and emotional connection to people of the same gender and may identify as lesbian, gay or bisexual, whether or not they have had any type of sexual experience. Children and youth who internally identify as lesbian, gay or bisexual may not be comfortable discussing these issues – especially before they know it is safe to do so. Cultural and religious norms also influence children's willingness to talk about sexual orientation or gender identity. Child welfare personnel should signal their openness and acceptance in order to encourage disclosure and normalize discussion of these issues. Using language which is inclusive, age appropriate, culturally accepted and understandable helps to create an environment in which children can disclose information about themselves at their own pace and on their own terms. Conveying inclusive and affirming messages in posters and other materials or images also helps to create a safe environment.*

- 7. Child welfare personnel should ensure that their understanding, and any documentation, of the child's sexual orientation and gender identity and expression remains current.**

*Commentary: Gaining an understanding of a child's gender identity and sexual orientation and the impact of these issues in the child's life cannot occur in a single encounter or interview, but necessarily occurs over time. Sexual orientation and gender identity are immutable characteristics that cannot be changed. However, awareness and integration of one's sexual orientation and gender identity is an evolving process, as is*



*one's ability and readiness to discuss these issues. Some children may enter care at a very young age, and begin understanding their sexual orientation many years later. Some young people may deny or repress their sexuality or gender nonconformity. Others may feel uncertain because of a lack of contextual information or role models – while others may know that they are gay or lesbian at early ages. A child's understanding of her sexual orientation or gender identity may also shift over time. A child who initially identifies as bisexual may ultimately determine that she is a lesbian. A child who initially demonstrates gender nonconforming behavior or expression may discover that he is gay.*

*Just as a child's understanding of her identity develops over time, her external circumstances may also change. A school or home environment that that was once stable and supportive may become unsafe for a child who openly identifies as gay, or insists upon wearing gender nonconforming clothing in middle school. Child welfare workers cannot expect to "check a box" or definitively address these issues in one meeting. The objective is not to simply repeat the same questions at preset intervals, but to stay connected, pay attention, and create opportunities to discuss all aspects of the child's experience. It is particularly important to be alert to any indication that the child is experiencing distress, lack of support or external pressure related to developing or integrating a positive gender identity and sexual orientation.*

## **B. COLLECTING INFORMATION FOR AGENCY ASSESSMENT AND PLANNING**

Like all publicly funded services, child welfare agencies are under increasing pressure to demonstrate that their programs are effective and efficient. Shrinking public dollars have increased the demand for accountability, prompting public agencies to collect data to support program assessment and planning. Child welfare agencies collect and report client data to track demographic trends, identify gaps in programming, assess the effectiveness of specific interventions and programs, and measure progress toward system objectives. (Child Welfare League of America and Juvenile Law Center, 2008) Client data can also be used to measure the outcomes of targeted populations of children and youth.

A growing body of research has demonstrated that lesbian, gay, bisexual and transgender youth are at increased risk for homelessness (Rosario, Schrimshaw, & Hunter, 2012) (Quintana, 2010), substance abuse, suicide, school bullying (Gay, Lesbian, and Straight Education Network [GLSEN], 2010), and family rejection (Willoughby, Doty, & Malik, 2010). Informed by these findings, the child welfare profession is obliged to monitor and protect the safety and well-being of children who may face enhanced risks based upon their actual or perceived sexual orientation or

gender identity or expression. In order to meet this obligation, child welfare personnel must collect data – on an individual and aggregate level. Simply put, the agency cannot determine whether it is meeting its obligation to LGBT youth unless it makes an authentic effort to identify the sexual orientation and gender identity of the children in its care. In the absence of such data, child welfare agencies cannot accurately assess their services to LGBT children or youth, track the outcomes of these young people, or create services that respond to the needs of this population.

Fortunately, the child welfare profession can follow the lead of other public agencies that are successfully collecting this information. For example, sexual orientation questions have been included on school-based surveys of adolescents since the mid 1980's through versions of the Youth Risk Behavioral Survey. Researchers have drawn from the experience of these surveys to distill best practices for asking questions related to sexual orientation and gender identity and expression (Badgett & Goldberg 2009). Researchers have also successfully surveyed LGBT youth in the juvenile justice system, significantly increasing the profession's understanding of the disproportionate numbers of LGBT youth in detention, as well as their experiences and offenses (Irvine, 2010).

- 1. Child welfare agencies should include sexual orientation and gender identity in the demographic data collected for each child.**

*Commentary: Including data fields for sexual orientation, gender identity and gender expression is important for several reasons. Absent this data, agencies can only guess about the prevalence of LGBT youth in their care. Client specific data is also necessary to track permanency, well-being and safety outcomes for LGBT youth, and the extent to which these outcomes differ from those of heterosexual and gender conforming children and youth. The data is essential to assessing the agency's success in recruiting and supporting affirming, competent caregivers.*

- 2. Child welfare agencies should provide all youth in protective custody with the opportunity to complete an annual confidential survey evaluating the services they have received.**

*Commentary: Supplementing intake questions with a self-administered survey increases the validity of the agency's data by providing youth with an opportunity to identify themselves confidentially. Anonymous surveys permit youth to be more candid, increasing the reliability of the data and potentially providing more accurate data on the quality of services and the needs of youth. In their report on "Best Practices for Asking Questions about Sexual Orientation on Surveys," Badgett and Goldberg (2009) provide*

*several recommendations for maximizing the accuracy and validity of survey data. Survey drafters should give careful consideration to the framing of the questions used to elicit the data, as well as their placement on the survey. Questions designed to elicit data on sexual orientation should address one or more dimensions, such as self-identification, sexual behavior, sexual attraction or romantic relationships. These questions should not immediately precede or follow questions about sexual abuse or assault. Questions eliciting information about gender identity or expression should define the relevant terms in simple, direct language. In general, the language used in the survey should be “culturally appropriate, relevant, acceptable, and compatible with the respondent’s understanding of the construct that the question is intended to measure” (Badgett & Goldberg, 1998).*

### **C. RECORDING INFORMATION**

Clinical education and training emphasizes the critical importance of accurate, timely case notes. The case file documents all aspects of the child welfare worker’s investigation, assessment and case plan. Caseworkers must capture each child’s story and summarize the actions undertaken by the agency to strengthen the family and keep the child safe. The importance of this function cannot be overstated. Documentation is an important tool for improving outcomes for children, and protecting both children and caseworkers. Lack of timely and accurate documentation can undermine the effectiveness of all other priorities and tasks undertaken by the caseworker (Stephenson-Valcourt, 2009-2010).

The case file provides a comprehensive record for the current caseworker and a case history for subsequent workers. Information from the case file is used to develop court reports and recommendations. Generally, clients are also entitled to copies of all or part of their case files when they reach the age of majority. Caseworkers should anticipate the multiple functions of a case file when making the inevitable judgment calls about what to include and what to exclude.

- 1. Child welfare personnel should record relevant and reliable information related to the child’s sexual orientation, gender expression or gender identity in the case file.**

*Commentary: As part of the process of documenting the information they have gathered through interviews and observations, child welfare personnel should record information related to the child’s sexual orientation, gender identity and gender expression. Workers*

*should carefully identify the source of the information in the case file, and limit the information recorded to that which is relevant to furthering the goals of permanence, well-being and safety. For example, while it is important to document that a young person in care has recently disclosed that he is gay, it is not necessary to divulge every aspect of his personal life and relationships. It may be most important to document efforts to ensure that the youth is in a safe and supportive environment at home, at school and in the community. Consistent with sound social work practice and professional guidelines, child welfare agencies should adopt and implement policies that protect the confidentiality of information in the case file.*

- 2. Child welfare personnel should record information related to a child's sexual orientation or gender identity or expression in a court report only when the information is directly relevant to the issue to be decided by the court, the worker preparing the court report has discussed the matter with the child and obtained his or her authorization, and the worker has taken precautions to minimize unnecessary disclosure of the information to third parties.**

*Commentary: There may be circumstances under which it is essential for the court to understand how the child's sexual orientation or gender identity or expression is related to the issue to be decided at a hearing or other proceeding. For example, in a hearing at which a change in placement is considered, the court may need to understand the need for a safe and accepting caregiver. However, court proceedings are often attended by many individuals – including parents, siblings, caretakers, providers, guardians ad litem and attorneys. These individuals may or may not be aware of the child's sexual orientation or gender identity. Moreover, despite policies and statutes that require the confidentiality of court reports, their contents are often disclosed outside of court proceedings. Thus, workers should exercise caution and should only include this information in court reports when they can articulate a specific rationale for doing so, and have worked with the child to minimize any potential negative ramifications that may stem from disclosure. Agency policy may provide that, even when disclosure to the court is necessary, workers must prepare a supplemental report containing the information and request an in camera discussion of the matter and/or a protective order prohibiting re-disclosure of the information.*

#### **D. DISCLOSING INFORMATION**

Children served by the child welfare system interact with many other systems and individuals, including service providers, courts, schools, caregivers and others. Disclosing personally identifiable information across these systems may help children achieve better safety, permanency and well-being. With appropriate safeguards, sharing information can reduce duplication of effort and enhance coordination of services, all toward the goal of improving outcomes for children. Child welfare agencies may share information internally, with other agency employees, without violating confidentiality provisions. However, information contained in child welfare agency files is protected by federal and state confidentiality provisions, such as the Social Security Act of 1935, and generally may not be disclosed outside the agency without proper consent or a court order. Child welfare agencies must carefully reconcile these potentially countervailing interests in order to appropriately serve the children in their care (CWLA & Juvenile Law Center, 2008).

- 1. Child welfare professionals should regard children as the principle owners of information related to their sexual orientation and gender identity and expression, and should actively involve them in decisions related to any disclosure of this information.**

*Commentary: The consequences that flow from disclosure of personal information are primarily borne by the individual who is the subject of the information. For this reason, ethical and legal standards generally require the subject's consent or authorization prior to disclosure of confidential or sensitive information.*

*Young people are uniquely qualified to anticipate the positive and negative consequences that may result from disclosure of information related to their sexual orientation or gender identity and expression. At a minimum, child welfare professionals should engage youth in a discussion prior to disclosure in which the young people have an opportunity to ask questions, assert their wishes and problem-solve to minimize potential negative consequences or amend the information to be disclosed. This discussion also provides an opportunity for the professional to clearly identify the objective of the contemplated disclosure. Meaningful engagement with young people conveys respect, and builds trust.*

*Child welfare professionals should obtain the child's consent prior to disclosure whenever possible. In rare circumstances, child welfare professionals may determine that they are legally or ethically obligated to disclose this information against the child's wishes. For example, the child's sexual orientation may be directly tied to abuse or self-harm that the professional is mandated to report. In this situation, the professional should carefully explain the reason for disclosure, and should limit the disclosure to that information necessary to protect the child's safety and well-being.*

**2. Child welfare professionals should identify and document a specific rationale related to the child's interests for every decision to disclose information related to the child's sexual orientation or gender identity.**

*Commentary: In an ideal world, children and youth would feel secure in all aspects of their identities, and coming out as gay, lesbian, bisexual or transgender would engender support and affirmation. In such a world, information related to a child's sexual orientation or gender identity might not warrant such stringent protections. Unfortunately, we are far from achieving these aspirational conditions. In fact, unwarranted disclosure of this information may subject a child to a range of physical and emotional harm. Under these circumstances, information related to a child's sexual orientation or gender identity must be considered both private and sensitive.*

*At the same time, there are circumstances under which disclosure of this information may be necessary to promote a child's welfare. Child welfare professionals should be thoughtful and cautious about any decision to disclose this information in verbal, written or digital communications. Prior to any disclosure, professionals should identify the rationale for disclosure, specifically ascertaining how the child will benefit from disclosure. Professionals should document this decision and the rationale in the case file.*

*Disclosure of information increases the likelihood that it will be re-disclosed beyond the intended recipient. While the nature of this risk can differ, all modes of disclosure (verbal, written, and digital) necessarily involve risk of re-disclosure and potential negative collateral consequences. Child welfare professionals should limit disclosure of the information to recipients who need it to support or serve the child. Professionals should also consider the risk of re-disclosure and take measures to minimize this risk.*

**3. Policies governing the management of information related to the sexual orientation or gender identity of children should be consistent with state and federal confidentiality laws, as well as agency policy and rules of court.**

*Commentary: State and federal laws govern the management of client information held by public child welfare agencies, including the circumstances under which personally identifiable information may be shared. Different laws govern what information may be shared with whom, often depending upon the original source of the information. For example, information obtained from health records is governed by different laws than information obtained from education or mental health records.*

*Confidentiality laws may differ from relevant professional standards. For example, the regulations governing the Health Insurance Portability and Accountability Act (HIPAA) of 1996 permit disclosure of health information for routine purposes of treatment, payment or health care operations without specific consent of the client. This regulation conflicts with the Privacy and Confidentiality standards of the NASW Code of Ethics, which provide, "Social workers may disclose confidential information when appropriate with valid consent from a client or person legally authorized to consent on behalf of a client" (Polowy, Morgan, Khan, & Gorenberg, 1997). The HIPAA provision authorizes disclosure for some purposes without consent, whereas the NASW provision requires consent for any disclosure.*

*Child welfare agencies should consult their legal counsel to ensure that agency policies comply with all relevant legal standards and requirements.*

**4. Child welfare agencies should consider adopting additional measures to prevent inappropriate or harmful disclosure of information related to children's sexual orientation, gender identity or gender expression.**

*Commentary: Because of the unique sensitivity of this information, child welfare agencies may determine that additional layers of protection are appropriate. Agencies may decide to add one or more of the following protections: a requirement for supervisory approval prior to disclosure, a requirement that child welfare personnel obtain a signed consent prior to disclosure, or a requirement that child welfare personnel obtain a court order authorizing disclosure and/or prohibiting re-disclosure of the*

*information. Child welfare agencies may also consider entering into a Memorandum of Understanding with local child welfare system stakeholders that specifies the limited circumstances under which information related to children's sexual orientation, gender identity or gender expression may be disclosed.*

#### **E. INSTITUTIONALIZING PRACTICE**

Competent child welfare practice is informed by a constantly evolving body of research and accepted best practice. Child welfare agencies also experience frequent turnover of personnel. Combined with daily workload challenges, competing reform initiatives and shrinking budgets, these realities threaten the sustainability of new policies and procedures.

Meaningful integration of these guidelines will require several key structural elements. At the outset, agency leadership is crucial. The Director of the child welfare agency, and other key managers, must fully understand and embrace these guidelines. Leadership is essential to conveying the importance of the guidelines and their connection to the agency's mission and values, as well as responding to any initial resistance. Agency management must be visibly involved in the introduction of the guidelines, as well as their implementation over time.

Child welfare agencies must also commit sufficient resources to ensure the viability and sustainability of the guidelines in daily practice. At the outset, resources are necessary to adequately communicate the change in policy to all of the important internal and external stakeholders, including agency managers, supervisors, line workers, families, children, judges and attorneys. Agencies should ensure that all personnel receive training and ongoing supervision geared toward consistent implementation of the policy in daily practice. Agencies must also build internal competence across all levels of the organization to decrease the agency's dependence on outside consultants and resources.



- 1. Agency policies, practices, training and supervision related to children’s sexual orientation, gender identity and gender expression should be explicitly grounded in credible social science research and the foundational objectives of safety, permanency and well-being.**

*Commentary: Policies and practices related to sexual orientation, gender identity and gender expression often engender controversy due to their association with entrenched religious and political points of view. Agencies cannot expect to prevent resistance or debate, and should instead invite constructive engagement as an opportunity to convey a consistent and thoughtful rationale. Internal and external messaging related to these issues must emphasize their connection to the child welfare objectives of safety, permanency and well-being. All communications should cite peer reviewed, published social science research, as well as emerging professional standards, that support the objectives and content of the policies and training.*

- 2. Child welfare agencies should have written policies and procedures governing the management of information related to the sexual orientation, gender identity and gender expression of children and youth under their care.**

*Commentary: Written policies and procedures provide the roadmap for consistent and competent practice, as well as professional accountability. Thoughtful development and revision of agency policy provides an opportunity to engage and educate agency employees and external stakeholders about the agency’s mission and values, and permits personnel and providers to reflect on their own experiences and points of view. Development of written policy should be as inclusive as practicable to incorporate the perspectives of important child welfare stakeholders, including managers, supervisors, line workers, court officers, families, children, guardians ad litem, judges and attorneys. Policies should be specific enough to provide meaningful guidance, and general enough to permit trained professionals to exercise reasoned judgment and discretion. When questions arise about the management of information related to children’s sexual orientation, gender identity or gender expression, professionals should refer to written policy for guidance. Agency policy should also form the backbone of all training and supervision. Child welfare agencies should institutionalize the practice of regular review and revisions of policies to ensure that they remain consistent with emerging research and understanding of children and families.*

**3. Child welfare agencies should provide pre-service and ongoing training to all child welfare personnel regarding the agency's policies governing the management of information related to children's sexual orientation, gender identity and gender expression.**

*Commentary: Under Title IV-E of the Social Security Act (1935), the federal government underwrites 75% of the cost of training employees of state and local child welfare agencies, as well as foster and adoptive parents and child care institutions staff. The Children's Bureau has clarified that matching federal funds are available to support training that addresses "How to assess and serve the needs of children without bias and ensure their safety, including how to parent youth struggling with issues related to sexual orientation, gender identity and/or gender expression" (Children's Bureau, 2012). Child welfare agencies should include these topics in their existing training programs, including training of child welfare workers on the practice issues covered by these guidelines. The training should be tailored to respond to the agency's current level of competence and familiarity with serving children whose actual or perceived sexual orientation is other than heterosexual, and children whose gender identity or expression is incongruent with their biological sex or with cultural expectations related to gender expression. A series of trainings dedicated to implementation of the guidelines may be appropriate to introduce new policies and procedures. Agencies may also determine that initial trainings are best delivered by outside consultants, or some combination of internal and external trainers. As personnel become more familiar with the guidelines and agencies more fully integrate these practices, it is important to build internal capacity to conduct the training. Integrating these issues into broader training programs may also assist in institutionalizing these guidelines.*

**4. Child welfare agencies should ensure that all staff receive ongoing supervision and technical assistance on the management of information related to the sexual orientation, gender identity and gender expression of children and youth under the agency's care.**


*Commentary: Particularly in the early stages of implementation, child welfare workers will likely have questions about how to apply the guidelines in specific situations. Agencies must provide some accessible mechanism for exploring solutions to such questions. Options include assignment of a specific person or persons to whom such questions are directed, a means of convening a group of personnel to "staff" a specific case to brainstorm potential solutions, or a contract with an external expert to provide coaching and technical assistance. Although the number of questions is likely to diminish over time, it is still a good practice to ensure some means of providing guidance in*

*individual cases. In addition to case specific technical assistance, agencies should ensure that supervisors regularly monitor practice through the supervision process. This may involve case file reviews to ensure compliance with the guidelines, or simply inviting questions about implementation.*

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### View Completed EO 12866 Meeting

RIN [0970-AC72](#)

Title Adoption and Foster Care Analysis and Reporting System

Agency/Subagency 0970-HHS/ACF

Stage of Rulemaking Final Rule Stage

Meeting Date/Time 04/23/2020 01:00 PM

Requestor National Center for Transgender Equality Requestor's Name Harper Jean Tobin

#### Documents

[List of Documents](#)

[NCTE OIRA memorandum - AFCARS Rule 4.23.20](#)

#### Attendees

[List of Attendees](#)

[Participant](#)

- Debbie Ojeda-Leitner - NCTE
- Josh Brammer - OMB/OIRA
- Brenda Aguilar - OMB/OIRA
- Libby Ashley - OMB/O RA
- Natasha Wright - HHS/ACF
- Scott Logan - HHS/ACF
- Joel Bach - HHS/ACF
- Ms. Harper Jean Tobin - National Center for Transgender Equality

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**Comments on Health and Human Services Proposed Rule: Adoption and Foster Care  
Analysis and Reporting System  
RIN: 0970-AC72**

April 23, 2020

The National Center for Transgender Equality (NCTE) submits these comments on the above rule (RIN 0970-AC72) to address developments since the comment period on the proposed rule, including recently published research and the unprecedented COVID-19 pandemic.

**New Research Confirms: Eliminating Data Elements Related to Foster Youth’s Sexual Orientation Would Negatively Impact the Safety, Permanency, and Well-being of Children.**

The AFCARS data elements relating to foster youth’s sexual orientation and gender identity are critical to ensuring the safety, permanency, and well-being of LGBTQ youth in the child welfare system.

Existing research and ACF itself recognize that LGBTQ youth are disproportionately represented in out-of-home care, and experience poor treatment at higher rates.<sup>1</sup> New research from Chapin Hall at the University of Chicago, based on multiple data sources, confirms that homeless youth “who had been in foster care were... more likely to identify as LGBTQ.”<sup>2</sup> The journal of the Child Welfare League of America, *Child Welfare*, dedicated an entire 2018 issue to the need for data on the sexual orientation and gender identity (SOGI) of youth in the child welfare system, explaining that serving “an especially vulnerable group of children... who have not, in general, [been] served well” requires “infus[ing] the findings of data into our efforts.”<sup>3</sup> These AFCARS data elements are critical to meet that widely recognized need.

Recent research continues to confirm the particular vulnerability of LGBTQ youth. Several new studies published in the past year find **disproportionately high levels of suicidal ideation and attempts**. A new analysis of twenty years of data from the (Youth Risk Behavior Survey) found that, despite a general decline in suicidal ideation among both sexual minority and heterosexual

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<sup>1</sup> See Administration for Children and Families, ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> and <https://cssp.org/wp-content/uploads/2019/08/Policy-AdvancingHealthyOutcomes-Website-1.pdf>: “Children and youth who identify as lesbian, gay, bisexual, transgender, or queer/questioning (LGBTQ+) experience both disproportionate involvement with child welfare, and once involved, disparate outcomes including placement instability and longer stays in foster care.”

<sup>2</sup> Dworsky, A., Gitlow, E., Horwitz, B., & Samuels, G.M. (2019). *Missed opportunities: Pathways from foster care to youth homelessness in America*. Chicago, IL: Chapin Hall at the University of Chicago.  
[https://www.chapinhall.org/wp-content/uploads/Chapin-Hall\\_VoYC\\_Child-Welfare-Brief\\_2019-FINAL.pdf](https://www.chapinhall.org/wp-content/uploads/Chapin-Hall_VoYC_Child-Welfare-Brief_2019-FINAL.pdf)

<sup>3</sup> Feild, T. (2018). “It is Time to Start Counting Kids Who are LGBTQ in Child Welfare.” *Child Welfare*, 96(1), XIII-XX.  
<https://search.proquest.com/openview/7a2f876120268afc7c3931ad4337a109/1?pq-origsite=gscholar&cbl=40853>

youth in the past two decades, it “remained consistently elevated”<sup>4</sup> among sexual minority youth compared to their peers. A another new analysis of YRBS data found that disparities extend to actual suicidal attempts: “disparities in suicide attempts persist for sexual minority youth as well.”<sup>5</sup>

New analyses of YRBS data also confirm that “sexual and gender minority (SGM) youth are **more likely to use alcohol** than their heterosexual cisgender peers.”<sup>6</sup> And while their mental health and substance abuse differs, LGBTQ foster youth of color are in an even more precarious situation than their white counterparts, according to a literature review published in February 2020. Here, the authors concluded that the precarity of LGBTQ foster youth stems from their “**increased risk for social isolation and family rejection**,”<sup>7</sup> funneling them into the child welfare system, and possibly accounting for their disproportionate representation there. “This is particularly true in African American communities,” the authors concluded, “where there is an increased lack of social support and acceptance for LGBTQ youth from their biological families, communities, churches, schools and healthcare systems.”<sup>8</sup>

A March 2020 paper from the Annie E. Casey Foundation and the the National Implementation Research Network on “Developing an Evidence-Based Child Welfare Preventive Practice Model” recommends “**targeted services to address risk and protective factors and evidence-based programs that meet the specific goals and needs of families**.”<sup>9</sup> The authors of the recent new research on LGBTQ suicide attempt disparities advise applying this principle “developing and implementing approaches” specific to sexual minority youth.<sup>10</sup> Similarly a recent paper from the Center for the Study of Social Policy (CSSP) points out that **LGBTQ youth often are placed in “inappropriate placements in congregate care settings**,” and that “systems are not always equipped to identify or address the feelings of rejection” these youth experience, which are then “pathologized.” This new paper also states:

<sup>4</sup> Richard T. Liu, Rachel F.L. Walsh, Ana E. Sheehan, Shayna M. Cheek and Sarina M. Carter. “Suicidal Ideation and Behavior Among Sexual Minority and Heterosexual Youth: 1995–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020)

<https://pediatrics.aappublications.org/content/145/3/e20192221>

<sup>5</sup> Julia Raifman, Brittany M. Charlton... Margaret McConnell “Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20191658>

<sup>6</sup> Watson, R.J., Fish, J.N., Poteat, V.P. et al. “Sexual and Gender Minority Youth Alcohol Use: Within-Group Differences in Associations with Internalized Stigma and Victimization.” *Journal of Youth and Adolescence* 48, 2403–2417 (2019). <https://link.springer.com/article/10.1007/s10964-019-01130-y>

<sup>7</sup> Jamal Hailey, Whitney Burton & Joyell Arscott “We Are Family: Chosen and Created Families as a Protective Factor Against Racialized Trauma and Anti-LGBTQ Oppression Among African American Sexual and Gender Minority Youth” *Journal of GLBT Family Studies*. Vol. 16(2), 176-191 (2020) <https://www.tandfonline.com/doi/full/10.1080/1550428X.2020.1724133>

<sup>8</sup> Jamal Hailey, Whitney Burton & Joyell Arscott “We Are Family: Chosen and Created Families as a Protective Factor Against Racialized Trauma and Anti-LGBTQ Oppression Among African American Sexual and Gender Minority Youth” *Journal of GLBT Family Studies* Vol. 16(2), 176-191(2020) <https://www.tandfonline.com/doi/full/10.1080/1550428X.2020.1724133>

<sup>9</sup> Annie E. Casey Foundation *Putting Family First: Developing an Evidence-Based Child Welfare Preventive Practice Model* (March 20, 2020) <https://www.aecf.org/resources/putting-family-first/>

<sup>10</sup> Julia Raifman, Brittany M. Charlton et al. “Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20191658>



Current research shows that **LGBTQ+ youth are more likely to be removed from their homes due to conflicts with their caregivers.** Given these trends, states must assess gaps in their current service continuum and implement prevention services to meet these youth's needs. States should assess which evidence-based programs have been found to be effective to address these needs and, where there is a gap, **states should invest in building the evidence for promising and innovative approaches** to ensure solutions have a strong fit with the experiences of LGBTQ+ youth and families.<sup>11</sup>

As another recent study concludes, developing targeted approaches with a strong fit includes “the importance of culturally responsible treatment delivery.”<sup>12</sup> This includes ensuring foster parents understand and are prepared to help children address the unique challenges they face. As a policy paper from coalition of child welfare and child health experts states, “A major cause of premature placement disruption is the foster parent’s dissatisfaction, associated with a lack of preparation for the type and severity of problems presented by children in their care, and their lack of ability to effectively manage those challenges.”<sup>13</sup>

Given the particular needs of LGBTQ foster youth, it is no surprise that they experience greater placement instability, and thus, on average, more placements than their heterosexual counterparts. A recent literature review describes such placement instability as “a devastating experience” and finds that **“higher levels of placement stability have been linked with less positive mental health outcomes and increased rates of emergency room admissions.”**<sup>14</sup> A recent study based on AFCARS and other data sources also found that placement instability has **“a positive relationship with risk of homelessness.”**<sup>15</sup>

Identifying those States and those practices that are serving this vulnerable population well is only possible if we have national data to make State-by-State comparisons. By contrast, removing sexual orientation data points from AFCARS will continue to obscure and hide the experiences and needs of this vulnerable population, making it impossible to track any systemic improvements and draw accurate conclusions about effective treatments.

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<sup>11</sup> Alexandra Citrin and Megan “Martin Advancing Healthy Outcomes “Eight Ways to Promote the Health and Well-Being of LGBTQ+ Youth Involved with Child Welfare through FFPSA” *Center for the Study of Social Policy* (August 2019) <https://cssp.org/wp-content/uploads/2019/08/Policy-AdvancingHealthyOutcomes-Website-1.pdf>

<sup>12</sup> Ayanda Chakawa, William Frye, Jamie Travis and Elizabeth Brestan-Knight. “Parent-child interaction therapy: Tailoring treatment to meet the sociocultural needs of an adoptive foster child and family” *Journal of Family Social Work* Vol. 23(1) (2020) <https://www.tandfonline.com/doi/full/10.1080/10522158.2019.1681336>

<sup>13</sup> *CHAMPSPolicy Playbook*, 2nd ed. (January 2019) <https://playbook.fosteringchamps.org/wp-content/uploads/2019/01/champs-playbook.pdf>

<sup>14</sup> Donna F. Ossorio, Jackson de Carvalho “Foster Care Placement and the Impact of Placement Instability” *International Journal of Humanities and Social Science Review* Vol. 5(4) (December 2019) <http://www.ijhssrnet.com/uploads/volumes/1577287331.pdf>

<sup>15</sup> Sneddon, D. *Community-level and Individual-level Predictors of Variation in Rates of Homelessness among Youth Transitioning Out of Foster Care* (Doctoral dissertation, 2019) <https://archive.hshsl.umaryland.edu/handle/10713/11612>.

**New Research Confirms: Excluding Data Elements Related to Foster and Adoptive Parents' Sexual Orientation Would Negatively Impact the Safety, Permanency, and Well-being of Children.**

The need to recruit as many parents into the system as possible remains strong: every year, thousands of children age out of the system without parents, and congregate care use remains prevalent. Simply put, there are not enough families to welcome foster youth, and adopt them if they are unable to return to their families of origin.

LGBTQ parents are extremely willing foster and adoptive parents: same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.<sup>16</sup> Meanwhile, almost half of millennial LGBTQ individuals are planning on having a family. More than 40% are considering foster care and adoption to do so.<sup>17</sup> But despite significant interest in foster care and adoptions from the LGBTQ community, new research based on interviews with LGBTQ prospective parents finds that they continue to: “face multiple challenges to parenthood because of barriers such as discriminatory legislation and policies” and denial of services.<sup>18</sup>

This study concluded that **anti-LGBTQ “attitudes and discrimination can lead to debilitating and enduring harm upon the economic, emotional, and relational well-being of growing LGBTQ+ families.”**<sup>19</sup> Another new study of 337 LGBTQ adults in the United States who reported delays or disruptions in the adoption or foster care process found that anti-LGBTQ attitudes and practices **discourage prospective parents from entering the system, or prevent and delay them from actually parenting children.**<sup>20</sup> In particular, they concluded that “placement delays and disruptions discourage LGBTQ people from adopting.”<sup>21</sup>

Collecting basic demographic data about these parents would help States effectively address barriers to recruiting them, first and foremost by sending a positive signal to these parents by giving them confidence that they will not be discriminated against. In the health care field, a recent paper based on interviews with health care administrators found growing agreement that routinely collecting SOGI data in fact makes these minorities feel more welcome and seen, as

<sup>16</sup> Shoshana K. Goldberg & Kerith J. Conron, How Many Same-Sex couples are Raising Children?, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>

<sup>17</sup> Family Equality (2019) LGBTQ Family Building Survey. <https://www.familyequality.org/fbs> (April 21, 2019) <https://www.familyequality.org/wp-content/uploads/2019/02/LGBTQ-Family-Building-Study-Summary-1.pdf>

<sup>18</sup> Levitt, H. M., Schuyler, S. W., Chickerella, R., Elber, A., White, L., Troeger, R. L., ... & Collins, K. M. (2020). “How discrimination in adoptive, foster, and medical systems harms LGBTQ+ families: Research on the experiences of prospective parents.” *Journal of Gay & Lesbian Social Services*, 1-22. <https://www.tandfonline.com/doi/abs/10.1080/10538720.2020.1728461>

<sup>19</sup> *Ibid.* “Findings indicate that heteronormative attitudes and discrimination can lead to debilitating and enduring harm upon the economic, emotional, and relational well-being of growing LGBTQ+ families.”

<sup>20</sup> Abbie E. Goldberg, Reihonna L. Frost, Liam Miranda, Ellen Kahn “LGBTQ individuals' experiences with delays and disruptions in the foster and adoption process.” *Children and Youth Services Review*, Vol. 106 (2019), <https://www.sciencedirect.com/science/article/pii/S0190740919305791>.

<sup>21</sup> *Ibid.*

well as allowing them to provide better care for these patients.<sup>22</sup> Given the common experiences of discrimination in both health care and child welfare services, there is strong reason to suppose that collecting data on the sexual orientation of foster and adoption parents would likewise have a dual benefit. First, the data would allow child welfare providers, like health care providers, to better serve these parents. As with LGBTQ foster youth, only thorough data allows targeted responses. Second, these parents would feel more welcome and experience less discrimination, if data collection is coupled with staff cultural competency training as health care providers suggest.

Given the need for more parents in foster care and adoption remains strong, the child welfare system stands to benefit from doing everything it can to welcome as many parents into the system as possible. Any exclusion of qualified, willing, and able parents constitutes a detriment to the safety, permanency, and well-being of the children these parents could care for. To welcome more LGBTQ parents, discrimination and stigma against them, and their particular needs, must be addressed. The experience of health care providers sets a clear precedent: effective treatment started with thorough data collection. National AFCARS data will be important for research affecting the safety, permanency, and well-being of children. A better understanding of, for example, how often LGBTQ parents foster disabled children and sibling groups, will allow the child welfare system to better serve children in need.

#### **New Research Confirms: HHS Should Refine Sex Data Elements to Collect Data on Transgender Youth and Parents.**

Sexual orientation is not the only data AFCARS should collect to serve children in the child welfare system. An estimated 1.4 million US adults are transgender, and as hundreds of youths of youth.

Recent research in *Children and Youth Services Review* identifies specific barriers that transgender adults face in adopting and fostering children. The authors conclude that “Trans adults **report more fears about discrimination than cisgender sexual minorities**,” whilst also being “**more open to older children and trans children than cisgender sexual minorities**.” Hence, the authors suggest that, “Trans parents could be a unique asset to children involved in child welfare who are most vulnerable.”<sup>23</sup> Transgender parents thus have even greater fears of discrimination and could serve particularly vulnerable children.

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<sup>22</sup> The Fenway Institute and NORC “Helping Your Organization Collect Sexual Orientation and Gender Identity Data” *The Fenway Institute* 2019  
[https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOIGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_HelpingYourOrganization.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOIGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf).

<sup>23</sup> Abbie E. Goldberg, Samantha Tornello, Rachel Farr, JuliAnna Z. Smith, Liam Miranda. “Barriers to adoption and foster care and openness to child characteristics among transgender adults.” *Children and Youth Services Review*, Vol. 109 (2020)  
<https://www.sciencedirect.com/science/article/pii/S0190740919311144>.

Transgender youth also face extraordinary barriers that can be even greater than those facing cisgender sexual minority youth. A recent study in the journal *Pediatrics* including 1,148 transgender adolescents found that this group had **“higher odds of all suicidality outcomes than their cisgender peers.”**<sup>24</sup>

By refining sex data elements to collect data on both sex assigned at birth and gender identity, AFCARS data would enable the Children’s Bureau, States, Tribes, and all child welfare providers to better serve transgender foster youth, and to more effectively recruit and support transgender parents. Doing so will improve the safety, permanency, and well-being of children insofar as it would improve the safety, permanency, and well-being of transgender youth in care, and open up more homes for all children. Only comprehensive data through AFCARS can provide the necessary data to properly evaluate the needs and treatments of transgender youth and parents in the child welfare system.

**New Data Confirms: Data Elements Related to Educational Stability Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.**

Recent research provides more evidence for the conclusion that education instability is detrimental to the well-being of foster youth. Thus, one recent study found that “connection with a caring adult, enrollment in school, and employment were inversely related to risk of homelessness.”<sup>25</sup> That is, **education stability decreases the likelihood of homelessness after transitioning out of foster care.** This is congruent with prior research underscoring “the detrimental effects of co-occurring placement changes and school moves in case planning for students in foster care.”<sup>26</sup>

Without this data, the Children’s Bureau, States, Tribes, and child welfare providers will be hampered in their ability to accurately track the trends and analyze the repercussions of educational instability. Given what existing research has found, it is in children’s best interest that systems continue to develop and improve treatments aimed at maximizing educational and placement stability. Doing so requires AFCARS to collect thorough and accurate data concerning the educational and placement stability of children in care.

**New Data Confirms: The Data Elements Related to Health Assessments Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.**

<sup>24</sup> Brian C. Thoma, Rachel H. Salk, Sophia Choukas-Bradley, Tina R. Goldstein, Michele D. Levine, Michael P. Marshal, “Suicidality Disparities Between Transgender and Cisgender Adolescents.” *Pediatrics* Nov 2019, 144 (5) <https://pediatrics.aappublications.org/content/144/5/e20191183>.

<sup>25</sup> Sneddon, D. *Community-level and Individual-level Predictors of Variation in Rates of Homelessness among Youth Transitioning Out of Foster Care* (Doctoral dissertation, 2019) <https://archive.hshsl.umaryland.edu/handle/10713/11612>.

<sup>26</sup> Clemens, E. V., Klopfenstein, K., Lalonde, T. L., & Tis, M. (2018). “The effects of placement and school stability on academic growth trajectories of students in foster care.” *Children and Youth Services Review*, 87, 86-94. <https://files.eric.ed.gov/fulltext/ED593232.pdf>.

According to the National Conference of State Legislatures, **mental health is a critical issue in foster care.**<sup>27</sup> Eighty percent of foster youth have mental health issues, and they fare worse in everything from substance and alcohol abuse, to post traumatic stress disorder. Given the dire mental health needs of foster youth, timely health assessments are absolutely critical to their safety and well-being. Without data on whether such health assessments are being conducted, however, we simply do not know the extent to which this need is being met. Nor do we know how different states compare in addressing this need.

This is especially worrying for LGBTQ foster youth, since, as proven by research cited above, they fare even worse in amongst other things, substance abuse and suicidal ideation and attempts. Other health disparities, including mental health, also remain.<sup>28</sup> Thus, it is incredibly important to the well-being of foster youth that AFCARS continues to collect data both on the provision of health assessments, and on sexual orientation and gender identity of children in care. Such data would allow the child welfare system to confidently draw conclusions about the particular needs and experiences of children in care, develop appropriate and targeted treatments to address these needs and experiences, and evaluate the relative success of such treatments.

### **New Research and Expert Recommendations Confirms: Collecting LGBTQ Demographic Data Is Not Overly Burdensome.**

New research and expert recommendations also confirm that the collection of SOGI data is not burdensome. In June 2019, The Fenway Institute and NORC at the University of Chicago released three briefs on the collection of SOGI data in health care settings.<sup>29</sup> According to their research, based on interviews with health care administrators:

**SOGI questions are widely understood and accepted by diverse patient populations from across the country, and that that providers often overestimate the number of patients who will be uncomfortable or offended by SOGI questions.** For example, a survey of 1,516 patients and 429 providers found that while approximately 80% of

<sup>27</sup> National Conference of State Legislatures *Mental Health and Foster Care* (Nov 1, 2019) <https://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx>.

<sup>28</sup> Emma C. Potter and Charlotte J. Patterson "Gay, and Bisexual Adults: The Burden of Health Disparities in 2016 Behavioral Risk Factor Surveillance System Data" *LGBT Health*. Oct 2019. p. 357-369. <https://www.liebertpub.com/doi/10.1089/lgbt.2019.0013>.

<sup>29</sup> The Fenway Institute and NORC, "Helping Your Organization Collect Sexual Orientation and Gender Identity Data!" (June 2019), [https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_HelpingYourOrganization.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf); The Fenway Institute and NORC, "Eight Tips for Building Coalition Support and Moving SOGI Data Collection Forward in Your Organization" (June 2019),

[https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_EightTips.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_EightTips.pdf); The Fenway Institute and NORC, "The Nuts and Bolts of SOGI Data Implementation: A Troubleshooting Toolkit" (June 2019), [https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_NutsAndBolts.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_NutsAndBolts.pdf).

providers thought that patients would refuse to answer SO questions, only 10% of patients said that they would refuse to answer.<sup>30</sup>

Those findings and recommendations are in line with previous research on data collection in health care, which found that “patients feel routine SO/GI collection allows for recognition of individual identity and improved therapeutic relationships in the ED”.<sup>31</sup> One major study found that: “Collection of SOGI data as a part of the routine clinical patient intake process is not distressing to 97 percent of patients who are heterosexual, cisgender, and older than 50 years.”<sup>32</sup> Other research “found a high response rate to questions about sexual orientation and gender identity” and also argues that such “data can help organizations identify health inequities related to sexual orientation and gender identity.”<sup>33</sup>

Thus, there is overwhelming evidence that collection of SOGI data is possible, and that those who are surveyed do not find the collection of such data burdensome.

### **New Research Confirms: Collecting the Data Elements in the Final Rule will Decrease Costs in the Child Welfare System by Improving Outcomes for LGBTQ Youth.**

High placement instability among LGBTQ youth means more time spent in congregate care. Congregate care, of course, is less optimal for children and more expensive to the child welfare system than stable foster care placements or adoption. A study released in 2020 found that “residential treatment and group home placements and services were also associated with having high costs.”<sup>34</sup> Meanwhile another study analyzed how some states are currently using therapeutic foster care, suggesting that this model “is more cost-effective than congregate care.”<sup>35</sup>

Insofar as the collection of SOGI data through AFCARS will allow the child welfare system to better serve LGBTQ foster youth and therefore decrease their placement instability, such data

<sup>30</sup> The Fenway Institute and NORC, “Helping Your Organization Collect Sexual Orientation and Gender Identity Data!” (June 2019), [https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_HelpingYourOrganization.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf).

<sup>31</sup> Kodadek, L. M., Peterson, S., Shields, R. Y., German, D., Ranjit, A., Snyder, C., ... & Haider, A. H. (2019). “Collecting sexual orientation and gender identity information in the emergency department: the divide between patient and provider perspectives.” *Emergency Medicine Journal*, 36(3), 136-141. <https://emj.bmj.com/content/36/3/136.abstract>.

<sup>32</sup> Rullo, J. E., Foxen, J. L., Griffin, J. M., Geske, J. R., Gonzalez, C. A., Faubion, S. S., & van Ryn, M. (2018). “Patient acceptance of sexual orientation and gender identity questions on intake forms in outpatient clinics: a pragmatic randomized multisite trial.” *Health Services Research*, 53(5), 3790-3808. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6153164/>.

<sup>33</sup> Pinto, A. D., Aratangy, T., Abramovich, A., Devotta, K., Nisenbaum, R., Wang, R., & Kiran, T. (2019). “Routine collection of sexual orientation and gender identity data: a mixed-methods study.” *CMAJ*, 191(3), E63-E68. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6336479/>.

<sup>34</sup> Yampolskaya, S., Robst, J., & Armstrong, M. I. (2020). “High cost child welfare cases: Child characteristics and child welfare services.” *Children and Youth Services Review*, 111 (2020) <https://www.sciencedirect.com/science/article/pii/S0190740919312423>

<sup>35</sup> Seibert, J., Romaire, M., Cowell, A., Hinde, J., Mills, M., Cool, A., ... & Orlebeke, B. (2019). “Patterns of Treatment/Therapeutic Foster Care and Congregate Care Placements in Three States” *Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy - U.S. Department of Health and Human Services* (August 2019) [https://pdfs.semanticscholar.org/e000/79e22718c5b90b66c46a8d9c82a1fd8b2d61.pdf?\\_ga=2.224428506.1505451321.1587505100-1995808140.1587505100](https://pdfs.semanticscholar.org/e000/79e22718c5b90b66c46a8d9c82a1fd8b2d61.pdf?_ga=2.224428506.1505451321.1587505100-1995808140.1587505100)

collection will reduce the costs of the child welfare system by reducing the requirement for congregate care. Informed and well-prepared foster parents and social workers facilitate permanency. But we can only inform and prepare foster parents and social workers in the child welfare system if we have thorough and accurate data on the needs and experiences of foster youth. A complete understanding of the needs and experiences of youth in care must include SOGI data, given their distinct experiences. Effective leveraging of such data into better treatments, reducing the placement instability of LGBTQ foster youth and the system's dependence on congregate care to care for them, will reduce the overall cost to the system.

**New Research Confirms: AFCARS remains the most appropriate vehicle for collecting this data and no other adequate system exists to do so.**

AFCARS is the only available vehicle to collect this kind of national and state-based data on foster youth and parents. The lack of nation-wide SOGI data on foster youth in the absence of AFCARS collecting it, only exemplifies the fact that AFCARS remains the only existing vehicle to collect it. Considering AFCARS existing infrastructure to readily collect nation-wide data on the foster care system, and the high barriers to developing and implementing a new system, AFCARS is the most appropriate vehicle for collecting any data that is essential to improving the functioning of the child welfare system by improving childrens' safety, permanency, and well-being.

Thorough data is critical to the child welfare system, as evidenced by the Children's Bureau's own reliance on this data for everything from determining funding, the strengths and weaknesses of programs, analyzing and tracking trends, to developing the annual report to Congress.

CSSP conducted a study asking Federal, State, and local government officials **“to reflect on what evidence they had used in reaching” the most important decisions in the past year. First and foremost was “data from agency operations,** typically in order to better understand the characteristics of the populations being served and the results of their encounters with the system or organization,” specifically **“national trend data, for example about changes in... [the] composition of the foster care population.”**<sup>36</sup> And another recent paper from Chapin Hall finds that, “If Congress and HHS invested in research on the factors that drive youth of color and LGBTQ youth to run away from foster care at disproportionate rates, and on developing and testing data-driven interventions, child welfare systems and practitioners can be better prepared to prevent this from occurring.”<sup>37</sup>

<sup>36</sup> Steven D. Cohen “The Evidence Decision-Makers Wants” *Center for the Study of Social Policy* (December 2019) <https://cssp.org/wp-content/uploads/2019/12/FutureofEvidenceReport-Dec-2019.pdf>

<sup>37</sup> Morton, M. H. & Horwitz, B. (2019). *Federal actions to prevent & end youth homelessness: Recommendations based on research and a national convening of experts and stakeholders*. Chicago, IL: Chapin Hall at the University of Chicago. <https://www.chapinhall.org/wp-content/uploads/Federal-actions-to-prevent-and-end-youth-homelessness-final.pdf>

Only through AFCARS can standardized national data be collected, allowing for accurate state-by-state comparisons to determine effective treatments and problem areas. Only if AFCARS collects such national data can the Children's Bureau accurately analyze trends in foster care, provide a comprehensive and accurate analysis of foster care to Congress, and know when and where state reviews are in order so as to develop Program Improvement Plans to improve the care for especially vulnerable foster youth.

**OMB review should be extended, and publication of a final rule delayed, during the unprecedented COVID-19 National Emergency.**

Secretary Azar himself has recognized the current pandemic as “an unprecedented threat.”<sup>38</sup> As of today, COVID-19 has killed over 50,000 Americans, more than 15 times as many Americans as the 9/11 terror attacks, with thousands more deaths every day. As of today, all Americans are living under emergency public health orders that have closed schools and workplaces, and more than 90% of Americans are living under stay-at-home orders. Some of these orders are not expected to expire for several weeks, and all are subject to extension based on changing public health conditions.


**Most Americans across the country, including staff of countless state, local, and private agencies and other key stakeholders, are unable to work** due to illness, caring for ill or vulnerable loved ones, closures of schools and child care, and closures of their own workplaces. These conditions mean that the vast majority of individuals and organizations in this country have faced **massive disruptions in their ability to participate in public input processes** such as the process administered by the Office of Management and Budget pursuant to Executive Order 12866 for proposed and final rules. It also means these same **stakeholders are unable to prepare for implementation of any regulatory changes, and HHS is not in a position to determine an appropriate effective date** given the current unique and constantly changing circumstances.

For this reason alone, OMB should extend its review process for non-emergency rules such as this one through at least 30 days after the termination of the current COVID-19 National Emergency, as declared by President Trump on March 13, 2020.

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<sup>38</sup> HHS.gov “Secretary Azar Statement on Launch of Phase 1 COVID-19 Vaccine Trial” *Health and Human Services Press Office* (March 16, 2020) <https://www.hhs.gov/about/news/2020/03/16/hhs-secretary-azar-statement-on-launch-of-phase-1-covid-19-vaccine-trial.html>



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### View Completed EO 12866 Meeting

RIN [0970-AC72](#)

Title Adoption and Foster Care Analysis and Reporting System

Agency/Subagency 0970-HHS/ACF

Stage of Rulemaking Final Rule Stage

Meeting Date/Time 04/24/2020 03:00 PM

Requestor Los Angeles LGBT Center Requestor's Name Joey Hernández

#### Documents

[List of Documents](#)

[a20174211 full](#)

[Los Angeles LGBT Center RISE Sexual Gender Report in Foster Care](#)

#### Attendees

[List of Attendees](#)

[Participation](#)

• Libby Ashley - OMB/O RA	Teleconference
• Scott Logan - HHS/ACF	Teleconference
• Joe Bock - HHS/ACF	Teleconference
• Josh Brammer - OMB/OIRA	Teleconference
• Joey Hernández - Los Angeles LGBT Center	Teleconference
• Terra Russell-Slavin, Esq. - Los Angeles LGBT Center	Teleconference
• Ariel Bustamante - Los Angeles LGBT Center	Teleconference

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# LGBTQ Youth in Unstable Housing and Foster Care

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**BACKGROUND AND OBJECTIVES:** Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are suggested to be overrepresented in unstable housing and foster care. In the current study, we assess whether LGBTQ youth are overrepresented in unstable housing and foster care and examine disparities in school functioning, substance use, and mental health for LGBTQ youth versus heterosexual youth in unstable housing and foster care.

**METHODS:** A total of 895 218 students (10–18 years old) completed the cross-sectional California Healthy Kids Survey from 2013 to 2015. Surveys were administered in 2641 middle and high schools throughout California. Primary outcome measures included school functioning (eg, school climate, absenteeism), substance use, and mental health.

**RESULTS:** More youth living in foster care (30.4%) and unstable housing (25.3%) self-identified as LGBTQ than youth in a nationally representative sample (11.2%). Compared with heterosexual youth and youth in stable housing, LGBTQ youth in unstable housing reported poorer school functioning ( $Bs = 0.10$  to  $0.40$ ), higher substance use ( $Bs = 0.26$ – $0.28$ ), and poorer mental health (odds ratios =  $0.73$ – $0.80$ ). LGBTQ youth in foster care reported more fights in school ( $B = 0.16$ ), victimization ( $B = 0.10$ ), and mental health problems (odds ratios =  $0.82$ – $0.73$ ) compared with LGBTQ youth in stable housing and heterosexual youth in foster care.

**CONCLUSIONS:** Disparities for LGBTQ youth are exacerbated when they live in foster care or unstable housing. This points to a need for protections for LGBTQ youth in care and care that is affirming of their sexual orientation and gender identity.



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Drs Russell, Wilson, and Baams conceptualized and designed the study, drafted the initial manuscript, and reviewed and revised the manuscript; Dr Baams conducted the initial analyses; and all authors approved the final manuscript as submitted and agree to be accountable for all aspects of the work.

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**WHAT'S KNOWN ON THIS SUBJECT:** It has been suggested that lesbian, gay, bisexual, transgender, and questioning youth are overrepresented in unstable housing and foster care and that the care they receive is not affirming of their sexual orientation or gender identity.

**WHAT THIS STUDY ADDS:** Lesbian, gay, bisexual, transgender, and questioning youth were overrepresented in foster care and unstable housing and report worse school functioning, higher substance use, and poorer mental health compared with heterosexual youth in stable housing. Affirmative care is needed.

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For youth who identify as lesbian, gay, bisexual, transgender, and questioning (LGBTQ), disclosing their sexual identity to family members can mean facing verbal and physical harassment,<sup>1-3</sup> sometimes even resulting in out-of-home placement or homelessness.<sup>4-6</sup> Because of high rates of rejection and abuse among LGBTQ youth,<sup>7,8</sup> it has been suggested that they are overrepresented in unstable housing and the child welfare system.<sup>9-14</sup> When placed in an out-of-home setting, LGBTQ youth are more likely to experience victimization and abuse by social work professionals, foster parents, and peers, which has been shown to be related to a lack of permanency<sup>15-17</sup> and poorer functional outcomes.<sup>18</sup> Existing studies have relied on local or regional samples or on samples of youth living out-of-home. With the current study, we use data from a large statewide school-based survey to assess, first, whether LGBTQ youth are overrepresented in unstable housing (defined according to guidelines from the federal McKinney-Vento Act as living in a friend's home, hotel or motel, or shelter and other transitional housing<sup>19</sup>) and foster care (foster home, group care, or waiting placement). Second, we examine disparities in school functioning, substance use, and mental health for LGBTQ youth in unstable housing and foster care compared with heterosexual youth in unstable housing and foster care and LGBTQ youth in stable housing.

A number of legal and social work professional accounts<sup>17,20</sup> as well as researchers in qualitative studies have suggested an overrepresentation of LGBTQ youth in out-of-home care.<sup>15</sup> In a study in Los Angeles County, researchers confirmed that there were 2.3 times more LGBTQ youth in foster care than would be expected based on estimates of

LGBTQ youth in national adolescent populations.<sup>14,21</sup> Once in out-of-home care, LGBTQ youth are found to experience further mistreatment,<sup>14,22</sup> such as verbal and physical violence, and more frequent hospitalization for emotional and physical reasons.<sup>4,14</sup> In addition, LGBTQ youth in out-of-home placements have a general lack of formal and informal supportive relationships with adults,<sup>23,24</sup> resulting in lower educational attainment, homelessness, and financial instability.<sup>18</sup> The mistreatment of LGBTQ youth in their own family or foster family may lead them to leave their home, which is related to an overlapping issue: homelessness.<sup>9,10,12,13,25</sup>

In addition to research signaling an overrepresentation of LGBTQ youth in foster care, African American and American Indian youth are also found to be overrepresented in foster care.<sup>26-30</sup> However, researchers have not examined whether LGBTQ youth are more vulnerable when they are in foster care or forms of unstable housing and from these racial and ethnic groups. Recognizing this gap in the literature, we explore whether outcomes differ for African American and American Indian youth (compared with non-Hispanic white youth) by LGBTQ status and living situation.

With the current study, we provide an examination of overrepresentation of LGBTQ youth in unstable housing and foster care, and we examine disparities in school functioning, substance use, and mental health for LGBTQ youth versus heterosexual youth in stable housing versus unstable housing and foster care.

## METHODS

### Participants

The data used in this study are from the 2013 to 2015 California Healthy Kids Survey (CHKS) ( $N = 910\,885$ ).

CHKS is conducted in middle and high schools across California and administered by WestEd to track health risks and resilience among youth.<sup>31</sup> Both parents and students gave active or passive informed consent (dependent on the school's requirements), and students' participation was voluntary and anonymous. As recommended by WestEd, youth whose response validity was questionable were excluded. Exclusion of these youth was based on meeting 2 or more criteria related to inconsistent responses (eg, never using a drug and use in the past 30 days, exaggerated drug use, using a fake drug, and answering dishonestly to all or most of the questions on the survey).<sup>32</sup> On the basis of these criteria, data from 1.7% of youth were excluded from the current analyses.

Students from schools that administered the question about living situation and sexual orientation and/or gender identity were included in the analytic sample. The analytic sample comprises 593 241 students (age range 10–18) enrolled in grades 6 to 12, or ungraded, across 1211 schools. Slightly less than one-half of respondents identified as male (49.6%) and 50.4% identified as female. Respondents were asked about their ethnic and racial background; over half (52.0%) of respondents identified as Hispanic. In addition, 24.6% identified as white non-Hispanic, 13.8% as Asian American, 2.7% as Native Hawaiian or Pacific Islander, 5.8% as African American, 4.7% as American Indian or Alaska Native, and 40.49% as multiracial. See Supplemental Table 4 for characteristics of students by housing situation and LGBTQ status.

### Measures

#### *School Functioning*

Grades were assessed with the following item: "During the past 12

months, how would you describe the grades you mostly received in school" (1 = mostly A's, 8 = mostly F's). Absenteeism was assessed with the following item: "During the past 12 months, about how many times did you skip school or cut classes" (1 = 0 times, 6 = more than once a week). Perceived school safety was assessed with 2 items. An example item is "I feel safe in my school" (1 = strongly disagree, 5 = strongly agree). School climate was assessed with 14 items about school belongingness, teacher-student relationships, and meaningful participation ( $\alpha = .89$ ). An example item is "I am happy to be at this school" (1 = strongly disagree, 5 = strongly agree). Whether youth reported fights in school was assessed with the average of 7 items ( $\alpha = .78$ ). For example, "During the past 12 months, how many times on school property have you been in a physical fight?" (1 = 0 times, 4 = 4 or more times). Whether youth experienced victimization at school was assessed with the average of 6 items ( $\alpha = .79$ ). For example, "During the past 12 months, how many times on school property have you been pushed, shoved, slapped, hit, or kicked by someone who wasn't just kidding around?" (1 = 0 times, 4 = 4 or more times).

#### *Substance Use*

Substance use was assessed with the average of 3 items: "During the past 30 days on how many days on school property did you (1) smoke cigarettes, (2) have at least 1 drink of alcohol, (3) smoke marijuana?" (1 = 0 days, 6 = 20–30 days;  $\alpha = .68$ ); and "During your life, how many times have you been very drunk or sick after drinking alcohol" (1 = 0 times, 6 = 7 or more times).

#### *Mental Health*

Whether youth had felt depressed was assessed with the following item: "During the past 12 months, did you ever feel so sad or hopeless almost every day for 2 weeks or more that

you stopped doing some usual activities?" (0 = no, 1 = yes). Whether youth had seriously considered suicide was assessed with the following item: "During the past 12 months, did you ever seriously consider attempting suicide?" (0 = no, 1 = yes).

#### *Living Situation*

Participants were asked about their living situation: "What best describes where you live? A home includes a house, apartment, trailer, or mobile home." Participants could check 1 of the following categories: (1) A home with 1 or more parents or guardians; (2) other relative's home; (3) a home with more than 1 family; (4) friend's home; (5) foster home, group care, or waiting placement; (6) hotel or motel; (7) shelter, car, campground, or other transitional or temporary housing; (8) other living arrangement. Those who chose option 1, 2, or 3 were classified as living in stable housing ( $n = 548\,817$ ); those who chose option 4, 6, 7, or 8 were classified as living in unstable housing ( $n = 20\,231$ ); those who chose option 5 were classified as living in foster care ( $n = 3344$ ).

#### *Gender and Sexual Identity*

Participants were asked about their gender and sexual identity with 1 item. Participants could check 1 or more of the following categories: heterosexual (straight) ( $n = 443\,013$ ); gay or lesbian or bisexual ( $n = 35\,126$ ); transgender ( $n = 7931$ ); not sure ( $n = 26\,065$ ); or decline to respond ( $n = 31\,651$ ). Categories are not mutually exclusive, and reported sample sizes are limited to students who completed the question on living situation. For the focal analyses, we compared youth who only reported being heterosexual ( $n = 430\,672$ ) to youth who reported being gay or lesbian or bisexual, transgender, or not sure (LGBTQ) or any other composition of answers ( $n = 62\,431$ ).

#### *Race and/or Ethnicity*

Students were asked whether they were of "Hispanic or of Latino origin." With answer options yes or no. Students were also asked, "What is your race?" with the following answer options: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Pacific Islander, white, or multiracial (2 or more races). For the current analyses, comparisons were made between African American (1) and non-Hispanic white (0) students and American Indian (1) and non-Hispanic white students (0).

#### *Analysis Strategy*

Because CHKS contains nested data (students nested in school), survey-adjusted percentages and means were used to assess the living situation of LGBTQ and heterosexual youth. Survey-adjusted analyses (svy in Stata [Stata Corp, College Station, TX]) account for the complex (nested) data and adjusts SEs. First, the disproportionality representation index (DRI) was used to document whether LGBTQ youth were overrepresented in foster care. The DRI is calculated by dividing the percentage of LGBTQ youth by the percentage of sexual minority youth in the general population (taken from the 2015 Youth Risk Behavior Survey<sup>33</sup>). When DRI values are  $>1.00$ , this indicates an overrepresentation of LGBTQ youth in the CHKS sample; when DRI values are  $<1.00$ , this indicates underrepresentation. Second, survey-adjusted (linear and logistic) regression analyses in Stata version 14.0 were conducted to examine whether LGBTQ status, foster care engagement, and unstable housing and interactions between these factors were associated with school functioning, substance use, and mental health. Third, when interaction terms were significant, estimates for LGBTQ youth in foster care and unstable housing were

compared with estimates for LGBTQ youth in stable housing, and estimates for LGBTQ youth in foster care and unstable housing were compared with estimates for heterosexual youth in foster care and unstable housing (*pwcompare* in Stata, Bonferroni adjusted). Last, as sensitivity analyses, we examined whether findings were similar across youth who identified as lesbian, gay, or bisexual (LGB); transgender; or unsure, compared with youth who did not identify as such. In addition, we examined whether there were 3-way interactions between LGBTQ status, living situation, and race and/or ethnicity (African American or American Indian versus non-Hispanic white). In all analyses, we included student age and sex as covariates.

## RESULTS

### Overrepresentation of LGBTQ Youth in Unstable Housing and Foster Care

Using the estimates of students in different living situations in CHKS, the results revealed an overrepresentation of LGBTQ youth in foster care; <1% of our sample is in foster care, but of those youth, 30.4% report an LGBTQ identity (see Table 1). We compared the proportion of LGBTQ youth in foster care in the CHKS sample with data from the 2015 edition of the Youth Risk Behavior Survey that includes a measure of sexual orientation (not gender identity).<sup>33</sup> In the national probability-based sample, 11.2% of 12- to 18-year-olds identified as LGB or unsure; comparing this to the percentage of LGBTQ youth in foster care in the current study (30.4%),

there is an overrepresentation of LGBTQ youth in foster care. This results in a DRI of 2.71. LGBTQ youth are also overrepresented in other forms of unstable housing; 3.53% of our total sample lives in unstable housing, and of those youth, 25.3% report an LGBTQ identity, resulting in a DRI of 2.26. In sum, the proportion of LGBTQ youth in foster care and unstable housing is 2.3 to 2.7 times larger than would be expected from estimates of LGBTQ youth in nationally representative adolescent samples.

### Disparities by Sexual and Gender Identity and Housing

With several survey-adjusted regression analyses, we examined whether LGBTQ youth and youth in unstable housing and foster care compared with heterosexual youth and youth in stable housing differed in their school functioning, substance use, and mental health. Generally, the results revealed that LGBTQ youth report poorer school functioning, more substance use, and poorer mental health compared with heterosexual youth ( $P < .001$ ). Youth in unstable housing ( $P < .001$ ) and foster care ( $P < .001$ ) also reported poorer school functioning, more substance use, and poorer mental health compared with youth in stable housing (Table 2).

To examine the interaction between LGBTQ status (LGBTQ versus heterosexual) and living situation (foster care versus stable housing; unstable housing versus stable housing) in terms of school functioning, substance use, and mental health, we added 2 interaction

terms to the model: LGBTQ  $\times$  unstable housing and LGBTQ  $\times$  foster care. The findings revealed significant interaction effects, indicating disparities for LGBTQ youth in unstable housing and foster care for several outcomes.

Compared with heterosexual youth in unstable housing and LGBTQ youth in stable housing, LGBTQ youth in unstable housing reported lower grades ( $P = .020$ ), higher rates of absenteeism ( $P < .001$ ), school safety ( $P = .001$ ), lower school climate ( $P = .049$ ), more fights in school ( $P < .001$ ), and more victimization ( $P < .001$ ). They were also more likely to have been depressed (not different from LGBTQ youth in stable housing) or suicidal in the past year, to have been drunk or sick from alcohol ( $P < .001$ ), and they reported higher levels of substance use ( $P < .001$ ).

Compared with heterosexual youth in foster care and LGBTQ youth in stable housing, LGBTQ youth in foster care reported more fights in school ( $P < .001$ ) and more victimization ( $P = .009$ ). They were also more likely to have been depressed (not different from LGBTQ youth in stable housing) or suicidal in the past year. See Table 2 and Fig 1 for an example.

We also tested main effects and interactions with LGB, unsure, and transgender status (Supplemental Table 5). Findings from main effects were largely similar to the analyses, including LGBTQ status. However, interaction effects became nonsignificant for LGB youth in foster care (except for suicidality) and unsure youth in unstable housing (except for grades, school climate,

**TABLE 1** Survey Adjusted Percentages of Youth in Housing Situations Overall and by Gender and Sexual Identity

	Overall	Heterosexual	LGBTQ	LGB	Transgender	Unsure
	% (95% CI)	% (95% CI)	% (95% CI)	% (95% CI)	% (95% CI)	% (95% CI)
Stable housing	95.88 (95.76 96.00)	87.85 (87.62 88.08)	12.15 (11.92 12.38)	6.14 (5.99 6.28)	1.17 (1.13 1.22)	4.53 (4.43 4.63)
Unstable housing	3.53 (3.44 3.64)	74.68 (73.89 74.47)	25.32 (24.53 26.11)	10.04 (9.58 10.51)	4.95 (4.57 5.35)	8.70 (8.25 9.16)
Foster care	0.58 (0.55 0.62)	69.60 (67.79 71.36)	30.40 (28.64 32.21)	13.87 (12.74 15.10)	5.04 (4.32 5.87)	6.74 (5.95 7.62)

CI, confidence interval

**TABLE 2** Survey-Adjusted Regression Analyses and Means of School Functioning, Substance Use, Mental Health of Heterosexual and LGBTQ Youth in Stable Housing, Unstable Housing, and Foster Care

	Heterosexual				LGBTQ				Main				Interaction	
	Stable Housing		Foster Care		Stable Housing		Foster Care		Unstable Housing		Foster Care		LGBTQ × Unstable Housing	LGBTQ × Foster Care
	Mean (SE) or %	Mean (SE) or %	Mean (SE) or %	Mean (SE) or %	Mean (SE) or %	Mean (SE) or %	Mean (SE) or %	Mean (SE) or %	B or OR	B or OR	B or OR	B or OR	B or OR	B or OR
School functioning	3.11 (0.02)	3.85 (0.02)	3.94 (0.05)	4.09 (0.04) <sup>a,b</sup>	4.21 (0.08)	0.37***	0.73***	0.82***	-0.10*	-0.00				
Grades past 12 mo	1.84 (0.01)	2.33 (0.02)	2.67 (0.05)	2.97 (0.04) <sup>a,b</sup>	3.12 (0.07)	0.28***	0.60***	0.84***	0.40***	0.16				
Absenteeism past 12 mo	3.73 (0.01)	3.49 (0.01)	3.53 (0.03)	3.14 (0.02) <sup>a,b</sup>	3.20 (0.04)	-0.27***	-0.26***	-0.21***	-0.07***	-0.08				
Perceived school safety	-0.01 (0.01)	-0.23 (0.01)	-0.19 (0.02)	-0.43 (0.01) <sup>a,b</sup>	-0.32 (0.03)	-0.17***	-0.23***	-0.16***	-0.03*	0.04				
Schoolmate	1.18 (0.00)	1.34 (0.01)	1.45 (0.02)	1.76 (0.02) <sup>a,b</sup>	1.81 (0.03) <sup>a,c</sup>	0.19***	0.21***	0.30***	0.23***	0.16***				
Fights in school	1.43 (0.00)	1.54 (0.01)	1.63 (0.02)	2.00 (0.02) <sup>a,b</sup>	2.07 (0.03) <sup>a,c</sup>	0.31***	0.14***	0.22***	0.13***	0.10*				
Victimization														
Substance use														
Substance use during past 30 d	1.35 (0.01)	1.61 (0.01)	1.84 (0.03)	2.12 (0.03) <sup>a,b</sup>	2.22 (0.05)	0.26***	0.33***	0.50***	0.26***	0.11				
Drunk or sick after drinking alcohol	1.58 (0.01)	1.89 (0.02)	2.25 (0.06)	2.46 (0.03) <sup>a,b</sup>	2.74 (0.07)	0.32***	0.40***	0.70***	0.28***	0.16				
Mental health														
Depressed for 2 wk or more during past 12 mo	29.23	35.56	37.31	53.23 <sup>b</sup>	57.75 <sup>c</sup>			1.40***	0.73***	0.82*				
Seriously considered suicide during past 12 mo	15.13	20.92	25.04	43.30 <sup>a,b</sup>	48.55 <sup>a,c</sup>			1.69***	0.80***	0.73**				

Control for student age and sex. Stable housing is the reference category. Sample sizes ranged from 476-922 (depressive symptoms) to 482-779 (schoolmate). OR, odds ratio.

<sup>a</sup> Significant difference from LGBTQ youth in stable housing ( $P < .05$ ).

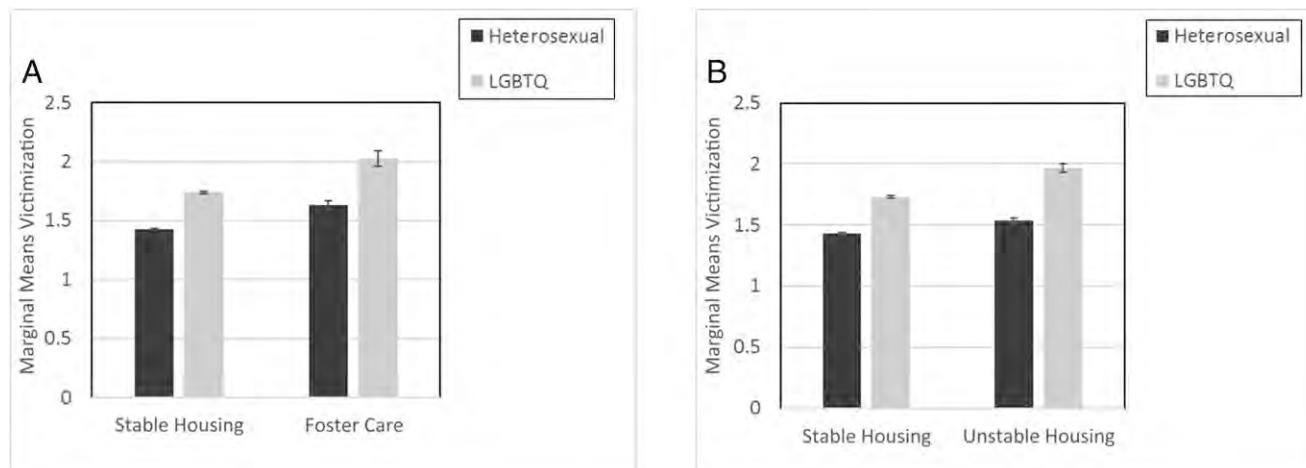
<sup>b</sup> Significant difference from heterosexual youth in unstable housing ( $P < .05$ ).

<sup>c</sup> Significant difference from heterosexual youth in foster care ( $P < .05$ ).

\*  $P < .05$ ; \*\*  $P < .005$ ; \*\*\*  $P < .001$ .

fights in school, and mental health) and foster care (except for mental health). Disparities were most robust for transgender youth in unstable housing and transgender youth in foster care.

To examine whether associations between LGBTQ status and living situation were different for African American and American Indian youth, we added the following set of interaction terms to the models: LGBTQ × unstable housing × African American and LGBTQ × foster care × African American and separately LGBTQ × unstable housing × African American and LGBTQ × foster care × American Indian (Table 3). For LGBTQ African American students in unstable housing, there are significant interactions for school safety ( $B = 0.21, P = .026$ ), school climate ( $B = 0.20, P = .001$ ), fighting at school ( $B = 0.28, P < .001$ ), victimization ( $B = 0.26, P = .001$ ), substance use ( $B = 0.29, P = .009$ ), and having been drunk or sick from alcohol ( $B = 0.63, P < .001$ ). Overall, these results revealed a general pattern of LGBTQ African American students living in unstable housing reporting poorer outcomes compared with LGBTQ non-Hispanic white students living in unstable housing. See Fig 2 for an example. For LGBTQ African American students in foster care, there are significant interactions for school absenteeism ( $B = 0.66, P = .038$ ), fighting at school ( $B = 0.31, P = .017$ ), victimization ( $B = 0.35, P = .028$ ), substance use ( $B = 0.77, P = .001$ ), and having been drunk or sick from alcohol ( $B = 1.13, P = .002$ ). Similar to patterns for youth living in unstable housing, the results revealed a general pattern of LGBTQ African American students living in foster care reporting poorer outcomes compared with LGBTQ non-Hispanic white students living in foster care. Interactions between LGBTQ status and living situation for American Indian students were not significant ( $P > .05$ ).



**FIGURE 1** A, Interaction foster care × LGBTQ. B, Interaction unstable housing × LGBTQ for victimization.

**DISCUSSION**

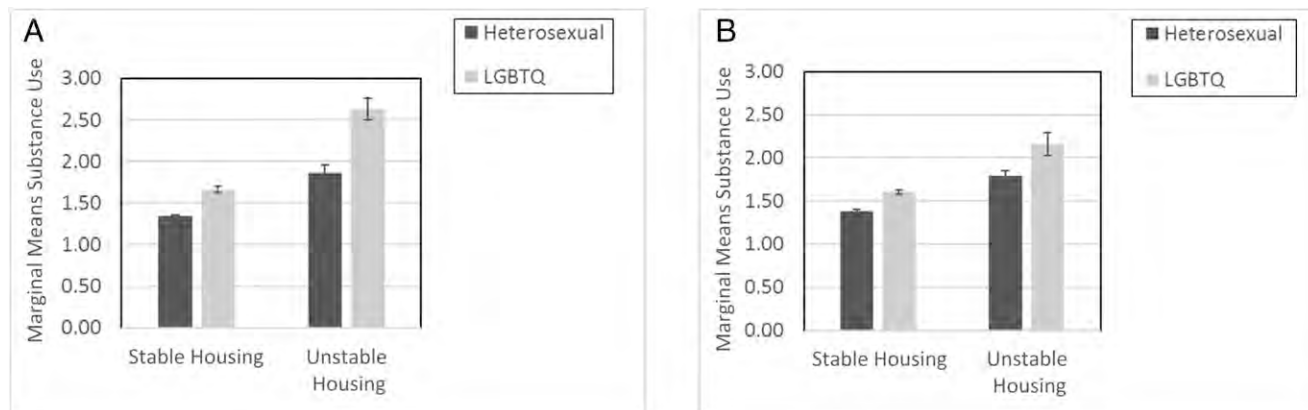
The current study shows that LGBTQ youth are overrepresented in unstable housing and foster care. Our findings also revealed that LGBTQ youth in unstable housing

have poorer school functioning outcomes (eg, absenteeism, safety, victimization), higher substance use, and poorer mental health (depression, suicidality) compared with LGBTQ in stable housing and

heterosexual youth in unstable housing. For youth in foster care, disparities for LGBTQ youth were less robust; LGBTQ youth in foster care reported more fights in school and victimization and more mental health

**TABLE 3** Survey Adjusted Means, SE, and Percentages for African American and American Indian Heterosexual and LGBTQ Youth in Unstable Housing, Stable Housing, and Foster Care

	Heterosexual			LGBTQ		
	Stable Housing	Unstable Housing	Foster Care	Stable Housing	Unstable Housing	Foster Care
African American, <i>n</i>	18 810	834	210	3353	540	121
School functioning, mean (SE)						
Grades past 12 mo	3.54 (0.03)	4.12 (0.09)	4.43 (0.15)	3.77 (0.04)	4.62 (0.12)	4.84 (0.15)
Absenteeism past 12 mo	1.89 (0.02)	2.94 (0.07)	2.95 (0.14)	2.29 (0.03)	3.83 (0.09)	3.77 (0.18)
Perceived school safety	3.58 (0.02)	3.27 (0.04)	3.52 (0.08)	3.33 (0.02)	2.76 (0.06)	3.00 (0.11)
School climate (standardized)	-0.06 (0.01)	-0.36 (0.03)	-0.19 (0.05)	-0.19 (0.01)	-0.65 (0.04)	-0.31 (0.08)
Fights in school	1.23 (0.00)	1.55 (0.03)	1.46 (0.05)	1.48 (0.02)	2.19 (0.05)	1.97 (0.08)
Victimization	1.46 (0.01)	1.64 (0.03)	1.64 (0.06)	1.76 (0.02)	2.25 (0.05)	2.22 (0.08)
Substance use, mean (SE)						
Substance use during past 30 d	1.35 (0.01)	1.85 (0.05)	1.73 (0.08)	1.68 (0.02)	2.56 (0.07)	2.52 (0.13)
Drunk or sick after drinking alcohol	1.41 (0.01)	2.23 (0.07)	1.99 (0.12)	1.81 (0.03)	3.12 (0.09)	3.06 (0.19)
Mental health, %						
Depressed for 2 wk or more during past 12 mo	23.85	29.65	35.18	44.28	46.71	55.10
Seriously considered suicide past 12 mo	12.58	19.75	22.96	34.33	41.25	50.00
American Indian, <i>n</i>	14 993	788	204	2506	266	60
School functioning, mean (SE)						
Grades past 12 mo	3.60 (0.03)	3.62 (0.08)	3.45 (0.15)	3.67 (0.04)	3.76 (0.15)	3.58 (0.29)
Absenteeism past 12 mo	2.01 (0.02)	2.55 (0.06)	2.45 (0.11)	2.24 (0.04)	3.07 (0.13)	2.94 (0.24)
Perceived school safety	3.63 (0.01)	3.53 (0.03)	3.47 (0.07)	3.37 (0.02)	3.11 (0.07)	3.18 (0.14)
School climate (standardized)	-0.12 (0.01)	-0.23 (0.03)	-0.25 (0.05)	-0.27 (0.02)	-0.44 (0.05)	-0.42 (0.09)
Fights in school	1.23 (0.01)	1.33 (0.02)	1.41 (0.05)	1.50 (0.02)	1.76 (0.05)	1.64 (0.10)
Victimization	1.41 (0.01)	1.47 (0.02)	1.54 (0.05)	1.80 (0.02)	1.94 (0.06)	1.90 (0.11)
Substance use, mean (SE)						
Substance use during past 30 d	1.44 (0.01)	1.61 (0.04)	1.82 (0.09)	1.73 (0.03)	2.08 (0.09)	1.88 (0.16)
Drunk or sick after drinking alcohol	1.68 (0.02)	1.94 (0.06)	2.16 (0.12)	2.04 (0.04)	2.40 (0.11)	2.23 (0.23)
Mental health, %						
Depressed for 2 wk or more during past 12 mo	29.51	30.57	30.61	51.58	48.31	56.60
Seriously considered suicide past 12 mo	15.15	17.49	29.15	40.75	37.99	46.15

**FIGURE 2**

A, Interaction LGBTQ  $\times$  unstable housing for African American students for substance use. B, Interaction LGBTQ  $\times$  unstable housing for non-Hispanic white students for substance use.

problems (although depression did not differ from LGBTQ youth in stable housing). In addition, exploratory analyses revealed the disadvantaged position for LGBTQ African American youth in unstable housing in terms of substance use, mental health problems, and school functioning. The findings revealed similar patterns of disparities for American Indian youth, but these differences did not reach significance, likely because of small sample sizes.

We sought to understand the similar and distinct ways multiple forms of nonpermanency experienced by youth were associated with various outcomes. The current findings revealed a larger overrepresentation of LGBTQ youth in foster care than was previously found.<sup>14</sup> Considering the current sample is geographically more comprehensive and diverse than the earlier study in Los Angeles County,<sup>14</sup> we conclude that earlier estimations of overrepresentation may reflect underestimates at the state level. In the context of unstable housing, our estimates of LGBTQ youth in California appear consistent with previous estimates of overrepresentation of LGBTQ youth who are unstably housed, although this area of research is less developed. In previous studies, researchers assessing sexual

orientation and gender identity among unstably housed youth (typically studied under the framework of youth experiencing homelessness) have estimated that LGBTQ youth make up anywhere from 20% to 45% of homeless youth.<sup>12,34,35</sup> As such, it is unclear how this study compares to previous assessments of disproportionality of LGBTQ youth in unstable housing. However, because almost all previous reports of sexual orientation and gender identity demographics among unstably housed youth indicate high rates of LGBTQ youth in this subpopulation, it is clear that the current study is consistent with others in its claim of disproportionality.

Our findings suggest that LGBTQ youth living in foster care or unstable housing are similar in some ways; both groups showed disparities in victimization and mental health, whereas only unstably housed LGBTQ youth showed disparities in school functioning and substance use. One might, therefore, conclude that LGBTQ youth in foster care are in some way protected from negative school functioning and substance use outcomes, at least during adolescence.

### Implications

California is 1 of only 13 states that has laws and policies in place to protect foster youth from harassment and discrimination based on both sexual orientation and gender identity.<sup>11,36</sup> However, the current findings revealed that LGBTQ foster care youth in California are not faring as well as their non-LGBTQ or non-foster care counterparts, indicating potential areas for future research and intervention. Not only does previous research indicate that LGBTQ youth experience rejection in foster care and other child welfare settings, it also suggests that the child welfare system is not prepared to provide safe and affirming care.<sup>4,15-17</sup> With this study, we highlight the importance of encouraging further cross-system collaboration within county and state departments to address the unique needs of sexual- and gender-minority youth.<sup>37</sup>

### Limitations and Suggestions for Future Research

There are several important limitations to note. The current data are cross-sectional and not representative of all adolescents in California. Therefore, we cannot conclude any causal mechanisms and, despite the large sample size, we cannot generalize our findings to



youth in California that did not participate. Because youth in different forms of unstable housing are less likely to be enrolled in school or regularly attend school, and the current study used a school-based survey, the CHKS sample may present an underrepresentation of marginally housed youth in California. Moreover, we cannot ascertain whether disparities are even more severe in states without protections from harassment and discrimination based on sexual orientation and gender identity. Further, as the CHKS only contains self-report measures, some youth may underreport undesirable behaviors such as truancy and experiences of violence. In addition, because of a lack of information about family relationships and stability in the home, we cannot conclude that

living with parents is more stable for LGBTQ youth than living in foster care. However, empirical work does suggest that because of a higher number of placements, foster care might be particularly unstable for LGBTQ youth.<sup>14</sup> Qualitative work could home in on the environment from which youth are removed and why LGBTQ youth are moved from placement to placement more often than heterosexual youth. Focusing on young people's experiences should offer more detailed information about families, foster parents, siblings, and the role of school.

### CONCLUSIONS

Using a statewide youth sample, we document overrepresentation of LGBTQ youth in unstable housing and

foster care and disproportionate risks related to schooling, substance use, and mental health. LGBTQ youth, in general, showed poorer outcomes, which was exacerbated when they lived in unstable housing or foster care. The findings of this study point to the need for care that is affirming and respectful of youth's sexual orientation and gender identity.

### ABBREVIATIONS

CHKS: California Healthy Kids Survey  
 DRI: disproportionality representation index  
 LGB: lesbian, gay, or bisexual  
 LGBTQ: lesbian, gay, bisexual, transgender, and questioning

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# SEXUAL AND GENDER MINORITY YOUTH IN FOSTER CARE:

## ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES



## ACKNOWLEDGMENTS

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This report of the Los Angeles Foster Youth Study focuses on the main findings of the research project with regard to the primary research questions about rates of disproportionality and disparities. It is the first of several forthcoming publications examining the demographics and experiences of sexual and gender minority youth in foster care in Los Angeles County. It is the product of several years of hard work and investment by many, including the funders, community collaborators, and supporting institutions.

We would like to thank the Children's Bureau (CB) Federal Project Officers, Matthew McGuire and Catherine Heath, and the Office of Planning, Research and Evaluation (OPRE) liaison, Maria Woolverton, as well as many of their colleagues within the CB and OPRE that provided feedback and support as we finalized the instruments and methodology. Similarly, the PII Evaluation Team (PII-ET) and Training and Technical Assistance Team (PII-TTAP) members have been valued colleagues throughout the process of designing and implementing the study, particularly Jaymie Lorthridge (Westat), Elizabeth Black (Center for the Support of Families, Inc.), and Roseana Bess (JBS International, Inc.) for their suggestions on the final report. We also thank Sue Crystal-Mansour and her team at Westat's survey research center for their due diligence and efficiency in administering the interviews.

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## CONTRIBUTORS

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### FUNDERS

**The Federal Permanency Innovations Initiative (PII)** is a 5-year, \$100 million, multi-site demonstration project designed to improve permanency outcomes among children in foster care who have the most serious barriers to permanency. PII includes six grantees, one of which is RISE, each with a unique intervention to help a specific subgroup of children leave foster care in fewer than three years.

**The L.A. LGBT Center's Children, Youth & Family Services Department** operates Recognize Intervene Support Empower (RISE), an initiative designed to help lesbian, gay, bisexual, transgender and questioning (LGBTQ) children and youth in the child welfare system achieve permanency (a safe, stable, permanent family). The Center welcomes nearly a quarter-million client visits from ethnically diverse lesbian, gay, bisexual, and transgender youth and adults each year accessing a variety of services. RISE's partners include the Los Angeles County Department of Children and Family Services (LA-DCFS) and more than 20 community organizations. RISE is designed to help LGBTQ youth in Los Angeles find durable family connections, achieve emotional permanency, and obtain legal permanency in homes where they feel safe, nurtured and loved into adulthood.

### AFFILIATED ORGANIZATION DESCRIPTIONS

**The Williams Institute** is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy. A national think tank at UCLA Law, the Williams Institute produces high-quality research with real-world relevance and disseminates it to judges, legislators, policymakers, media and the public. Examples of other Williams' work on

youth and human services include: *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless* (July 2012)<sup>1</sup> and *Provider Perspectives on the Needs of Gay and Bisexual Male and Transgender Youth of Color* (August 2013)<sup>2</sup>

**Holarchy Consulting** has worked in the area of LGBTQ system-involved youth for over 15 years and has conducted several trainings and given multiple talks on the risks LGBTQ youth face. Holarchy clients are governmental units, for and non-profits, school districts, foundations or collaborations thereof. The firm specializes in performance management, public-private partnerships, and demonstration projects in the human services field with a particular focus on foster care and at-risk youth.

**Westat** is an employee-owned research firm that provides research services to foundations and associations, agencies of the federal government, as well as state and local government, and businesses. Westat is a well-known and respected leader in the field of survey research and has conducted studies and provided technical assistance focused on all modes of survey research across a broad range of topic areas.

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<sup>1</sup> Available at: <http://williamsinstitute.law.ucla.edu/research/safe-schools-and-youth/serving-our-youth-july-2012/>

<sup>2</sup> Available at: <http://williamsinstitute.law.ucla.edu/research/safe-schools-and-youth/project-access-report-aug-2013/>

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## I. EXECUTIVE SUMMARY



# SEXUAL & GENDER MINORITY YOUTH IN LOS ANGELES FOSTER CARE

BIANCA D.M. WILSON, KHUSH COOPER, ANGELIKI KASTANIS, SHEILA NEZHAD

## INTRODUCTION

The Los Angeles County Child Welfare System has a duty to protect foster care youth from harm and to act in their best interests. In order for the system to fulfill its duty, there is a need to understand who is in the system and how different groups of youth may face unique challenges. Lesbian, gay, bisexual, transgender and questioning (LGBTQ), and other sexual and gender minority youth are one such group. At various points during their time in the child welfare system, LGBTQ youth interact with caseworkers, foster parents, congregate care facility employees, and other foster youth. In these interactions, LGBTQ youth may experience discrimination and stigma unique to their sexual orientation, gender identity and/or gender expression. However, an overall lack of systematic data collection on LGBTQ youth in foster care limits the ability of the child welfare system to address the unique challenges of this group.

For over three decades, research on adolescent demographic characteristics and behavior has been conducted via school-wide, state, or national surveys, many of which have included questions about sexual orientation. More recently, there have also been efforts to integrate measures of gender identity and expression into large scale surveys. Though past studies likely included youth in foster care, they did not specifically focus on foster care youth, nor did they include questions about dependency status. This makes it difficult to answer “How many youth in foster care are LGBTQ?” Similarly, while there has been research on the factors that may lead youth to enter or remain in foster care, such as family rejection or physical and verbal abuse, there is a lack of population-based research on the outcomes of those youth once they enter care. This makes it difficult to answer, “How are LGBTQ youth doing in foster care?”

This summary outlines the findings of the Los Angeles Foster Youth Survey (LAFYS), which represents a first

**“12.9% of LGBTQ youth report being treated poorly by the foster care system compared to 5.8% of non-LGBTQ youth.”**

step toward population-based data collection on LGBTQ foster youth. This data collection is valuable because it answers questions about whether LGBTQ youth are overrepresented in foster care and adds to the research on how sexual and gender minority youth face unique challenges compared to non-LGBTQ youth. These data provide opportunities for policy makers and practitioners to make evidence-based decisions to allocate resources in ways that address the challenges of LGBTQ youth. This study also highlights some areas where further population-based research can be conducted with LGBTQ youth in foster care.

## LOS ANGELES FOSTER YOUTH SURVEY

In response to this need for data, researchers from the Williams Institute and Holarchy Consulting conducted the LAFYS, a telephone interview study with 786 randomly sampled youth ages 12-21 living in foster care in Los Angeles County. The LAFYS was a one-time study conducted as part of the RISE (Recognize Intervene Support Empower) Project, a five-year cooperative agreement awarded to the L.A. LGBT Center (The Center) by the federal Permanency Innovations Initiative (PII). PII is a 5-year, \$100 million, multi-site demonstration project designed to improve permanency outcomes among children in foster care who have the most serious barriers to permanency. PII includes six grantees, each with a unique intervention to help a

specific subgroup of children who leave foster care in fewer than three years. The goals of the LAFYS were:

- to accurately and confidentially assess the proportion of foster youth who identify as LGBTQ,
- to assess whether LGBTQ youth are overrepresented in foster care, and
- to help us understand the experiences of these foster youth within the child welfare system.

We collected information about a range of demographics, including sexual orientation, gender identity and gender expression. We also assessed youth’s experiences in foster care as they relate to risks to permanency and wellbeing, such as information on placements, homelessness, and schooling.

## FINDINGS

### How many.

Around 7,400 youth, ages 12-21, are in out-of-home care in Los Angeles County in any given month (LA-DCFS, 2014); **19% or about 1,400 of these youth identify as LGBTQ.**

### Characteristics.

The LGBTQ foster youth population in Los Angeles County has similar racial/ethnic and age demographics as the non-LGBTQ foster youth population. Thus,

**the majority of LGBTQ youth in the sample were youth of color.** Further, about 10% of LGBTQ youth reported being born outside of the U.S. and nearly one third had a biological mother or father that had been born outside of the U.S.

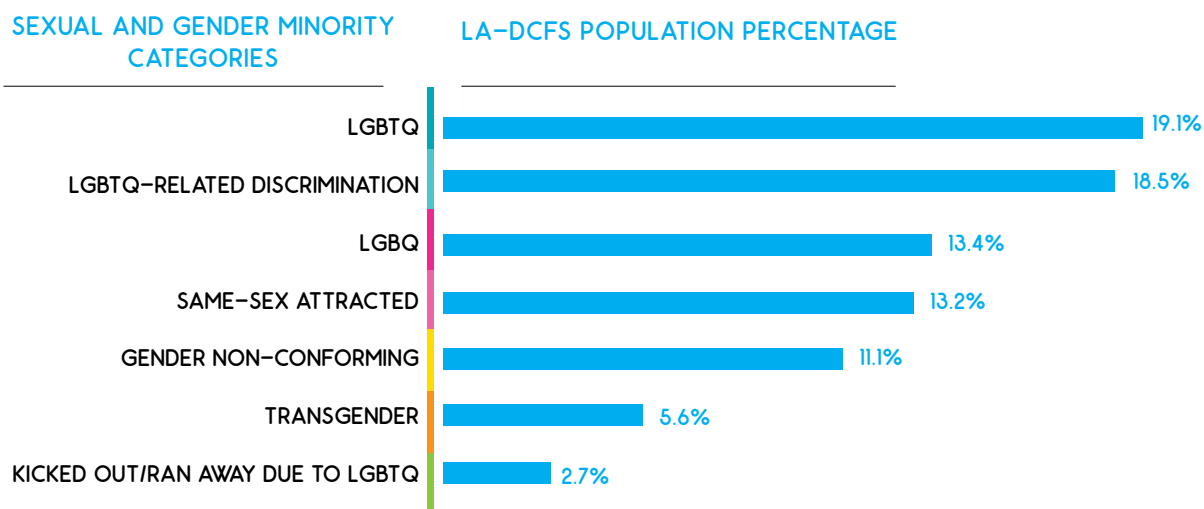
### Disproportionality.

13.6% of foster youth identify as lesbian, gay, bisexual, or questioning, 13.2 % reported some level of same sex attraction, and 5.6% identify as transgender. This means that **there are between 1.5 to 2 times as many LGBTQ youth living in foster care as LGBTQ youth estimated to be living outside of foster care.**<sup>1-2</sup>

### Disparities in Experience.

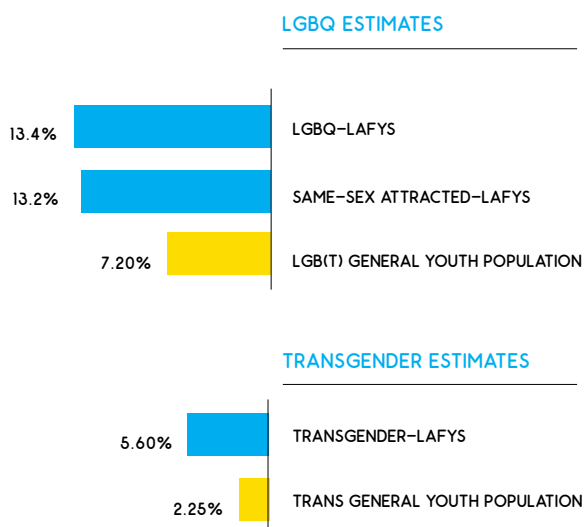
LGBTQ youth have a higher average number of foster care placements and are more likely to be living in a group home. They also reported being treated less well by the child welfare system, were more likely to have been hospitalized for emotional reasons at some point in their lifetime, and were more likely to have been homeless at some point in their life. The significance of these findings is supported by previous scholarship that has linked multiple placements, mental health concerns, homelessness, and placements in group homes are barriers to permanency faced by all youth, and LGBTQ youth in particular.<sup>3</sup>

**CHART I. SEXUAL AND GENDER MINORITY CATEGORIES OF YOUTH IN FOSTER CARE**



\*The total LGBTQ population estimate removes overlap created by respondents who fit more than one category

**CHART 2. LGBTQ YOUTH ARE OVERREPRESENTED IN FOSTER CARE**



**IMPLICATIONS FOR POLICYMAKERS & CAREGIVERS**

Policymakers and caregivers can take steps to better understand the lives and unique challenges of the LGBTQ youth they serve.

**Data collection.**

Despite their overrepresentation among foster care youth, LGBTQ youth have been relatively invisible within the system because of barriers to disclosure and a lack of data collection. To address this:

- Integrate questions about sexual orientation, gender identity, gender conformity, and discriminatory experiences related to these social statuses into existing demographic data collection, intake, service planning and case review processes.
- Raise competencies of child welfare workers to collect this information respectfully and accurately prior to integrating these questions in systems.
- Make sure to maintain confidentiality when sharing and recording this information prior to integrating these questions in systems.

**Address oppressions.**

Improving permanency outcomes for LGBTQ youth requires a multi-pronged approach that examines how oppressions operate at structural and institutional levels

(e.g., within policies, families, public spaces, and organizations), as well as at the level of interpersonal and workforce interactions.

- Address LGBTQ competencies within the child welfare system workforce and among caregivers.
- Address the roles that racism, heterosexism, and anti-trans-bias play in creating disparities for LGBTQ youth in foster care.

**Cost Avoidance.**

LGBTQ youth in this sample were particularly overrepresented in group home settings, moved significantly more, and were hospitalized for emotional reasons at

**TABLE 1. LGBTQ YOUTH FACE UNIQUE BARRIERS TO PERMANENCY:**

BARRIERS TO PERMANENCY	LGBTQ	NON-LGBTQ
Total # of Placements [Mean(SD)]	2.85(1.1)	2.43(1.03)
Ever been hospitalized overnight	38.8%	31.2%
Hospitalization for emotional reasons	13.5%	4.2%
Ever been homeless	21.1%	13.9%
Lived in a Group Home	25.7%	10.1%

a higher rate. This all means additional costs – higher rates paid for extensive group care stays and hospital stays, and additional administrative burden on staff when youth move.

- Address the needs of LGBTQ youth in care so their experience begins to approximate those of their non-LGBTQ counterparts. This will result in much needed cost avoidance for already over-burdened child welfare systems.

**IMPLICATIONS FOR RESEARCHERS**

More data on LGBTQ youth in foster care can lead to understanding how best to allocate resources to support youth. It can also increase the ability to make evidence-based requests of systems and programs to identify what is working and what is not working for the youth in care.

**Data collection.**

Future research should further refine methods used to

**TABLE 2. DEMOGRAPHICS OF LGBTQ YOUTH IN FOSTER CARE:**

DEMOGRAPHICS OF YOUTH IN FOSTER CARE	LGBTQ
Lat no	54.6%
Amer can Ind an	3.0%
As an/Pac fic Is ander	2.9%
B ack	28.5%
Wh te	6.4%
B /mu t-rac a or ethn c	4.7%
Born out of U.S.	9.7%
One or both b o parents born out of U.S.	32.4%
Ass gned Fema e at b rth	61.4%
Ass gned Ma e at b rth	38.6%
Age n years	16.2 (1.7)

ask about sexual orientation, gender identity, and gender expression among foster care youth. This includes thinking about the best way to construct basic research procedures, like the ones used for this study. It also means collaborating with social services to assist in identifying ways to confidentially integrate sexual orientation and transgender status into public data systems, keeping in mind that a youth's sense of self is likely to shift throughout adolescence.

#### Linking case data.

This study has shown that LGBTQ-related questions can be asked of foster care youth as young as 12 years of age in a safe, private and non-stressful way. Counties, courts and academic review boards should allow linkage to case data of the participants. This would allow data systems to be used to understand far more information about the status, experience and outcomes of LGBTQ youth in foster care in combination with administrative data.

#### LGBTQ vs. Non-LGBTQ.

We need to know more about the ways that LGBTQ youth in foster care have different experiences than non-LGBTQ youth. Future studies should examine other details of youth's lives, such as:

- Conditions surrounding entry into care
- Permanency rates and differences in experience by placement setting
- Family relationships and family's reactions to LGBTQ or gender non-conforming youth
- How race, culture, sex, and gender interact to affect other relevant factors
- Identifying resiliency factors that allow some LGBTQ youth to thrive and transition out of foster care into permanency

#### Looking within LGBTQ.

More research needs to be done to examine the differences in experiences between L, G, B, T, and Q and how these experiences compare across gender and ethnic/racial groups. Also, not all gender non-conforming youth identified as LGBTQ, but many faced much of the same discrimination because rigid cultural norms around gender expression are tied to perceptions of sexual identity. Therefore, there is also a need to study differences between gender expression and identity.

## METHODOLOGY

Initial drafts of the LAFYS questionnaire were revised in consultation with social science researchers, the Center RISE staff, LA-DCFS, and community collaborators from the child welfare and dependency court systems. In order to confirm that the questionnaire items and survey methodology were easy to understand and relevant to LA County youth in foster care, the study team conducted cognitive interviews with youth and caregivers and then used pilot testing the survey before a full launching.

Youth were eligible to participate in the LAFYS if they: 1) were at least 12 years old, 2) were in “out-of-home” care, 3) were not in juvenile detention, 4) had an address in the state of California, 5) were able to complete the survey in English, and 6) if the CWS/CMS state child welfare database had both an address and phone number for them. In order to achieve a final sample of n=765 completed interviews, The Los Angeles Department of Child and Family Services (LA-DCFS) provided the contact information for a random sample of 2,967 foster youth ages 12-21 years in out-of-home care in Los Angeles County.

A stratified random sampling technique was used where the sample was split into two age groups: 12-16 years and 17 years and up. Interviews took approximately 20 minutes and were conducted over the phone using a Computer-Assisted Telephone Interview process by Westat Inc, which allowed for youth to respond to questions using their telephone’s keypad. 786 interviews were completed, yielding a 41.8% response rate.

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1 (Gates & Newport, 2013; Kann et al., 2011; LAUSD, 2013; Russell, Seif and Truong, 2001)

2 (Almeida, Johnson, Corliss, Molnar, & Azrael, 2009; Greytak, 2013; SFUSD, 2011)

3 (Jacobs & Freundlich, 2006)

## ABOUT CONTRIBUTORS

### FUNDING

#### **The Federal Permanency Innovations Initiative (PII)**

is a 5-year, \$100 million, multi-site demonstration project designed to improve permanency outcomes among children in foster care who have the most serious barriers to permanency.

#### **The L.A. LGBT Center’s Children, Youth & Family Services**

**Department** operates R.I.S.E., an initiative designed to help LGBTQ youth in the child welfare system achieve permanency.

### AUTHORING

**The Williams Institute**, a national think tank at UCLA School of Law, is dedicated to conducting rigorous, independent research on sexual orientation and gender identity law and public policy.

**Holarchy Consulting** has worked in the area of LGBTQ system-involved youth for over 15 years, conducting several trainings and presentations on the unique risks LGBTQ youth face.

### OTHER

**Westat** is an employee-owned research firm that provides research services to foundations and associations, agencies of the federal, state and local government, and businesses.

## NOTES

This project is funded by the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services, grant number 90-CT-0154. Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the Children's Bureau.

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## II. BACKGROUND

### THE ISSUE

Broadly, it is the duty of the child welfare system to protect children from harm and to act in their best interests. Around 17,000 youth and children are in out-of-home care in Los Angeles County in any given month. Approximately 7,000 of these youth are adolescents and young adults (LA-DCFS, 2014); sexual and gender minority youth<sup>3</sup> are likely a significant subgroup of this early-to late adolescent population. In order for the system to fulfill its duty, it is critical that policymakers and caregivers<sup>4</sup> have an understanding of the lives and unique challenges of the LGBTQ youth they serve, such as family rejection, abuse (physical, sexual and emotional), exploitation, harassment, and elevated suicide risk in response to their sexual and gender minority statuses.

To date, research on LGBTQ youth in foster care has documented some of the reasons LGBTQ youth enter and remain in foster care. Family rejection and violence is one oft-cited reason for LGBTQ youth entering out-of-home care. One study of homeless youth found that while both sexual minority and majority youth left their homes for similar reasons (family conflict, problems with family members, and desire for freedom), LGBQ youth left at nearly double the rate (Cochran, Stewart, Ginzler & Cauce, 2002). In a related study, though not specifically with a sample of homeless youth, 20% of gay and lesbian youth reported being verbally abused by their mothers due to their sexual orientation, while 14% reported verbal abuse by their fathers (Savin-Williams, 1994) Hunter. (1990) found that 46% of teenagers who reported violent physical assault were targeted because of

their sexual orientation. Of this 46%, more than half reported that the violence came from within their own families. Experiencing this form of minority stress can have dramatic impacts on adolescent and young adult development. In one study, LGB young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse, compared to their peers who reported no or low levels of family rejection (Ryan, Huebner, Diaz, & Sanchez, 2009). Though there are writings on clinical work with transgender youth in social services (Mallon, 2009), there are no empirical studies that help distinguish unique experiences, including minority stress, in the child welfare system among the multiple subgroups that fall under “LGBTQ.”

Rejection, abuse, and discrimination continue to affect LGBTQ youth while they are in out-of-home care. At various points in time while in the child welfare system these youth interact with caseworkers, foster parents, congregate care facility employees, and other foster youth. Prejudice has reportedly manifested in disturbingly common practices such as: deeming these youth “unadoptable;” blaming their being “out” for the harassment and abuse from others; housing them in isolation “for their own safety” or to avoid their “preying on other youth;” repeated placement moves resulting from the discomfort of a caregiver; or disciplining LGBTQ youth for engaging in age appropriate conduct

<sup>3</sup>The terms sexual minority and gender minority refer to social statuses that remain outside of the dominant heteronormative framework in which only different-sex relationships and polarized gender expression and identities are accepted and valued. Though the terminology is intended to highlight the political and social nature of the nonconforming sexuality and gender identities and norms described in this study, it may also serve as an umbrella term for identity labels such as lesbian, gay, bisexual, and transgender, and therefore the terms are used interchangeably throughout this report.

<sup>4</sup>We are defining caregiver as any adult in whose care the youth is living. This includes, for example, relatives, foster parents, and group home staff.

that would not be punishable were it between youth of different sexes (Wilber, Ryan & Marksamer, 2006). In fact, one study revealed that 56% of LGBTQ foster youth surveyed spent time on the streets because they felt safer there than in their group or foster home (Feinstein, Greenblatt, Hass, Kohn & Rana, 2001). In addition to discrimination and safety concerns, LGBTQ youth in foster care are less likely to find a permanent home (reunification or adoption) than other youth, with transgender youth having the most difficult time achieving permanency (CASA, 2009).

Public systems charged with the care and wellbeing of LGBTQ youth have been unresponsive to their needs and slow to acknowledge that they are in urgent need of appropriate and equitable care (Mallon 1992, 1998). In cases where care providers are affirming of LGBTQ identities, they still may not have had the training on how to work with LGBTQ clients. LGBTQ youth who have experienced discrimination from different people throughout their lives may be hesitant to trust caregivers who are not prepared to address the systemic and psychological barriers related to sexual and gender minority stress.

A consistent feature of research and practitioner accounts of LGBTQ foster youth experiences has been the assertion that sexual and gender minority youth are overrepresented in the child welfare system. However, there are not enough population-based data to support the suggestion that LGBTQ youth are disproportionately overrepresented in foster care or that they universally have disparate experiences. This lack of data affects policymakers' understanding of how best to allocate resources to support LGBTQ youth and affects practitioners' ability to make evidence-based requests of systems to pay attention to the plight of these youth. The lack of data also has an effect on the system itself, one that is rarely noticed. Neglecting to address the needs of LGBTQ foster youth is also a resource drain on the child welfare system as a whole when youth remain in long term foster care or additional services are needed to address experienced trauma due to anti-gay or anti-transgender bias in the system.

### Previous research on sexual and gender identification among foster youth

For over three decades, extensive research on adolescent demographic characteristics and behavior has been conducted via school-wide, state, or national surveys. Starting in the mid-1980's, many of these studies included questions about sexual orientation and gender identity (Reis & Saewyc, 1999; Remafedi, Resnick, Blum, & Harris, 1992; Russell & Joyner, 2001; Russell, Seif, & Truong, 2001). These studies likely included youth in foster care, but did not specifically focus on that population, nor did they include questions about dependency status. There has been one large-scale study ("The Midwest Study") on the economic health and demographic characteristics, including sexual orientation, among young adults who were previously in foster care (Dworsky, 2013). The Midwest Study found that 11-15% of respondents identified as LGB. Another study conducted by Tarnai & Krebill-Prather (2008) at Washington State University stands out for its larger sample size and aim to survey the entire population of a state child welfare agency. The study attempted to survey all of Washington State's foster care population to assess basic demographics (including sexual orientation and gender identity) and experiences in foster care (Tarnai & Krebill-Prather, 2008). This was a significant step in documenting the experiences of LGBTQ youth in foster care; however the approach to measuring sexual orientation and gender identity may have limited inquires about and documents the proportion of foster youth who are LGBTQ youth and examines their unique experiences in order to inform allocation of resources and service provision.

### The RISE Project & LAFYS

The LAFYS was a one-time study conducted as part of the RISE (Recognize Intervene Support Empower) Project, a five-year cooperative agreement awarded to the Los Angeles LGBT Center (The Center) by the federal Permanency Innovations Initiative (PII). PII is a 5-year, \$100 million, multi-site demonstration project



led by the Children's Bureau (CB), the Administration of Children, Youth & Families (ACYF), the Administration for Children and Families (ACF), and the U.S. Department of Health & Human Services (USDHHS) designed to improve permanency outcomes among children in foster care who have the most serious barriers to permanency.<sup>5</sup> PII includes six grantees, each with a unique intervention to help a specific subgroup of children leave foster care in fewer than three years.

RISE uniquely aims to address barriers to permanency and wellbeing for lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in the child welfare system in Los Angeles County by decreasing anti-gay

and anti-transgender bias in families and caregiving settings. In order to provide data that may contextualize the service and evaluation components of RISE, the Center contracted the Williams Institute and Holarchy Consulting to design and conduct an assessment of the demographics characteristics and experiences of LGBTQ youth in foster care in Los Angeles County. The results of this study help to fill the substantial gaps in the body of rigorous empirical research on LGBTQ foster youth and give child welfare providers and policymakers in Los Angeles County a better understanding of the LGBTQ foster youth population so they can make informed decisions about programs and services that address the needs of sexual and gender minority youth.

### III. INSTRUMENT DEVELOPMENT



As a first step to designing the survey study, we identified multiple constructs that characterized the population of youth in foster care for whom interventions and programs addressing anti-gay and anti-transgender bias may be directly relevant. Specifically, youth who: a) identify with a sexual minority label, such as lesbian, gay, bisexual, or questioning; b) identify as transgender or identify with a gender identity that is different than their sex assigned at birth; c) are gender nonconforming; d) report same-sex romantic attraction; and/or e) have experienced discrimination related to their perceived sexual or gender identity. The instrument was designed to assess varying levels of these core constructs, as well as to measure several important wellbeing and foster care experience variables that have been shown to affect LGBTQ youth in other settings. Initial drafts of the instrument were revised in consultation with other Williams Institute research staff, research scholars in LGBT studies at other academic

and non-academic institutions, the Center RISE staff, and community collaborators from the child welfare and dependency court systems. We wanted to confirm that the draft questionnaire items and survey methodology were easy to understand and relevant to LA County youth in foster care. To do this, we did a cognitive interview study where we: a) conducted a small qualitative study to assess youth response to the proposed approach and b) held feedback sessions with groups of caregivers and child welfare staff to gain insight about the proposed survey methodology. We interviewed 20 volunteer foster youth and conducted six feedback sessions. The outcome of the cognitive interview study was the finalized survey instrument and methodology used in a pilot test of the computer-assisted telephone interview (CATI) methodology.

<sup>5</sup> The current study was conducted in the context of a larger ACF initiative to develop research on the human service needs of LGBT people in the United States. A report on the current knowledge base and remaining research needs regarding family economic security, child welfare services, and programs for at-risk youth, including homeless youth, is forthcoming (<http://www.acf.hhs.gov/programs/opre/research/project/research-development-project-on-human-service-needs-of-lgbt-populations>).

## IV. PILOT

After we modified the survey instrument using the data collected from the cognitive interview study, we conducted a pilot of the final survey instrument and methodology. The pilot was a test of the administration of the questionnaire through computer-assisted telephone interviewing techniques. Westat, a third-party contractor experienced in conducting large-scale phone surveys, attempted to contact a random sample of 100 youth. Out of that sample, 14 youth agreed to participate and completed interviews. The instrument and overall approach to interviewing (via telephone) performed well in that respondents typically appeared to understand the questions and were interested in participating once we achieved direct contact with them. Also, having the option of touch tone response worked well. These data indicated that we did not need to make substantial

changes to the interview protocol. However, the low completion rate indicated that a few revisions had to be made before moving into full-scale administration. The revisions included: a) simplifying the comprehension assessment needed for youth to participate in the survey, b) obtaining a second randomly sampled (without replacement) contact list to offset the number of youth who were non-locatable, and c) addressing the issues related to reaching youth who live in group home settings by conducting more outreach to these facilities and getting direct phone numbers to the specific youth residences in each facility.

## V. MAIN STUDY

### OVERVIEW OF STUDY

#### OBJECTIVES

The goals of the LAFYS were: a) to accurately and confidentially assess the proportion of foster youth who identify as LGBTQ, and b) to help us understand the experiences of these foster youth within the child welfare system. We framed these goals using three research questions:

1. What percent of youth in foster care identify their sexual orientation or gender identity as lesbian, gay, bisexual, transgender, or questioning?
2. Is there a larger percentage of youth who identify as LGBTQ in foster care than the percentage of LGBTQ youth not in foster care?

3. Do LGBTQ and non-LGBTQ youth in foster care differ on key factors related to permanency and wellbeing?

To address these questions, we collected information about a range of demographics, including sexual orientation, gender identity and gender expression, as well as information about youth's experiences in foster care.

## SAMPLING FRAME

Power calculations indicated that we needed to achieve a final sample of  $n=765$  completed interviews.<sup>6</sup> Available resources prohibited attempting to contact the entire population and therefore a sample larger than the needed sample size had to be randomly drawn from the sampling frame and used as a contact list to recruit potential participants. The Los Angeles Department of Child and Family Services (LA-DCFS) provided the contact information for a random sample of 2,967 foster youth ages 12-21<sup>7</sup> years in out-of-home care in Los Angeles County. This sample was selected from the approximately 7,000 LA-DCFS cases that are youth ages 12-21 years at that time.

database had both an address and phone number for them. The LA-DCFS categorization of youth in “out-of-home” care, commonly referred to as foster youth, includes all youth who are dependents of the court living in residential or group care, foster homes, and kinship care (a type of placement where a child is placed in the home of a relative or a non-related extended family member). Although we provided informational material for youth and caregivers in both English and Spanish, the survey was only available in English.

Youth were eligible if they: 1) were at least 12 years old, 2) were in “out-of-home” care,<sup>8</sup> 3) were not in juvenile detention, 4) had an address in the state of California, 5) were able to complete the survey in English, and 6) if the CWS/CMS<sup>9</sup> state child welfare

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<sup>6</sup> Power calculations assume a 15% of LGBTQ youth ages 12+ years, 95% confidence interval, and 2.5% margin of error, given a population of approximately 7,000 youth in out-of-home care within this age range informed the selected desired sample size of  $n=795$  ( $n=30$  for pilot and 765 for full scale). The population size was estimated at this time because precise data on the number of foster youth meeting our eligibility criteria had not yet been provided by LA-DCFS.

<sup>7</sup> Assembly Bill 12 extended the maximum age youth may remain in foster care from 18 to 21, as of 2012. As a result, we added youth aged 18-21 to the sample.

<sup>8</sup> Only children placed in out-of-home care (OHC) were included in the sample. Relative care is considered a form of OHC. Youth who had an open LA-DCFS case with an assigned social worker but were still living with family of origin were not included in the sample as they are not considered to be “in care” and the consent and assent implications are different for this population, making it harder to expediently enroll them in research, particularly that which inquires about conventionally controversial topics such as the sexuality of minors. Future research should include these youth, especially now that we know the questions do not cause any harm or stress. Including this population might give further insight about how to prevent LGBTQ youth from entering foster care in the first place.

<sup>9</sup> Child Welfare Services/Case Management System

We used a stratified random sampling technique, where we split the sample into two age groups: 12-16 years, 17 years and up. We drew equal numbers of participants from these two groups in order to ensure a large enough sample within the older age group to make an accurate estimate of this LGBTQ subpopulation. Having an accurate estimate for this age range specifically allows us to make comparisons between previous and

future studies of youth transitioning out of foster care, many of which focus on youth ages 17 and older. In order to achieve this goal, we needed to oversample the older age group since they make up a smaller proportion of youth in foster care.

## METHODS

### RESEARCH ETHICS

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Many national or state survey research studies with adolescents—most of which currently include questions about sexual orientation—use passive parental consent procedures or waive parental consent altogether. Due to the legal intricacies related to minors who are wards of the dependency court, LAFYS had to approach the consent issue differently. Obtaining parental consent is often challenging with regard to foster youth because the court has either terminated parental rights, the whereabouts of parents are unknown, or the relationship between the youth and their parents is contentious and/or distant. Regardless of the legal relationship the foster youth has to their family of origin, the youth's attorneys are the additional authorized parties responsible for making legal decisions on behalf of the youth.<sup>10</sup> In order to prevent the extensive time and resources that would be required to track down the parents of each youth in the sample, we sought to obtain the court's permission to recruit and enroll youth to participate in the study.

According to established procedures for conducting research with foster youth, all research has to be approved by the LA-DCFS Research Department and the Dependency Court. After the LA-DCFS Research Department reviewed the scientific merits of the study, we filed the petition with the court and, at that point, Children's Law Center (CLC, the attorneys for foster children and youth), the Los Angeles Dependency Lawyers (LADL, the parents' attorney group), LA-DCFS and the Department of Probation<sup>11</sup> received notice of the study and had the opportunity to object to the proposed consent procedures or any other component. None of the parties raised any concerns with the court. As a minimal risk study asking relatively routine demographic questions, the court approved our procedures as described in the next section. In addition to court and LA-DCFS approval, the study was reviewed and approved by the UCLA Institutional Review Board (IRB).

### PROCEDURES

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Before the survey fielding began, we sent letters to potential youth participants and their caregivers describing the project and providing an opportunity to contact us for questions. The letters also included a

copy of "Survey FAQs" in English and Spanish, which answered some basic questions about the survey. Once the letters were sent, Westat interviewers began calling youth. Interviewers read a contact script that

<sup>10</sup> A Guardian Ad Litem is appointed by the court to represent the child's best interests and wishes.

<sup>11</sup> In some cases, foster youth are dually supervised by LA-DCFS and the Department of Probation if the foster youth has committed criminal or status offenses.

briefly described the study to the youth and asked the potential participant whether they agreed to allow the interviewer to tell them more details about the study. If a potential respondent agreed to allow the interviewer to provide more information, the interviewer proceeded with the assent script and ended with asking if the youth agreed to be in the study. If the participant was unavailable when the interviewer called, they asked for a better time to call and left a project telephone number. If no contact was made, the interviewer left a voicemail message. The interviewer attempted to make contact up to 12 times before removing a potential participant from the selection list. The interviewer did not begin the interview until the participant agreed to be in the study and correctly answered the three comprehension questions designed to assess their

level of understanding of their rights and expectations as a research participant. The actual interview took approximately 20 minutes using a Computer-Assisted Telephone Interview (CATI) process where the interviewer followed a computer-programmed script of the questionnaire. Every respondent used interactive voice response (IVR) technology that allowed for touchtone responses to the questions over the phone for complete privacy. As an additional measure, LA-DCFS sent out their own informational bulletin alerting case-carrying social workers to the study in the event that youth or their caregivers contacted them for confirmation that this was a legitimate study.

## INTERVIEWER TRAINING

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Westat had a series of interviewer training processes that data collectors completed before joining the survey team. All newly hired telephone interviewers received Westat's general interviewer training, which covered telephone interviewing protocols, interview best practices, and CATI administration and coding procedures. All interviewers received project-specific training that covered the study background, protocol, and in-depth coverage of the questionnaire. Interviewers also completed Westat's telephone data collector training, which consisted of self-paced tutorials, live interactive training sessions led by Williams Institute staff and Holarchy Consulting, and practice sessions. Practice interviews gave Williams Institute staff the opportunity to prevent data collection problems by monitoring interviewers and correcting any weaknesses relevant to the LAFYS.

Westat also gave interviewers supplemental trainings during survey implementation. One area of additional training led by Holarchy Consulting provided further information on the complexities of calling a group home

as compared to calling a foster home. The interviewers who completed this additional training were gathered into a "group home specialist" team that focused on calling youth in residential facilities and group homes.

Westat trained the interviewers on a distress response protocol that we developed in collaboration with Westat and LA-DCFS. The protocol instructed interviewers on questions to ask if the participant seemed upset and who to call if that was the case. Additionally, the co-PI was on call 24/7 in the event a distress protocol was triggered to ensure that the correct follow-up had been completed as she is a social worker with over 15 years of experience with LGBTQ youth in child welfare and probation settings, and is well versed in the stresses and risks for youth associated with disclosure of sexual orientation and or gender identity. However, this distress protocol was never activated during the study.

NON-LOCATABLE NUMBER PROTOCOL

Whether it was due to a disconnected phone line, incorrect phone number, or that a particular youth’s contact information had changed, for confidentiality reasons the LAFYS did not attempt to contact youth’s social workers to find new phone numbers for youth who were “non-locatable.” Instead, the LAFYS team periodically sent information about cases with

non-working numbers to LA-DCFS throughout the calling period and a subset of youth’s information was sent back to the research team and re-entered into the calling system to attempt a call back.

**MEASURES**

As noted above, the interview items were designed to measure the core constructs used to define the LGBTQ youth in foster care population and to measure a set of wellbeing factors and foster care experiences.

**SEXUAL ORIENTATION**

Our final interview items draw on the Williams Institutes’s expertise on asking questions about sexual orientation and gender identity (Sexual Minority Assessment Research Team, 2009; personal communications with staff, 2012-2013) and knowledge gathered from the cognitive interviews and feedback groups with foster youth, LA-DCFS staff, caregivers, and providers. According to the Sexual Minority Assessment Research Team report (2009), sexual orientation is best captured in a survey by asking about three separate components: attraction, identity and behavior. We chose to omit a question about sexual behavior because a) this dimension of sexual orientation tends to be less informative for younger samples given the range of sexual behav-

ior that is heavily skewed toward little or no sexual history, b) there was concern on the part of LA-DCFS about asking 12 year olds about sexual behavior, and c) Probation has strict policies about youth in their jurisdiction disclosing sexual behavior as this can have implications with respect to their criminal cases. We also added “I am not sure yet” and “I don’t know what this question means” to the sexual orientation identity question to distinguish between youth who may be questioning their sexual orientation and those who may not be familiar with the terms. We chose to use a two-part attraction question that seemed most suitable for adolescents, who may report no sexual attraction to both males and females (listed below).

IDENTITY (SEXUAL ORIENTATION)	ATTRACTION (SEXUAL ORIENTATION)	
<p><b>Do you consider yourself to be:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Straight or Heterosexual;</li> <li><input type="checkbox"/> Gay or lesbian;</li> <li><input type="checkbox"/> Bisexual;</li> <li><input type="checkbox"/> I am not sure yet; or</li> <li><input type="checkbox"/> I don’t know what this question means</li> </ul>	<p><b>Are you romantically attracted to boys/men?</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Yes</li> <li><input type="checkbox"/> No</li> <li><input type="checkbox"/> I am not sure yet; or</li> <li><input type="checkbox"/> I don’t know what this question means</li> </ul>	<p><b>Are you romantically attracted to girls/women?</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Yes</li> <li><input type="checkbox"/> No</li> <li><input type="checkbox"/> I am not sure yet; or</li> <li><input type="checkbox"/> I don’t know what this question means</li> </ul>

## GENDER IDENTITY

According to the Center of Excellence for Transgender Health (CETH), gender identity is best captured in a survey by using a two-part series of questions that asks about a person's sex assigned at birth and their current sex or gender (Sausa, Sevelius, Keatley, Iñiguez, & Reyes, 2009). Asking two questions instead of just one captures a person's sex/gender history while also validating their present sex and gender identity. While CETH did not test the suggested question wording with youth specifically, GLSEN had tested a similar set of items (Greytak, 2013) and our pre-survey study

indicated that foster youth understood the two-part question. Again, we added "I am not sure yet" and "I don't know what this question means" to the gender identity question in order to distinguish between youth who may be questioning their gender identity and those who may not be familiar with the terms or concept of gender identity. The first three answer choices (girl, boy, transgender) of the second question in the two-part series were provided in random order to avoid response error.

## IDENTITY (GENDER)

**What sex were you assigned at birth (what the doctor put on your birth certificate)? (Check one)**

- Male
- Female
- Decline to answer

**When you think about how you see yourself now, which of the following terms best fits how you describe your gender?**

- Girl or young woman
- Boy or young man
- Trans or transgender
- I am not sure yet; or
- I don't know what this question means

Research shows that levels of gender conformity matter when studying experiences of discrimination (Friedman Koeske, Silvestre, Korr, & Sites, 2006; Toomey, Ryan, Diaz, Card & Russell, 2010). That is to say, bullying, anti-trans and anti-gay discrimination do not just target those who self-identify as LGBT; many gender nonconforming heterosexual youth suffer the

same discriminatory behaviors due to their perceived sexual orientation or gender identity. For this reason, we included a two-part gender expression scale that allowed youth to describe their feminine and masculine expression separately on a scale of 1-9.

### EXPRESSION (GENDER)

- On a scale from 1–9, where 1 is not at all feminine and 9 is extremely feminine, how would you describe yourself at this point in your life?

- On a scale from 1–9, where 1 is not at all masculine and 9 is extremely masculine, how would you describe yourself at this point in your life?

### EXPERIENCES OF DISCRIMINATION

Our questionnaire included several items that helped us understand youth's lived experiences as it relates to their multiple social statuses and identities (e.g., gender, gender expression, and race). Our items focused on types of everyday discrimination and were derived from

Meyer's broader work on sexual minority stress and specifically his measure of self-appraised everyday discriminatory experiences (Gordon & Meyer, 2008).

### FOSTER CARE AND OTHER FACTORS RELATED TO PERMANENCY

The questionnaire also included items that gave us specific information about youth's experiences with the foster care system. This section was comprised of questions that asked about the youth's time in foster care and the placements in which they have lived. By including these questions, we were able to analyze responses by youth's LGBTQ status and to see if LGBTQ youth had more positive or negative experiences than non-LGBTQ youth.

permanency and risks to overall wellbeing. A majority of these items have been used in other surveys that focus on youth, particularly youth in the foster care or juvenile justice system (Irvine, 2010). By including questions about type of placement, and experiences—such as whether youth have been expelled from school, or if they have been hospitalized overnight—we were able to assess whether LGBTQ youth fared better or worse than non-LGBTQ youth in foster care in certain domains.

Finally, we included several items about experiences known to be connected to risks to not achieving

### WEIGHTING AND ANALYSIS

Sampling designs used to ensure large enough sample sizes of subgroups (e.g., over sampling an age group) and patterns of non-responses among various subgroups may bias the data. To address this, we used sample weights. Weighting is a strategy for adjusting the data to compensate for design and response issues. Using a two-stage procedure, we weighted the sample to match the Los Angeles foster

youth population aged 12-21 years. The first stage of weighting corrected for the different probabilities of selection associated with the number of youth in foster care in either the 12-16 year old or 17-21 year old age groups (i.e., design weight). The weighting of this first stage takes into account the higher probability of a youth being selected if they are in the older age



group, than if they were in the younger age group. The second stage accounted for the differences in proportions between males and females within the sample compared to the population (i.e., post-sampling weight). This second stage takes into account the proportion of female and male respondents as compared to the female/male ratio in the foster care population. The final weight created was a product of the design weight (age group) and sampling weight (sex).

We calculated the response rate, cooperation rate, refusal rate and contact rates are based on standards set by the American Association for Public Opinion Research Standard Definitions Committee (2011).

We used SPSS and Stata statistical software to complete descriptive and inferential analyses (IBM Corp., 2013, Statacorp, 2013). Sample sizes are reported for each variable and proportions are reported using the total number of non-missing responses as the denominator.

## FINDINGS

This section provides summary information about the study findings. First, we describe response rates, the demographic and foster care experiences for the overall sample. We then focus on the analyses that

provide answers to the three primary research questions regarding estimating the LGBTQ youth population proportions.

### RESPONSE RATES

Table 1.1 shows the data used to calculate the response rate, cooperation rate, refusal rate and contact rate for the LAFYS. The response rate (41.8%) is the proportion of the sample that completed the interview. This was heavily affected by the 36% of randomly drawn cases that were unable to be located because current address and phone number information that was provided

was no longer accurate. The cooperation rate (65.7%) is the proportion of contacted youth that completed the interview. The refusal rate (21.9%) is the proportion of all eligible cases in the sample that declined to be interviewed. The contact rate (73.5%) is the proportion of the eligible sample that interviewers were able to contact.

TABLE 1.1 SURVEY RATE CALCULATIONS

FINAL NUMBERS	FREQUENCY	SURVEY RATES	%	SURVEY RATE CALCULATIONS
I=Complete Interviews	786	Response Rate (RR4)	41.8	$(I+P)/((I+P) + (R+NC+O) + e(UH+UO) )$
P=Partial Interviews	0	Cooperation Rate (CR4)	65.7	$(I+P)/((I+P)+R)$
R=Refusal and break off	411	Refusal Rate RF3	21.9	$R/((I+P)+(R+NC+O))$
NC=Non Contact	498	Contact Rate CT3	73.5	$((I+P)+R+O) / ((I+P)+R+O+NC)$
O=Other <sup>12</sup>	186			
UH=Unknown Household	0			
UO=Unknown other	0			

<sup>12</sup>“Other” call attempts include attempts that ended in an assessment that the respondent was physically or mentally unable to respond to interview before consenting to begin informed consent process, as well as those who had language barriers or were deceased.

DEMOGRAPHICS

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All demographics are reported as unweighted sample data (n), split by the age categories of the stratified survey design. To highlight levels of representativeness, we also present the population demographics (N) of all youth in foster care in Los Angeles County, for the variables available in the CWS/CMS database (Table 2.1). The total population size fitting the sampling characteristics of the study was 7,376. The sample and target population are clearly not an exact match, but the total sample is representative in terms of being heavily compromised of ethnic minority youth and slightly higher numbers of girls compared to boys.

The age of study participants ranged from 12 to 21 years old, with an average age across the sample of 15.88 years old. In both age groups, more than 80% of youth identified as either Latino or African American. Further, female-assigned-at-birth youth comprised the majority of the sample for both age groups. Also notable, the overall percentage of youth who reported currently living in a group care setting, such as a group home or residential facility, was comparable to the population percentage. However, the distribution of group home status differed somewhat by age group. With regard to country of origin, over one third of the sample

reported having a biological mother or father who was born outside of the U.S. Though we do not have data on this topic for the LA-DCFS population, U.S. Census data indicate that approximately 25% of children have at least one parent born outside of the U.S. (Federal Interagency Forum on Child and Family Statistics, 2013).

We measured several indicators of risks to permanency and wellbeing among youth in foster care (Table 2.2). With regard to foster care-specific experiences, respondents reported multiple placements and were on average in care for periods that could be defined as long term foster care. Yet, most participants felt the foster care system had treated them well. But, there was also great variability in these figures as indicated by the large standard deviations. Additionally, significant numbers of youth in the study had been suspended or expelled from school, had been hospitalized, had been homeless at least one night, and/or reported some involvement with law enforcement (e.g. on probation).

TABLE 2.1 UNWEIGHTED DEMOGRAPHICS IN TOTAL SAMPLE

	12-16 YEARS OLD		17-21 YEARS OLD		TOTAL	
	SAMPLE n=428	POPULATION N=4281	SAMPLE n=385	POPULATION N=3095	SAMPLE n=786	POPULATION N=7376
	Mean age=14.14 (SD)=(1.42)	Mean age=14.12 (SD)=(1.41)	Mean age=17.96 (SD)=(.99)	Mean age=18.18 (SD)=(1.08)	Mean age=15.88 (SD)=(2.74)	Mean age=15.83 (SD)=(2.38)
	n %	N %	n %	N %	n %	N %
<b>Race/Ethnicity<sup>13</sup></b>						
Lat no	253 60.1	2216 51.8	181 51.3	1438 46.5	434 56.1	3654 49.5
Amer can Ind an	8 1.9	26 0.6	7 2.0	17 0.5	15 1.9	43 0.6
As an/Pac fic Is ander	12 2.9	92 2.1	10 2.8	87 2.8	22 2.8	179 2.4
B ack	88 20.9	1435 33.5	98 27.8	1203 38.9	186 24.0	2638 35.8
Wh te	39 9.3	502 11.7	35 9.9	347 11.2	74 9.6	849 11.5
B rac a /Mu t rac a	21 5.0	-- --	22 6.2	-- --	43 5.6	-- --
<b>Born out of U.S.</b>	30 7	-- --	34 9.5	-- --	64 8.1	-- --
<b>At least one bio parent born out of U.S.</b>	167 39.0	-- --	134 37.4	-- --	301 38.3	-- --
<b>Placement type<sup>14</sup></b>						
Group Home	35 8.2	649 5.2	65 18.1	370 12.0	100 12.7	1019 13.8
Re at ve/Guard an	190 44.4	2407 56.3	113 31.6	1205 38.9	303 38.5	3612 48.9
Foster Home	203 47.4	1224 28.6	170 47.5	714 23.1	373 47.4	938 26.2
<b>Sex assigned at birth<sup>15</sup></b>						
Ma e	188 43.9	2104 49.1	144 40.2	1303 42.1	332 42.2	3407 46.2
Fema e	240 56.1	2177 50.9	214 59.8	1792 57.9	454 57.8	3969 53.8

<sup>13</sup> Ethnic/race categories are mutually exclusive and represent unique subgroups. The b - or mu t -rac a category is not used in the CWS/CMS and on y pr mary rac a dent ficat on was prov ded; therefore, stat st cs on popu at on data for that var ab e are not nc uded.

<sup>14</sup> The var ab e opt ons for type of placement in the LAFYS and the LA-DCFS popu at on datasets were not dent ca . We re-categor zed each var ab e to prov de the best match poss b e between datasets and prov ded data for the top three represented categories. It s cr t ca to subsequent ana yses to note that "group home" refers to survey respondents report ng that they ved n a group home or res dent a fac ty and t refers to DCFS cases abe ed as v ng n a group home at the t me of data extract on.

<sup>15</sup> LA-DCFS does not d st ngu sh between gender dent ty and sex ass gned at b rth n the r adm n strat ve case management database. We compare the LA-DCFS popu at on data aga nst study part c pants' reported sex ass gned at b rth.

**TABLE 2.2 RISKS TO PERMANENCY AND WELLBEING AMONG YOUTH IN FOSTER CARE IN TOTAL SAMPLE**

	<b>12-16 YEARS OLD</b>	<b>17-21 YEARS OLD</b>	<b>TOTAL</b>
	<b>n=428</b>	<b>n=358</b>	<b>n=786</b>
	<b>Mean (SD) or %</b>	<b>Mean (SD) or %</b>	<b>Mean (SD) or %</b>
<b>Years spent in foster care</b>	3.41 (4.49)	7.41 (6.10)	5.23 (5.64)
<b>Total placements</b>	2.39 (3.57)	3.71 (5.60)	2.99 (4.65)
<b>Placements in last year</b>	.92 (1.55)	.92 (1.8)	.92 (1.67)
<b>Currently placed in a group home setting</b>	8.2	18.1	12.7
<b>Perception of foster care system treatment</b>			
Very well	66.6	50.3	59.2
Somewhat well	26.4	41.1	33.1
Not very well	6.8	8.1	7.4
<b>Ever been hospitalized</b>	28.5	37.4	32.6
<b>Ever been homeless</b>	9.6	21.3	14.5
<b>Suspended from school once</b>	16.1	11.2	13.9
<b>Suspended from school more than once</b>	15.9	7.0	11.8
<b>Expelled from school once</b>	5.8	2.8	4.5
<b>Expelled from school more than once</b>	2.1	1.4	1.8
<b>Law enforcement involvement (e.g., on probation)</b>	17.5	26.5	21.6

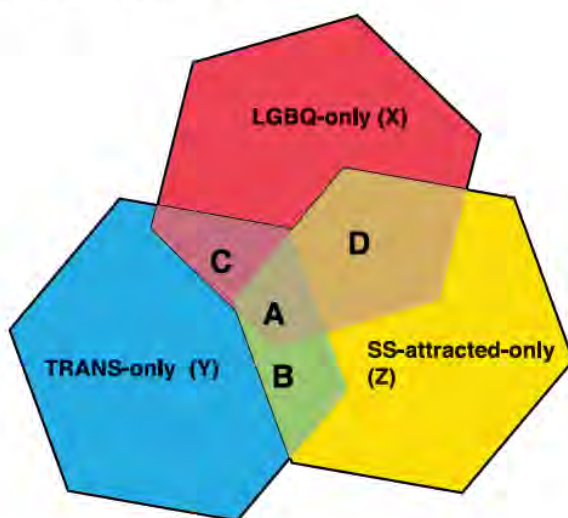
	12-16 YEARS OLD	17-21 YEARS OLD	TOTAL
	n=428	n=358	n=786
Experienced everyday discrimination based on:	%	%	%
Foster care status	22.2	33.0	27.1
Clothing and shoes	18.7	19.8	19.2
Race or ethnicity	13.8	22.6	17.8
Weight	14.5	14.8	14.6
Girlish mannerisms/ not being manly enough	5.8	8.1	6.9
Boyish mannerisms/ not being womanly enough	5.8	6.4	6.1
Gender	3.3	5.0	4.1
Immigrant status	3.3	4.2	3.7
Being lesbian, gay, bisexual, or questioning	3.0	7.0	4.8
Transgender status	.5	.8	.6

**RESEARCH QUESTION 1: WHAT PERCENTAGE OF LOS ANGELES COUNTY FOSTER YOUTH ARE LGBTQ?**

Once survey weights were applied, we estimated that 19.1% of the Los Angeles foster care youth population ages 12-21 years are LGBTQ (approximately 17.0% among youth ages 12-16 years and 22.2% among youth ages 17-21 years) – meaning approximately 1,409 youth in care in LA-DCFS are LGBTQ. This estimate includes 13.4% of youth who identify as LGBQ, 5.6% who identify as transgender, and 13.2% who report some level of same-sex attractions. The

estimate of the total LGBTQ population removes overlap created by respondents who fit more than one category (e.g., a transgender lesbian-identified youth would only be counted once in this overall estimate of LGBTQ youth). Using Figure 1 to identify the sub-populations that make up the intersections of these three variables, the unweighted LGBTQ status count =  $a+b+c+d+x+y+z$

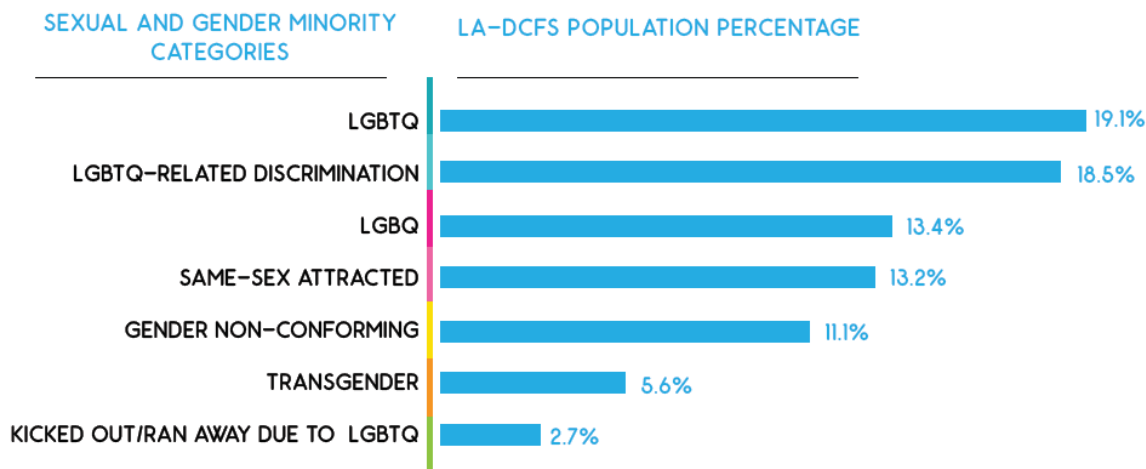
**FIGURE 1. CALCULATING LGBTQ STATUS**



Further, among all youth regardless of sexual orientation or gender identity, 11.1% were categorized as gender nonconforming, 2.7% had been kicked out of or run away from their homes for being perceived as LGBTQ or as gender nonconforming, and 18.5%

reported experiencing discrimination related to their transgender identity, sexual minority status, or gender expression. See Figure 2, and Tables 3.1 and 3.2 for estimates and confidence intervals.

**FIGURE 2. POPULATION PROPORTION ESTIMATES OF SEXUAL AND GENDER MINORITY STATUSES**



**TABLE 3.1 POPULATION PROPORTION ESTIMATES OF SEXUAL AND GENDER MINORITY STATUSES**

	PROPORTION ESTIMATE/ SAMPLE SIZE	95% CONFIDENCE INTERVAL LOWER LIMIT,UPPER LIMIT
<b>LGBTQ</b>	19.1%/n=684	16.26, 22.03
<b>LGBQ</b>	13.4%/n=758	11.04, 15.76
<b>Transgender</b>	5.6%/n=756	3.95, 7.24
<b>Same-sex attracted</b>	13.2%/n=739	10.83, 15.49
<b>Gender nonconforming</b>	11.1%/n=755	8.85, 13.34

**TABLE 3.2 POPULATION PROPORTION ESTIMATES OF LGBT STATUS–RELATED DISCRIMINATION**

	PROPORTION ESTIMATE/ SAMPLE SIZE	95% CONFIDENCE INTERVAL LOWER LIMIT,UPPER LIMIT
<b>Experienced LGBTQ-related discrimination</b>	18.5%/n=651	15.58, 21.67
<b>Kicked out of their homes related to sexual or gender minority status</b>	2.7%/n=786	1.65, 3.84

Below, we present descriptive data for each of these constructs to provide greater context of the findings for research question one

### SEXUAL ORIENTATION

As mentioned earlier, we assessed sexual orientation through one question about sexual identity and two questions about romantic attraction. Our first question allowed youth to report their sexual orientation identity as straight or heterosexual, gay or lesbian, bisexual, “I’m not sure yet” or “I don’t know what the question means.” The two part attraction questions asked participants whether they are romantically attracted to boys/men and whether they are romantically attracted to girls/women.<sup>16</sup>

We operationalized LGBTQ-identified as a response to the one identity question that indicates a non-heterosexual or a questioning identity. We estimated that 13.4% of youth self-identified as ‘lesbian’, ‘gay’, ‘bisexual’ or ‘questioning’ (LGBQ) in the LA-DCFS population. Looking at each identity category, 3.8% of participants identified as gay or lesbian, 7.3% of participants identified as bisexual, and 86.6% of participants identified as straight or heterosexual.

The 2.4% of participants that reported “I am not sure yet” made up the ‘questioning’ category. Those who indicated they did not understand the question were removed from the denominator.

While 13.4% of youth self-identified as LGBQ, 13.2% were estimated to have some level of same-sex attraction (exclusively same-sex or same and other sex). The data reported for LGBQ-identified youth and for levels of same- sex attraction highlight that while these constructs are very much connected, they are not the same. Within these two groups, gender, ethnicity, and age distributions are similar, though not equal. For example, a greater percentage of youth who reported being same-sex attracted are in group care than those that identified as LGBQ. See Table 3.3 for weighted age group breakdown for responses to sexual orientation questions and 3.4 for demographics of who comprises the sexual minority population.

<sup>16</sup> For variables that required a comparison between a reported identity or behavior and their gender, such as same-sex attraction or gender non-conformity, respondents’ birth sex was used as the referent gender. We assumed that experiences of psychological and structural forms of discrimination were more likely to be a function of the expectations of behaviors, mannerisms, and dress associated with their sex assigned at birth than their current gender identity.



TABLE 3.3 SEXUAL ORIENTATION BY AGE GROUP

	12-16 YEARS OLD	17-21 YEARS OLD	TOTAL SAMPLE
	%	%	%
<b>LGBQ</b>	n=462	n=296	n=758
Gay or Lesbian	1.7	7.0	3.8
Bisexual	6.8	8.0	7.3
I am not sure yet (questioning)	3.0	1.3	2.4
<b>Non-LGBQ (Straight or Heterosexual)</b>	88.5	83.7	86.6
<b>Same-sex attracted</b>	n=449	n=290	n=739
Same-sex only	1.2	7.1	3.6
Same-and other sex attracted	8.5	11.3	9.6
<b>Different-sex attracted only</b>	90.2	81.6	86.8

Sexual orientation varied by assigned sex. Among foster care youth, an estimated 15% percent of male-assigned youth identify as LGBQ, while 23.2% percent of female-assigned youth identify as LGBQ. This finding corresponds with the data presented in Table 3.4 showing that more than two thirds of the LGBQ and same-sex attracted youth were assigned female at birth. The demographic make-up of the participants who identified as LGBQ and same-sex

attracted maintained a racial and ethnic distribution similar to the demographics of the total sample. Thus, the majority of LGBQ-identified and same-sex attracted youth in the sample were youth of color. Further, about 8% of LGBQ-identified and 9% of same-sex attracted youth reported being born outside of the U.S. and nearly one fifth in both groups had a biological mother or father that had been born outside of the U.S.

TABLE 3.4 SEXUAL MINORITY DEMOGRAPHICS

	LGBQ	SAME-SEX ATTRACTED
	n=102	n=98
<b>Sex assigned at birth</b>		
Female	69.2	69.5
Male	31.9	30.5
<b>Race/Ethnicity</b>		
Latino	52.6	49.0
American Indian	1.3	3.0
Asian/Pacific Islander	3.3	3.1
Black	27.2	31.3
White	10.6	7.3
Bi/Multi racial or ethnic	4.8	6.4
<b>Born out of U.S.</b>	8.1	9.3
<b>At least one bio parent born out of U.S.</b>	29.4	29.4
<b>Group home or residential facility</b>	28.6	24.8
<b>Age [mean in yrs.(SD)]</b>	16.1 (.21)	16.6 (.19)

## GENDER IDENTITY

We asked participants two questions related to gender identity. Our survey questions on gender identity allowed youth to report a current gender that is different from their sex assigned at birth. Further, they were allowed to choose as many categories as they felt appropriate for current gender, for example, “transgender” and “girl.” In Table 3.5, we present the distribution of gender identities in terms of who identified their assigned sex at birth as female and their current gender identity as “girl” (cisgender girl), identified their assigned sex at birth as male and their

current gender identity as “boy” (cisgender boy), identified their current gender as “transgender,” indicated a current gender (boy or girl) different from their sex assigned at birth (female or male), or responded “I am not sure yet” in response to the current gender identity question.

For our analyses, we operationally defined “transgender” as a youth whose current gender identity was transgender, or if their current gender was different from their sex at birth, or if they responded to the current

gender question with “I am not sure yet.” These three ways of defining transgender status fit current research on transgender identity in which the focus is both on self-defined transgender status as well as a sense that one’s current and chosen gender identity is other than that which was assigned to them at birth. Using this definition, “transgender” in this report as a status represents both a self-claimed transgender identity as well as what Irvine (2010) calls a gender nonconforming identity in that the sex assigned at birth is not the same

as the current gender identity, whether that the current gender identity is transgender, girl, boy, unclear, or fluid. Applying this framework, transgender youth made up 5.6% of the total sample.<sup>17</sup> Similar to the sexual orientation dimensions, the majority of transgender youth in foster care in LA-DCFS are youth of color. However, the sex assigned at birth distribution is more equal among trans youth than among the sexual minority groups (Table 3.6).

**TABLE 3.5 GENDER IDENTITY BY AGE GROUP**

	12–16 YEARS OLD n=466	17–21 YEARS OLD n=290	TOTAL SAMPLE n=756
	%	%	%
<b>Cisgender girl</b>	48.6	53.8	50.6
<b>Cisgender boy</b>	45.2	41.5	43.8
<b>Transgender</b>			
Transgender Identified	0.8	0.2	0.6
Current gender different from sex assigned at birth	3.7	2.3	3.1
I am not sure yet	1.8	2.0	1.9

<sup>17</sup> The investigators have noted that there are a significant number of respondents categorized as transgender using the definition of incongruence between the sex assigned at birth and current gender identity in this sample compared to prior research on estimates of transgender populations. It is also noted that there appear to be higher proportions of transgender respondents who are Latino and a lower percentage for whom English is the primary language (84% among transgender youth vs. 93% among cisgender youth). For the purposes of the current report, we retain these participants in the transgender category because a) no data on the survey administration process indicated that there was a systematic response bias, and the response options to the current gender question were presented in random order to each respondent; b) a participant who participated passed the consent comprehension assessment, indicating they understood English enough to participate fully; c) respondents had the option to select “I don’t know what this question means”; and d) there are no population-level data that indicate we should expect transgender status to be evenly distributed across ethnicities. Nonetheless, further work to understand the relationships between culture, language, and transgender status among youth should be undertaken.

TABLE 3.6 GENDER MINORITY DEMOGRAPHICS

	TRANSGENDER
	n=41
	%
<b>Sex assigned at birth</b>	
Female	52.6
Male	47.4
<b>Race/Ethnicity</b>	
Latino	68.4
American Indian	2.5
Asian/Pacific Islander	6.6
Black	19.5
White	0
Mixed Race	3.0
<b>Born out of U.S.</b>	11.2
<b>At least one bio parent born out of U.S.</b>	38.5
<b>Group Home or Residential Facility</b>	19.6
<b>Age [mean in years (SD)]</b>	15.3 (.32)

To answer the primary research questions, we created a “LGBTQ” category by combining those who self-identified as LGBQ, those who reported some level of same-sex attraction, and those we classified or self-identified as transgender. The overall demographics of LGBTQ youth are shown in Table 3.7, again indicating that the sexual and gender minority youth population

is predominantly comprised of both younger and older girls who are ethnic minorities, and appear to be in group home settings more so than the general population of LA-DCFS.

**TABLE 3.7 WEIGHTED LGBTQ AND TOTAL SAMPLE DEMOGRAPHICS**

	LGBTQ	TOTAL SAMPLE <sup>18,19</sup>
	%	%
	n=130	n=786
<b>Sex assigned at birth</b>		
Female	61.4	53.5
Male	38.6	46.5
<b>Race/Ethnicity</b>		
Latino	54.6	56.9
American Indian	3.0	1.9
Asian/Pacific Islander	2.9	2.8
Black	28.5	23.4
White	6.4	9.4
Bi/Multi racial or ethnic	4.7	5.4
<b>Born out of U.S.</b>	9.7	7.9
<b>At least one bio parent born out of U.S.</b>	32.4	38.5
<b>Age Category</b>		
12-16 years old	52.3	62.4
17-21 years old	47.7	37.6
<b>Age [mean in yrs.(SD)]</b>	16.2 (1.7)	5.6 (.08)

<sup>18</sup> Total sample figures include all respondents, including those who may not have answered the sexual orientation, attraction, or gender identity questions. The authors chose to present the weighted LGBTQ population data in comparison to the total sample (rather than presenting the LGBTQ population compared to the non-LGBTQ sample) because it is more likely that current works being done based on the demographics of the foster youth population, and the authors wanted to highlight where the LGBTQ population differs.

<sup>19</sup> This column represents weighted overall sample data to provide a best possible approximation of the population from which it is drawn, resulting in different figures from the unweighted data presented in Table 2.1.

## ADDITIONAL LGBTQ RELATED CONSTRUCTS—GENDER EXPRESSION & DISCRIMINATION

### GENDER EXPRESSION

Another important indicator related to LGBTQ status is gender expression, and in particular, levels of gender conformity. As described above, we asked two questions about gender expression that allowed youth to indicate their level of masculinity or femininity on a scale of 1 to 9. Using prior research on the experiences of gender nonconforming youth in the context of mental health outcomes and bullying (Roberts, Austin, Corliss, Vandermorris, & Koenen, 2012), we defined a participant as gender nonconforming if they scored in the top decile above the median on the one gender expression scale that in the dominant culture is seen as discordant with their sex assigned at birth. For both groups, the median response on the scale that would

define their primary level of nonconformity (feminine for males, and masculine for females) was 1. The score required for a youth to be coded as gender nonconforming (i.e., the top decile point) was 7 on both scales. For example, a youth was categorized as being gender nonconforming if they were assigned female at birth and scored at least a 7 on the masculine scale. Between 9.3%-13.4% of youth across age groups and assigned sexes reported being perceived as gender nonconforming using this measure. Table 3.8 presents the percentages of gender nonconformity for the two sex assigned at birth groups by age.

**TABLE 3.8 PERCENTAGE OF GENDER NONCONFORMITY BY AGE GROUP AND SEX ASSIGNED AT BIRTH**

	12–16 YEARS OLD	17–21 YEARS OLD
<b>n=684</b>	<b>%</b>	<b>%</b>
<b>Gender Nonconforming</b>		
<b>Assigned female at birth</b>	10.8	9.9
<b>Assigned male at birth</b>	13.4	9.3

### DISCRIMINATION BASED ON PERCEIVED SEXUAL OR GENDER MINORITY STATUS AND GENDER EXPRESSION

As noted earlier in Table 3.2, nearly 3% of the overall foster care youth population are estimated to have ever been kicked out of or run away from their homes for issues related to sexuality, gender identity and gender expression, regardless of whether they were LGBTQ. Among LGBTQ youth specifically, 7.5% report this form of anti-LGBTQ bias experience. When we examined this variable further, findings indicated that some sub-groups experienced this at particularly high levels (Table 3.9). For example, 12% of LGBTQ youth ages 17-21 indicated that they had been kicked out of or ran away from a home or placement due to perceptions that they

were LGBTQ or due to their gender expression. Also significant, 2% of non-LGBTQ youth in the same age group also responded that they had been kicked out or ran away due to their perceived sexual orientation, gender identity or gender expression. These responses reflect whether this incident had ever happened and do not necessarily mean that this happened while in foster care, yet indicate that LGBTQ-related stigma and oppression are not experienced by youth in foster care solely by the group traditionally targeted for LGBTQ services.

**TABLE 3.9** EVER KICKED OUT OF OR RAN AWAY FROM HOME OR PLACEMENT DUE TO LGBTQ STATUS

	12–16 YEARS OLD	17–21 YEARS OLD
n=684	%	%
<b>Kicked out of home or ran away</b>		
<b>LGBTQ</b>	3.4	12.1
<b>Non LGBTQ</b>	1.4	2.0

We also asked participants a series of questions about whether they perceived that others had ever treated them poorly and whether or not this poor treatment seemed to be in relationship to various aspects of themselves (see unweighted values for this variable in Table 2.2). As noted in Table 3.2, 18.5% of all youth reported having experienced some form of discrimination based on people's perceptions of their LGBT status or

their expression of masculinity or femininity. Among LGBTQ youth, 37.7% reported poor treatment connected to their gender expression, sexual minority status, or transgender status. However, it is again notable that youth who do not identify as LGBTQ also report experiencing this LGBTQ-related stigma and oppression, though clearly at lower rates than LGBTQ youth (Table 3.10).

**TABLE 3.10** FREQUENCIES OF DISCRIMINATION BASED ON PERCEIVED SEXUAL, GENDER IDENTITY, OR GENDER EXPRESSION

	12–16 YEARS OLD	17–21 YEARS OLD
n=684	%	%
<b>Experienced LGBT or gender expression related discrimination</b>		
<b>LGBTQ</b>	29.5	46.3
<b>Non LGBTQ</b>	14.6	14.2

**RESEARCH QUESTION 2: IS THE PERCENTAGE OF FOSTER YOUTH WHO ARE LGBTQ LARGER THAN THE PERCENTAGE FOUND IN THE NON-FOSTER CARE POPULATION?**

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The findings indicate that LGBTQ youth are disproportionately overrepresented in out-of-home care in Los Angeles County. Most of the previous studies examining sexual orientation and gender identity among adolescents and young adults were conducted with school samples. As such, it is reasonable to assume that their samples included youth in foster care, though it is unclear how many or whether there were differences in sexual or gender identity between foster care status subgroups. Though previous studies do not target the exact corresponding non-foster care population of interest for this study, a few population-based studies provide useful approximate estimates.

In an analysis of the largest sample of people asked directly about their sexual and gender minority status, Gates and Newport (2013) reported that 6.4% of the U.S. adult population 18-29 years old identified as LGBT. The data used for these estimates were responses to the Gallup Daily tracking survey using one item that asked whether they identified as lesbian, gay, bisexual, or transgender – combining an assessment of sexual and gender minority status. Specific to youth, both the Youth Risk Behavior Surveillance System (YRBSS) and the National Longitudinal Study of Adolescent Health (Add Health Study) have provided estimates of sexual minority status among adolescents. Using YRBS data, Kann and colleagues (2011) assessed sexual orientation through both self-identification with a sexual minority label and sex of sexual partners across multiple states and districts that opted-in to include sexual orientation questions on their YRBS surveys. Though the exact wording of the sexual identity question varied among municipalities, they generally used one question about which sexual identity label the respondents would choose for themselves, similar to the item used in this study. They estimated that, across the locations using a sexual orientation survey item, a median of 93% identified as heterosexual, 3.7% identified as bisexual, and 2.5% were unsure about their sexual identity, and 1.3% identified as gay or lesbian. A collective median for the three sexual minority identities (gay/lesbian, bisexual, and questioning/unsure) was not

provided and it is not appropriate to simply add medians for the purpose of the current study's analyses. However, it is reasonable to assume given these data and the ranges reported that a median of approximately 7-8% identified with some sexual minority identity. Unfortunately, the Kann et al. (2011) study did not use Los Angeles YRBS data making it challenging to compare to the current data set. Specific to Los Angeles, reported 2013 YRBS data for Los Angeles Unified School District (LAUSD) indicate that 4.5% of middle school and 7.1% of high school students identify as gay, bisexual, or transgender (LAUSD, 2013). Again looking beyond Los Angeles, using Wave 1 of the Add Health data from 1995, Russell, Seif and Truong (2001) found similar rates of sexual minority status through an assessment of responses to items about romantic attraction, similar to those used in the current study. Among adolescents 12-19 years old, they estimated that 7.4% of boys and 5.3% of girls reported some level of same-sex attraction. Taken together, these studies of sexual orientation using identity and attraction measures would suggest that sexual minority youth and young adults make up somewhere between 6-8% of the U.S. youth population.

With regard to transgender status, population estimates are more challenging to identify because transgender status alone is not yet uniformly included on any national or statewide probability sample surveys of youth. However, some studies do provide estimates to consider in relation to the current study. For example, the Boston Youth Survey (BYS) conducted a probability survey of the city school district and used a single item approach to assess transgender status. Analyses of BYS reported in a peer-reviewed publication indicated that 17 out of 908 (1.7%) youth 13-19 years old identified as transgender (Almeida, Johnson, Corliss, Molnar, & Azrael, 2009). In a recent pilot using a nationally representative online survey, 1.4% of the year 1 and 3.2% of the year 2 samples identified as transgender (Greytak, 2013). Finally, the San Francisco Unified School District was the first to include both sexual orientation and gender identity on their middle and high school YRBS instruments. In 2011, they self-

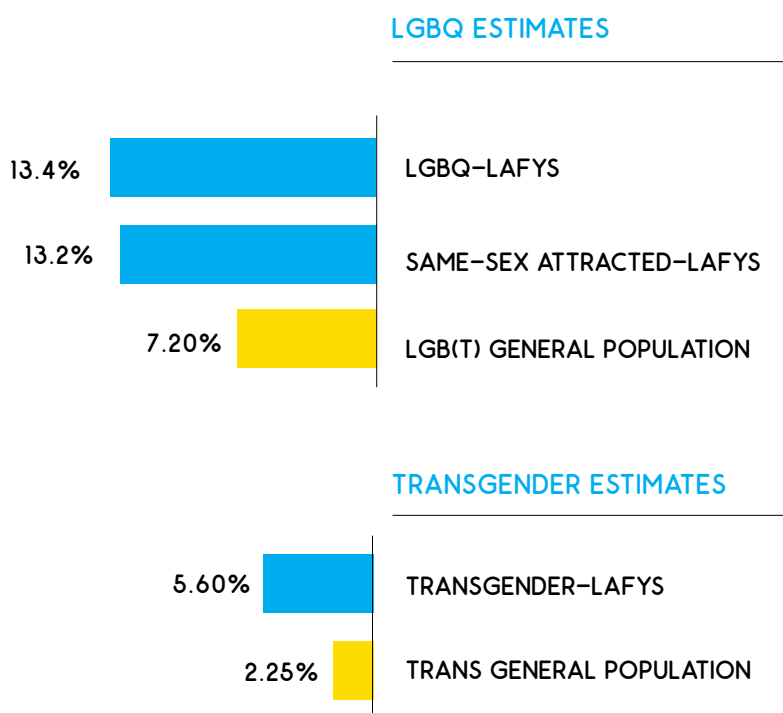


published reports indicating that 1.3% of middle school and 1.6% of high school students identified as transgender (SFUSD, 2011). Taken together, these studies of transgender status within local probability surveys or national convenience sample surveys would suggest that transgender youth make up somewhere between 1.3- 3.2% of the U.S. youth population.

Figure 1 represents the estimates identified in other national, state, or local studies of the general population of youth and young adults, with interval whiskers at the previously assessed extremes (6.4 – 8% for sexual

orientation and 1.3- 3.2% for transgender status). Thus, depending on the population estimates used, there are anywhere from 1.5 to 2 times more LGBTQ youth living in out-of-home care in Los Angeles than in the non-foster care population of youth and young adults (Figure 3). Though there are a number of limitations inherent to using prior research using various survey questions and sampling techniques to compare to the current study, regardless of the population estimate used, LGBTQ youth appear to be disproportionately represented at high rates within the foster care system.

**FIGURE 3. LAFYS POPULATION ESTIMATES COMPARED TO NON-FOSTER CARE ESTIMATES**



**RESEARCH QUESTION 3: DO LGBTQ AND NON-LGBTQ YOUTH IN FOSTER CARE DIFFER ON KEY FACTORS RELATED TO PERMANENCY AND WELLBEING?**

In response to the final research question, we examined differences between the LGBTQ and non-LGBTQ groups with regards to key foster youth outcomes or factors, such as number of placements and amount of time in foster care. We also examined how these groups differed in terms of wellbeing, and experiences

with schooling, homelessness, and the juvenile justice or criminal justice system. The experiences of LGBTQ youth in foster care do not seem different from non-LGBTQ youth across most of lived experience areas that we included in our survey.

However, there were some statistically significant differences on four key indicators.<sup>20</sup> Specifically, LGBTQ youth have an estimated higher average of foster care placements, reported being treated less well by the child welfare system, have been hospitalized

for emotional reasons at some point in their lifetime, and were more likely to have been homeless at some point in their life (see Table 4.1). For a full description of question wording, please see the survey instrument in Appendix A.

**TABLE 4.1 DIFFERENCES BETWEEN LGBTQ AND NON-LGBTQ ON RISKS TO PERMANENCY & WELLBEING**

FACTOR	MEAN(se) or %		TEST STATISTIC
	LGBTQ	NON LGBTQ	
<b>Total # of placements<sup>21</sup></b>	2.85(1.1)	2.43(1.03)	t(682)= 2.19*
<b># of placements in last year</b>	1.05(.14)	.89(.07)	t(682)= 1.07
<b>Total years in foster care</b>	5.56(.50)	5.20(.22)	t(682)= .65
<b>Currently in group home</b>	25.7%	10.1%	F(1, 682) = 23.84***
<b>Treatment by foster care system</b>	-	-	F(3.00, 2044.44)= 3.57 *
Very well	51.10%	61.02%	-
Somewhat well	35.14%	32.87%	-
Not very well	12.93%	5.78%	-
<b>Hospitalized</b>	38.80%	31.17%	F(1, 682) = 2.97†
<b>Reason for hospitalization</b>	-	-	F(3.99, 2724.52)= 7.81 ***
Emotional reasons	13.47%	4.25%	-
Physical reasons	13.60%	21.87%	-
Emotional and physical reasons	11.04%	4.16%	-
<b>Ever been arrested</b>	25.74%	22.17%	F(1.97, 1345.69)= 0.49
<b>Ever been homeless</b>	21.09%	13.90%	F(2.00, 1362.72)= 4.57*
<b>Times suspended from school</b>	.73(.57)	.57(.11)	t(682)= .76
<b>Times expelled from school</b>	16 (.16)	.05(.02)	t(682)= .70

Note. \* =  $p < .05$ , \*\*= $p \leq .01$ , \*\*\*=  $p < .001$ , †= $p < .10$ . Standard Deviations appear in parentheses next to the means.

<sup>20</sup> A nferent a stat st cs were conducted tak ng nto account the strat fied survey des gn.

<sup>21</sup> Geometr c means reported; conducted test of mean d fference w th og transform of outcome var ab e to adjust for h gh y skewed data.

## LIMITATIONS

There are a few limitations to the study that need to be noted to contextualize the findings. During the initial survey administration, a larger number of cases than anticipated were “non-locatable” (44%), indicating that the contact information provided by DCFS was not currently accurate. In order to reach our desired sample size, DCFS conducted a second extraction of data (randomly without replacement) and provided information for an additional sample of youth. The high number of cases that were unable to be contacted creates a potential and unknown sample bias. We assume that the distribution of cases that were deemed “non-locatable” was random with regard to sexual orientation and gender identity and not significantly different from the cases that were locatable. But this assumption may not be true if, for example, LGBTQ youth are more likely to be moved around among placements and therefore less likely to have correctly updated information. If this were the case, then the current point estimates would represent an undercount of the proportion of foster care youth who are LGBTQ.

Another key limitation is that the survey was only available in English. This was appropriate given the limits of resources, which made conducting field tests of multiple versions of the survey in various languages unfeasible. However, we recognize this may have reduced our understanding of LGBTQ foster youth who do not comprehend English at a level that made them eligible for the survey.

Additionally, the questions asking if youth had ever been hospitalized, arrested, or homeless did not ask youth

to specify if these events took place while they were in foster care, so it is possible that these events preceded and possibly contributed to youths’ entry into foster care.

One of the key research questions focused on evidence for claims of disproportionality of LGBTQ youth in foster care. Available data seem to suggest that the answer to this question is yes. However, a clear limitation in our ability to answer this question is the availability of data on sexual orientation and gender identity and expression among a population that matches the population from which we drew the sample. That is, we are not able to directly compare our findings to a probability sample of youth ages 12-21 years in Los Angeles County who are not in foster care who responded to interview items worded the same as they were in this study.

Finally, it is important to recognize that these estimates were formulated in a study of one large urban county child welfare service department. It is possible that levels of disclosure of sexual and gender minority statuses are higher and levels of experienced anti-gay and anti-trans bias are lower in urban areas where more explicit work is done around improving climates for LGBTQ youth. However, this may not be the case and more research is needed to understand the experiences of foster youth in other locations and to assess the usefulness of the methodology and generalizability of the results beyond Los Angeles County.

## VI. DISCUSSION

The Los Angeles Foster Youth Survey is the first study designed primarily to empirically document the proportion of LGBTQ youth in a child welfare system using a random sample and Computer Assisted Telephone Interviewing. The study assessed the proportion of LGBTQ-identified youth in the care of the Los Angeles Department of Children and Family Services, one of the largest metropolitan jurisdictions

in the country. The data indicate that 19.1% of foster youth identify as LGBTQ, making them significantly over-represented among LA foster youth. For example, U.S. population estimates of LGBT identification range from 3.4%-7.75% (Russell et al., 2001; Gates & Newport, 2013).

The majority of youth within the LGBTQ foster youth population were youth of color, indicating that many of them likely face both racial and anti-LGBTQ discrimination. Further, across age and sex groups, 9.3-13.4% of youth in the sample were classified as gender nonconforming. Future research needs to examine how subgroups of gender nonconforming youth may experience foster care differently. Transgirls, that is gender nonconforming youth who now identify along the feminine spectrum, may be especially vulnerable to discrimination based on gender conformity as studies show that parents have a stronger negative reaction to gender atypicality among male- assigned at birth children (D'Augelli, Grossman, & Starks, 2008; Galambos, Almeida, & Peterson, 1990) and transgirls are often more visible within systems (Irvine, 2010).

Despite their overrepresentation among foster youth, LGBTQ youth have been relatively invisible within the system because of barriers to disclosure and a lack of data collection. In order to meet the needs of LGBTQ youth, caregivers may need to know about a youth's identity. However, many youth may not feel safe identifying themselves as LGBTQ or sharing about their attractions and gender identities with child welfare workers and caregivers. Such reluctance is understandable given that this study found that 12% of foster youth ages 17-21 years had been kicked out of their house or run away due to their identified or perceived sexual orientation or gender identity. Other research has found that family rejection based on sexual orientation has been associated with higher rates of suicide, depression, illegal drug use, and risky sexual behavior (Ryan et al., 2009). In order to reduce barriers to disclosure, caregivers need to be trained on ways to ask about sexual orientation and gender identity and to have the skills to assure that if youth want to disclose an LGBTQ identity, that identity will be accepted and affirmed by the caregiver.

A lack of systematic data collection has also contributed to the invisibility of LGBTQ youth in the system. The results of this study of foster youth, as well as studies of the general youth population since the 1980's (Reis & Saewyc, 1999; Remafedi et al., 1992; Russell & Joyner, 2001; Russell, et al., 2001) show that it is possible to systematically collect sexual orientation and gender identity data among youth. Just like any other minority

demographic data, collecting sexual orientation and gender identity data helps policymakers and providers understand disparities and make informed resource allocation decisions. However, given the vulnerability of youth within systems of care, precautions must be taken to collect only the data that are needed and to protect confidentiality of the information.

LA-DCFS states that "Achieving timely permanency for every child in out-of-home care is a top priority" (LA-DCFS, 2011). Although permanency can look different for each youth, at minimum it involves the creation of a safe, stable, and secure relationship with at least one committed adult care provider. The study results revealed a few indicators of significantly greater barriers to permanency among LGBTQ youth when compared with non-LGBTQ youth. LGBTQ youth in the sample reported higher numbers of placements, a risk factor to not obtaining permanency and to wellbeing in general. Additionally, LGBTQ respondents were more than twice as likely to report that the foster system treated them "not very well." This finding supports anecdotal accounts of prejudice in the child welfare system such as deeming LGBTQ youth "unadoptable" or blaming their being "out" for the harassment and abuse from others (Wilber, Ryan & Marksamer, 2006).

LGBTQ youth were marginally more likely to have been hospitalized in general, and significantly more likely to have been hospitalized for emotional reasons. Prior studies have shown that identity-specific stressors contribute to higher rates of depression, mood disorders, and suicidality among LGBTQ youth, which may be related to being hospitalized for emotional reasons (Spirito & Esposito-Smythers, 2006). Unmet mental health needs may also be an additional barrier to permanency for LGBTQ youth if caregivers are less likely to be accepting of youth in emotional distress. Additionally, LGBTQ respondents were more likely to have been homeless, kicked out, or run away. This is consistent with previous evidence that LGBTQ youth leave their homes at nearly double the rate of non-LGBTQ youth (Cochran, 2002) and may choose to spend time on the streets because they felt safer there than in their group or foster home (Feinstein et al., 2001).

## VII. IMPLICATIONS

### IMPLICATIONS FOR POLICYMAKERS AND PRACTITIONERS:

#### **Understanding disproportionality:**

The study findings indicate that the proportion of foster youth in Los Angeles County who identify as LGBTQ is disproportionately high, which suggests that this is an important demographic factor. Policies and procedures need to be developed that will make it possible to integrate questions about sexual orientation, gender identity, gender conformity, and discriminatory experiences related to these social statuses into the existing demographic data collection, interview processes (with regard to intake, service planning, and transition) and case review processes in ways that ensure confidentiality when sharing and recording this information and involve raising competencies of child welfare workers to collect information respectfully and accurately.

#### **Implications for permanency:**

LGBTQ youth in this sample significantly differed from their non-LGBTQ counterparts with regard to the number of placements, rates of homelessness, hospitalization for emotional reasons, and likelihood of living in group settings. All of these suggest that LGBTQ youth face unique barriers to—and may require different strategies to achieve—permanency. Because LGBTQ youth are disproportionately represented in out-of-home care and have reported these disparities, public child welfare systems and the private providers with whom they contract must provide additional consideration for how sexual orientation and gender identity affect this constellation of experiences. Further, given that a third of the respondents had immigrant parents, family-based interventions must be designed taking those specific cultural and regulatory issues associated with being from an immigrant family into account.

#### **Addressing systemic and interpersonal level oppressions:**

The reported experiences with discrimination and the permanency-related disparities within the sample highlight the need to address sexuality and gender minority status-related competencies within the child welfare system workforce and among caregivers. In addition, the demographic diversity displayed by the sample points to a need to interweave into those cultural competencies ways to address racial disparities and to address the particular kind of marginalization which occurs at the intersection of race (culture, ethnicity) and sexual orientation and/or gender identity. Addressing the roles that racism, heterosexism, and anti-trans bias play in creating these disparities, in the interest of potentially improving permanency outcomes, requires a multi-pronged approach that examines how oppressions operate at structural and institutional levels (e.g., within policies, families, public spaces, and organizational cultures), as well as at the level of interpersonal and workforce interactions.

#### **Implications for cost avoidance:**

LGBTQ youth in this sample were overrepresented in the child welfare system, particularly in congregate care settings, moved significantly more (causing additional work for social workers), and were hospitalized for emotional reasons at a higher rate. These findings all correlate to additional costs – higher rates paid for extensive group care stays and hospital stays and additional administrative burden on staff when youth move. Addressing the needs of LGBTQ youth in care such that their experiences begin to approximate those of their non-LGBT counterparts will result in much-needed cost avoidance for already over-burdened child welfare systems.

## IMPLICATIONS FOR RESEARCHERS:

**Refining research methods:**

Future research should continue to refine methods for assessing sexual orientation, gender identity, and gender expression among foster youth. This includes further examination of the best practices for basic research procedures (like the ones used for this study). But, it also includes further assessments of whether there are confidential strategies for integrating assessment of sexual orientation and transgender status into public data systems in ways that protect youth and remain flexible for expected shifts in youths' sense of selves throughout adolescence.

Public sector collaboration and data management: Now that a precedent has been set and there is evidence that these questions can be asked of foster youth as young as 12 years of age in a safe, private and non-stressful way, counties, courts and IRBs should allow linkage to case data of the participants so that data systems can be mined to gather and analyze far more information about the status, experience and outcomes of LGBTQ youth in foster care in connection to standardized administrative data.

**Future surveys with further depth:**

Future surveys should inquire about other details of youth's lives to provide a more nuanced picture and to allow for more comparisons between LGBTQ youth's experiences in the system and their non-LGBTQ counterparts. Important areas to ask future survey participants about include conditions surrounding entry into care, permanency rates, family relationships and reactions to LGB sexual orientation and/or gender nonconformity, and differences in experience by placement setting, as well as assessments of how race, culture, sex, and gender interact to affect these factors. Additionally, identification of theoretically relevant resiliency factors would further the field's understanding of how some

LGBTQ youth may also be thriving and transitioning out of foster care into permanency.

**Looking within LGBTQ:**

More research needs to be done to examine within group comparisons, such as the differences in experiences between the various sexual and gender minority sub-groups (i.e., differences between L, G, B, and T), and how these experiences look similar or different across gender and ethnic/racial groups. Finally, the data also indicate a need to understand the importance of understanding differences between gender expression and identity, since not all gender nonconforming youth identified as LGBTQ, but may face much of the same discrimination based on perceptions of sexual identity and due to rigid dominant cultural norms around gender expression.

In sum, the results of the Los Angeles County Foster Youth survey revealed a significant LGBTQ foster youth population in LA County that experiences unique barriers to high quality care and permanency within the foster care system. To care for the now-established significant population of LGBTQ foster youth, further research needs to be conducted on this population, and policymakers and caregivers need to undertake coordinated efforts to address outcome disparities. Addressing these disparities will not only improve the lives of the LGBTQ children and their families who have come to the attention of the child welfare system, it will also provide significant cost avoidance to child welfare systems that already face resource constraints.

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## APPENDIX A. SURVEY INSTRUMENT

NOTE: *If the instrument is used, cite as: The Williams Institute & Holarchy Consulting (2013). Los Angeles Foster Youth Survey. Unpublished. Information on source of items is available upon request.*

### INTRODUCTION AND COGNITIVE ASSESSMENT

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#### LOS ANGELES FOSTER YOUTH SURVEY-PHASE II TELEPHONE QUESTIONNAIRE INTRO AND ASSENT

Again, we are helping UCLA with a research project on youth in foster care. The survey includes questions about basic information like age, ethnicity, sexual orientation, and other questions about your experiences in foster care. DCFS has given permission for you to participate. Even though they have said it is OK for you to participate, it is up to you if you want to talk to me.

Before you decide if you want to do the survey, there are a few things I need to tell you:

- The questions I will ask you are part of a research project. They are not required by your social worker.
- No one will be able to see how you answered the questions. Your name and other information will be kept separate from the survey answers.
- I will be asking you questions about basic information like age, ethnicity, sexual orientation, and other questions about your experiences in foster care.
- The interview will take between 15 and 20 minutes to complete, but could take up to half an hour.
- All of the information that you provide will be kept confidential. The only exception to this is if you are in danger of hurting yourself, threatening to hurt someone else, or are being hurt now, I will have to report it to a government agency for your protection.

JUST SO I'M ABSOLUTELY SURE YOU UNDERSTAND THIS, IF YOU TELL ME THAT YOU ARE BEING HURT, MAY HURT YOURSELF, OR YOU MAY HURT SOMEONE ELSE, WILL I HAVE TO REPORT IT TO A GOVERNMENT AGENCY?

1. YES

2. NO

*[If youth answers "yes", continue]*

OK THANK YOU.

*[If youth answers "no", repeat the question using the following script]*

LET ME REPEAT THE QUESTION. ALL OF THE INFORMATION THAT YOU PROVIDE WILL BE KEPT CONFIDENTIAL. THE ONLY EXCEPTION TO THIS IS IF YOU ARE IN DANGER OF HURTING YOURSELF, THREATENING TO HURT SOMEONE ELSE, OR ARE BEING HURT NOW, I WILL HAVE TO REPORT IT TO A GOVERNMENT AGENCY FOR YOUR PROTECTION.

**NOW, IF YOU TELL ME THAT YOU ARE BEING HURT, MAY HURT YOURSELF, OR YOU MAY HURT SOMEONE ELSE, WILL I HAVE TO REPORT IT TO A GOVERNMENT AGENCY?**

1. YES
2. NO

*[If youth answers "yes", continue]*

OK THANK YOU.

*[If they answer "no" twice, Thank them for their time and participation and code out as IC]*

- As mentioned in the letter we sent, you don't have to do this study. It's entirely up to you. No matter what you decide, no one will be mad at you. You can start the interview and then decide to quit at any time. Just tell me that you want to stop. If you want to skip a question, that's ok too.

**BEFORE I GO ON, LET ME MAKE SURE THAT WHAT I'M TELLING YOU MAKES SENSE. DO YOU UNDERSTAND THAT DOING THE INTERVIEW IS COMPLETELY UP TO YOU?**

1. YES
2. NO

*[If youth answers "yes", continue]*

OK THANK YOU.

*[If youth answers "no", repeat the question using the following script:*

**LET ME REPEAT THAT. YOU DON'T HAVE TO DO THIS STUDY. IT'S ENTIRELY UP TO YOU. NO MATTER WHAT YOU DECIDE, NO ONE WILL BE MAD AT YOU. YOU CAN START THE INTERVIEW AND THEN DECIDE TO QUIT AT ANY TIME. JUST TELL ME THAT YOU WANT TO STOP. IF YOU WANT TO SKIP A QUESTION, THAT'S OK TOO.**

**DO YOU UNDERSTAND THAT DOING THE INTERVIEW IS COMPLETELY UP TO YOU?**

*[If they answer "no" twice, Thank them for their time and participation and code out as IC]*

- You can answer the questions by saying the answer, pushing the number that goes with the answer, or saying the number that goes with the answer. Whatever is most comfortable for you.
- To protect your privacy, you should be on a phone where you are comfortable and can't be overheard by other people, or on a phone that allows you to push the numbers to respond.
- If not, I would be glad to call again later, or at a different number, or I can give you our toll free 800 number, and you can call us.
- If you feel more comfortable having someone in the room with you, (guardian, CSW, or clinician), during the survey, I would be glad to call again later, when you are both available.
- You will receive a \$10 gift card for participating in this survey.

## ASSENT/CONSENT

### Do you agree to do this interview?

1. YES - CONTINUE
2. WOULD PREFER A CALLBACK AT THIS NUMBER
3. WOULD PREFER A CALLBACK AT A DIFFERENT NUMBER 4. WANTS 800 NUMBER
91. OTHER

## INTERVIEW ITEMS

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### DEMOGRAPHICS

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Thank you again for being willing to talk to us. Remember that all of your answers to these questions will be kept confidential. No one will be told what you say, so feel free to answer them as honestly as you can. You may answer them using the buttons on their phone, or by saying the number out loud, or saying the answer out loud.

First, I have some basic questions about your background.

#### 1. How old are you? \_\_\_\_\_ # years

- 8 don't know

#### 2. What grade are you in? \_\_\_\_\_ grade

- 8 don't know

#### 3. What is your zip code where you live now? \_\_\_\_\_

- 8 don't know

#### 4. What is the language you speak most of the time?

- English
- Spanish
- Korean
- Armenian

#### 5. Do you have a second language?

- Yes- >>>If Yes, go to 5b.
- No- >>>If Yes, go to 6.

#### 5b. If yes, which one of the following is your second language?

- English
- Spanish

- Korean
- Armenian
- Tagalog
- Other \_\_\_\_\_

**6. Were you born in the United States?**

- Yes
- No
- I don't know

**7. Where was your biological mother born?**

- Mother was born outside of the U.S.
- Mother was born in the U.S.
- I don't know

Now, I am going to ask you a few questions about how you see yourself or how you identify. I want to remind you again that at any point you are welcome to respond using the number keys on your phone. For each response I will also give you a number code to press.

**9. Do you identify as Hispanic or Latino?**

- Yes
- No
- I don't know

**10. Which term do you use to describe your race?**

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- South Asian
- White
- Bi/multi racial or ethnic (allow skip to page where they select groups)
  - American Indian or Alaska Native
  - Asian

- Black or African American
- Hispanic/Latino
- Native Hawaiian or Other Pacific Islander or South Asian
- White
- 88Other\_\_\_\_\_

88 Other\_\_\_\_\_

8 don't know

**11. What was your sex at birth? (Check one)**

**(IF NEEDED: what the doctor put on your birth certificate?) [SINGLE RESPONSE; DO NOT RANDOMIZE]**

- Male
- Female
- 8 don't know

**12. When you think about how you see yourself, which of the following terms best fits how you describe your gender? (Check all that apply) [RANDOMIZE]**

- Girl
- Boy
- Trans or transgender
- I am not sure yet; or
- I don't know what this question means

**13. Do you consider yourself to be:**

- Straight or Heterosexual
- Gay or lesbian
- Bisexual
- I am not sure
- I don't know what this question means

**14. Are you romantically attracted to boys/men?**

- Yes
- No





No

I don't know

**21. Have you ever been kicked out of your home or placement, or run away because you are too feminine or masculine, or because someone assumed you were lesbian, gay, bisexual, or transgender?**

Yes

No

I don't know

**22. Have you ever spent a night or more in a hospital?**

Yes >> go to Q22b

No >> goto Q23

I don't know >> go to Q23

**22b. [If Yes], was this because of emotional reasons or physical reasons, such as illness or injury, or both?**

emotional reasons

physical illness or injury

Both emotional and physical illness or injury

I don't know

**23. Have you ever been arrested, been on probation, or been picked up by the police because they thought you were doing something wrong?**

Yes

No

I don't know

This next section will ask about experiences you may have had in the last year. Please tell me whether each experience has never happened, rarely happened, sometimes happened, or happened almost every day.

[For each question, repeat “1- Never, 2- Rarely, 3- Sometimes, 4- Often, or 8- Don’t know?”]

**24. How often in the last year (since June 2012) have you....**

	<b>Never</b> 1	<b>Rarely</b> 2	<b>Sometimes</b> 3	<b>Often</b> 4	<b>Don't know</b> 8
24. a...been treated with less respect than others					
24. b...received poorer services than others in restaurants or stores?					
24. c...experienced people treating you as if you're not smart?					
24. d...experienced people acting as if they are better than you are?					
24. e...experienced people acting as if they are afraid of you?					
24. f...experienced people acting as if they think you are dishonest?					
24. g...been called names or insulted?					

**>>>If all are marked Never- skip to Q27.**

For the next set of questions, I want to follow up on the events that you mentioned happening in the last year. You may choose as many categories as you want that apply to the event or events you are thinking about.

**25. You mentioned one or more ways that you were treated poorly in the last year. Would you say that being treated poorly was related to your...? (check all that apply)[RANDOMIZE]**

- Being in foster care
- Gender
- Being transgender
- Boyish mannerisms or not being womanly enough
- Girlish mannerisms or not being manly enough
- Immigrant status
- Race or ethnicity
- Being lesbian, gay, bisexual, or unsure about your sexual orientation

- Weight
- Clothing and shoes
- Other >>> If OTHER, ask “why do you think you were treated this way?” \_\_\_\_\_

**26. You mentioned one or more ways that you were treated poorly in the last year. What type of settings would you say you were treated like that in? (check all that apply)[RANDOMIZE]**

- Group home or residential campus
- Social worker office
- Family Setting
- Local business
- Neighborhood
- School

Other place >>> If OTHER, ask “where were you treated this way?” \_\_\_\_\_  
FOSTER CARE EXPERIENCES

---

Now, I would like to ask you a few questions about your experiences in foster care.

**27. About how many years have you spent in foster care, including placements with relatives?**  
\_\_\_\_\_ # YEARS

- 8 don't know

**28. What type of place was your first placement?**

- Home of a relative
- Home of someone not related to you
- Foster Home
- Group Home
- Residential Campus
- 8 don't know

**29. Where do you live right now?**

- Home of a relative
- Home of someone not related to you
- Foster Home

Group Home

Residential Campus

>>>If age is reported to be 18 or older, ask Q30. if not, skip to Q31..

**30. [If the child is 18 years of age or older, ask:] “Is your current placement a voluntary placement which you asked to stay in even though you are eligible to leave the system?”**

Yes

No

I don't know

**31. How many TOTAL placements have you had since you've been in foster care, including placements with relatives?**

\_\_\_\_\_ Total # Placements

I don't know

**32. How many different placements did you have since June of last year?**

\_\_\_\_\_ # Placements in last year

I don't know

**33. How has the foster care system treated you since June of last year? Would you say . . .**

Very well

Somewhat well

Not very well

I don't know

We are almost done, I have one more question and it is about your hopes for the future.

**34. In the next five to ten years, which type of work or career do you most likely see yourself working in?\_\_\_\_\_**

I don't know

That was my last question. Do you have any questions for me about the study?

Ok, as I explained, we will not share the information you have provided with your social worker or placement. But would you like me to let a DCFS social worker know that you would like to be contacted about any concerns you have?

***If yes, follow contact form completion protocol. If no, thank them for their time and end call.***

APPENDIX B.  
RAW DATA FREQUENCY  
TABLES

HOW OLD ARE YOU?	FREQUENCY	VALID PERCENT
12	73	9.3
13	84	10.7
14	83	10.6
15	86	10.9
16	102	13.0
17	150	19.1
18	105	13.4
19	71	9.0
20	31	3.9
21	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

WHAT GRADE ARE YOU IN?	FREQUENCY	VALID PERCENT
6	18	2.3
7	64	8.1
8	84	10.7
9	87	11.1
10	103	13.1
11	117	14.9
12	155	19.7
13	1	.1
OTHER	36	4.6
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

WHAT LANGUAGE SPOKEN MOST	FREQUENCY	VALID PERCENT
ENGLISH	728	92.63
SPANISH	57	7.3
<b>DO YOU HAVE A SECOND LANGUAGE?</b>		
	<b>FREQUENCY</b>	<b>VALID PERCENT</b>
YES	389	49.5
NO	397	50.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
<b>OTHER</b>		
	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
<b>WHAT IS YOUR SECOND LANGUAGE?</b>		
	<b>FREQUENCY</b>	<b>VALID PERCENT</b>
MISSING	397	.1
ENGLISH	55	7.0
SPANISH	311	39.6
KOREAN	2	.3
ARMENIAN	1	.1
TAGALOG	3	.4
OTHER	17	2.2
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
<b>SECOND LANGUAGE OTHER SPECIFY</b>		
	<b>FREQUENCY</b>	<b>VALID PERCENT</b>
MISSING	769	.1
AMERICAN SIGN LANGUAGE	1	.1
ARABIC	1	.1
CAMBODIAN	1	.1
CHINESE	1	.1
CREOLE	1	.1

SECOND LANGUAGE OTHER SPECIFY	FREQUENCY	VALID PERCENT
FILIPINO	1	.1
FRENCH	1	.1
ITALIAN	1	.1
JAPANESE	2	.3
PATOIS	2	.3
RUSSIAN	2	.3
SIGN LANGUAGE	1	.1
VIETNAMESE	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WERE YOU BORN IN THE UNITED STATES?	FREQUENCY	VALID PERCENT
DON'T KNOW	5	.6
YES	717	91.2
NO	64	8.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHERE WAS YOUR BIOLOGICAL MOTHER BORN?	FREQUENCY	VALID PERCENT
DON'T KNOW	107	13.6
REFUSE	1	.1
OUTSIDE U.S.	223	28.4
IN THE U.S.	455	57.9
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHERE WAS YOUR BIOLOGICAL FATHER BORN?	FREQUENCY	VALID PERCENT
DON'T KNOW	214	27.2
REFUSE	1	.1
OUTSIDE U.S.	241	30.7
IN THE U.S.	330	42.0
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

DO YOU IDENTIFY AS HISPANIC OR LATINO	FREQUENCY	VALID PERCENT
DON'T KNOW	2	.3
YES	434	55.2
NO	223	44.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHICH TERM TO DESCRIBE YOUR RACE	FREQUENCY	VALID PERCENT
DON'T KNOW	22	2.8
REFUSE	3	.4
AMERICAN INDIAN OR ALASKA NATIVE	121	15.4
ASIAN.	17	2.2
BLACK OR AFRICAN AMERICAN	201	25.6
NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER	10	1.3
SOUTH ASIAN	12	1.5
WHITE	131	16.7
BI/MULTI RACIAL OR ETHNIC	144	18.3
OTHER	25	15.9
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
If selected B /Multi Race a , which races:		
WHICH BI/MULTI RACIAL/ETHNIC	FREQUENCY	VALID PERCENT
DON'T KNOW	5	.6
MISSING	642	81.7
AMERICAN INDIAN OR ALASKA NATIVE	23	2.9
ASIAN	4	.5
BLACK OR AFRICAN AMERICAN	35	4.5
NATIVE HAWAIIAN OR OTHER PACIFIC ISLANDER	3	.4
SOUTH ASIAN	1	.1



WHICH BI/MULTI RACIAL/ETHNIC	FREQUENCY	VALID PERCENT
WHITE	32	4.1
OTHER	41	5.2
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
If selected other race:		
RACE OTHER SPECIFY	FREQUENCY	VALID PERCENT
MISSING	661	84.1
AMERICAN	2	.3
AMERICAN HISPANIC	1	.1
HISPANIC/LATINO	65	8.3
HUMAN	1	.1
LATIN	1	.1
LATINA HISPANIC	1	.1
LATINO	15	1.9
LIGHT BROWN	1	.1
MEXICAN	24	3.1
MEXICAN AMERICAN	7	.9
NONE	4	.5
NONE OF THE ABOVE	1	.1
PUERTO RICAN	1	.1
SALVADORIAN	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHAT WAS SEX AT BIRTH	FREQUENCY	VALID PERCENT
MALE	332	42.2
FEMALE	454	57.8
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

HOW DESCRIBE GENDER	FREQUENCY	VALID PERCENT
DONT'KNOW	1	.1
GIRL	424	53.9
BOY	314	39.9
TRANS OR TRANSGENDER	4	.5
I AM NOT SURE YET	14	1.8
I DON'T KNOW WHAT THIS QUESTION MEANS	29	3.7
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHAT IS SEXUAL ORIENTATION	FREQUENCY	VALID PERCENT
REFUSE	1	.1
STRAIGHT TO HETEROSEXUAL	645	82.1
GAY OR LESBIAN	32	4.1
BISEXUAL	57	7.3
I AM NOT SURE	17	2.2
I DON'T KNOW WHAT THIS QUESTION MEANS	34	4.3
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
ARE YOU ATTRACTED TO BOYS/ MEN?	FREQUENCY	VALID PERCENT
DON'T KNOW	1	.1
REFUSE	2	.3
YES	393	50.0
NO	328	41.7
I AM NOT SURE YET	31	3.9
I DON'T KNOW WHAT THIS QUESTION MEANS	31	3.9
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

ARE YOU ATTRACTED TO GIRLS/ WOMEN?	FREQUENCY	VALID PERCENT
REFUSE	1	.1
YES	371	47.2
NO	376	47.8
I AM NOT SURE YET	26	3.3
I DON'T KNOW WHAT THIS QUESTION MEANS	12	1.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

RATE 1-9 FEMININITY	FREQUENCY	VALID PERCENT
I DON'T KNOW	25	3.2
REFUSE	3	.4
NOT AT ALL FEMININE	205	26.1
2	37	4.7
3	25	3.2
4	32	4.1
5	74	9.4
6	49	6.2
7	110	14.0
8	76	9.7
EXTREMELY FEMININE	150	19.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

RATE 1-9 MASCULINITY	FREQUENCY	VALID PERCENT
I DON'T KNOW	16	2.0
REFUSE	6	.8
NOT AT ALL FEMININE	247	31.4
2	59	7.5
3	39	5.0
4	38	4.8
5	65	8.3
6	42	5.3
7	56	7.1
8	75	9.5
EXTREMELY MASCULINE	143	18.2
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW MANY TIME SUSPENDED FROM SCHOOL	FREQUENCY	VALID PERCENT
I DON'T KNOW	9	1.0
0	575	73.2
1	109	13.9
2	42	5.3
3	20	2.5
4	10	1.3
5	6	.8
6	1	.1
7	4	.5
8	1	.1
9	1	.1
10	4	.5

HOW MANY TIME SUSPENDED FROM SCHOOL?	FREQUENCY	VALID PERCENT
13	1	.1
14	1	.1
25	1	.1
30	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

TIMES EXPELLED FROM SCHOOL?	FREQUENCY	VALID PERCENT
DON'T KNOW	5	.6
0	732	93.1
1	35	4.5
2	4	.5
3	2	.3
4	3	.4
5	3	.4
6	1	.1
9	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

HAVE YOU EVER BEEN HOMELESS?	FREQUENCY	VALID PERCENT
DON'T KNOW	1	.1
YES	116	14.8
NO	669	85.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

EVER KICKED OUT OF HOME FOR SEXUALITY?	FREQUENCY	VALID PERCENT
DON'T KNOW	1	.1
YES	23	2.9
NO	762	96.9
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
EVER SPENT A NIGHT OR MORE IN HOSPITAL?	FREQUENCY	VALID PERCENT
DON'T KNOW	1	.1
YES	256	32.6
NO	529	67.3
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHY SPENT NIGHT IN HOSPITAL?	FREQUENCY	VALID PERCENT
DON'T KNOW	7	.9
MISSING	530	67.4
EMOTIONAL REASONS	54	6.9
PHYSICAL ILLNESS OR INJURY	150	19.1
BOTH EMOTIONAL AND PHYSICAL ILLNESS OR INJURY	45	5.7
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
EVER BEEN ARRESTED/ PROBATION?	FREQUENCY	VALID PERCENT
REFUSE	1	.1
YES	170	21.6
NO	615	78.2
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

HOW OFTEN BEEN TREATED W/ LESS RESPECT	FREQUENCY	VALID PERCENT
DON'T KNOW	1	.1
REFUSE	2	.3
NEVER	329	41.9
RARELY	233	29.6
SOMETIMES	157	20.0
OFTEN	64	8.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW OFTEN RECEIVED POORER SERVICE?	FREQUENCY	VALID PERCENT
DON'T KNOW	3	.4
REFUSE	1	.1
NEVER	511	65.0
RARELY	184	23.4
SOMETIMES	78	9.9
OFTEN	9	1.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW OFTEN TREATED AS NOT SMART?	FREQUENCY	VALID PERCENT
NEVER	385	49.0
RARELY	199	25.3
SOMETIMES	154	19.6
OFTEN	48	6.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

HOW OFTEN PEOPLE ACTED AS IF BETTER	FREQUENCY	VALID PERCENT
DON'T KNOW	1	.1
NEVER	208	26.5
RARELY	211	26.8
SOMETIMES	252	32.1
OFTEN	114	14.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW OFTEN PEOPLE ACTED AFRAID OF YOU?	FREQUENCY	VALID PERCENT
DON'T KNOW	2	.3
NEVER	456	58.0
RARELY	184	23.4
SOMETIMES	115	14.6
OFTEN	29	3.7
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW OFTEN PEOPLE THINK YOU'RE DISHONEST?	FREQUENCY	VALID PERCENT
NEVER	327	41.6
RARELY	263	33.5
SOMETIMES	153	19.5
OFTEN	43	5.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>



HOW OFTEN BEEN CALLED NAMES/INSULTED?	FREQUENCY	VALID PERCENT
NEVER	253	26.5
RARELY	239	26.8
SOMETIMES	206	32.1
OFTEN	88	14.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHY INSULTED:		
BEING IN FOSTER CARE	FREQUENCY	VALID PERCENT
DON'T KNOW	56	.3
REFUSE	7	58.0
MISSING	72	23.4
YES	213	14.6
NO	438	55.7
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
GENDER	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	32	4.1
NO	619	78.8
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

BEING TRANSGENDER	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	5	.6
NO	646	82.2
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
BOYISH MANNERISMS/NOT WOMANLY ENOUGH	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	48	6.1
NO	603	76.7
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
GIRLISH MANNERISMS/NOT MANLY ENOUGH	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	54	6.9
NO	597	76.0
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

IMMIGRANT STATUS	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	29	3.7
NO	622	79.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

RACE OR ETHNICITY	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	140	17.8
NO	511	65.0
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

BEING LESBIAN/GAY/BISEXUAL/ UNSURE	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	38	4.8
NO	613	78.0
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

WEIGHT	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	115	14.6
NO	536	68.2
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

CLOTHING AND SHOES	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	151	19.2
NO	500	63.6
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

OTHER	FREQUENCY	VALID PERCENT
DON'T KNOW	56	7.1
REFUSE	7	.9
MISSING	72	9.2
YES	136	17.3
NO	515	65.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

## WHERE TREATED BADLY:

FOSTER HOME	FREQUENCY	VALID PERCENT
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	130	16.5
NO	558	71.0
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
GROUP HOME OR RESIDENTIAL CAMPUS	FREQUENCY	VALID PERCENT
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	75	9.5
NO	613	78.0
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
SOCIAL WORKER OFFICE	FREQUENCY	VALID PERCENT
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	40	5.1
NO	648	82.4
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

<b>FAMILY SETTING</b>	<b>FREQUENCY</b>	<b>VALID PERCENT</b>
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	142	18.1
NO	546	69.5
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

<b>LOCAL BUSINESS</b>	<b>FREQUENCY</b>	<b>VALID PERCENT</b>
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	65	8.3
NO	623	79.3
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

<b>NEIGHBORHOOD</b>	<b>FREQUENCY</b>	<b>VALID PERCENT</b>
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	95	2.1
NO	593	75.4
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

SCHOOL	FREQUENCY	VALID PERCENT
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	378	48.1
NO	310	39.4
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

OTHER	FREQUENCY	VALID PERCENT
DON'T KNOW	21	2.7
REFUSE	5	.6
MISSING	72	9.2
YES	29	3.7
NO	659	83.8
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

WHERE TREATED POORLY OTHER SPECIFY	FREQUENCY	VALID PERCENT
MISSING	757	96.3
BY MY FRIENDS	1	.1
DRIVING	1	.1
FRIENDS HOUSE	1	.1
FRIENDS WHEN WE PLAY AROUND EACH OTHER	1	.1
IN SPORTS	1	.1
METRO BUS	1	.1
N/A	2	.3
PERSONAL RELATIONSHIPS	14	1.8
TRANSITIONAL HOUSING	1	.1
WAS HOMELESS	1	.1

WHERE TREATED POORLY OTHER SPECIFY	FREQUENCY	VALID PERCENT
WHERE I WORK	1	.1
WORK	3	.4
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW MANY YEARS SPENT IN FOSTER CARE?	FREQUENCY	VALID PERCENT
I DON'T KNOW	19	2.4
REFUSE	3	.4
0	69	8.8
1	136	7.3
2	79	10.1
3	90	11.5
4	51	6.5
5	43	5.5
6	43	5.5
7	36	4.6
8	21	2.7
9	19	2.4
10	36	4.6
11	20	2.7
12	20	2.4
13	15	4.6
14	12	2.5
15	13	2.5
16	16	1.9
17	11	1.5
18	18	1.7
19	11	2.0



HOW MANY YEARS SPENT IN FOSTER CARE?	FREQUENCY	VALID PERCENT
20	4	.5
21	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHAT TYPE OF PLACE WAS FIRST PLACEMENT?	FREQUENCY	VALID PERCENT
DON'T KNOW	13	1.7
REFUSE	1	.1
HOME OF RELATIVE	239	30.4
HOME OF SOMEONE NOT RELATED TO YOU	129	16.4
FOSTER HOME	346	44.0
GROUP HOME	44	5.6
RESIDENTIAL CAMPUS	14	1.8
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHERE DO YOU LIVE RIGHT NOW?	FREQUENCY	VALID PERCENT
DON'T KNOW	9	1.1
REFUSE	1	.1
HOME OF A RELATIVE	303	38.5
HOME OF SOMEONE NOT RELATED TO YOU	108	13.7
FOSTER HOME	265	33.7
GROUP HOME	85	10.8
RESIDENTIAL CAMPUS	15	1.9
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

IS CURRENT PLACEMENT VOLUNTARY?	FREQUENCY	VALID PERCENT
DON'T KNOW	5	.6
REFUSE	1	.1
MISSING	578	73.5
YES	179	22.8
NO	23	2.9
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW MANY TOTAL PLACEMENTS?	FREQUENCY	VALID PERCENT
I DON'T KNOW	37	4.7
REFUSE	2	.3
1	224	28.5
2	171	21.8
3	115	14.6
4	65	8.3
5	45	5.7
6	42	5.3
7	20	2.5
8	15	1.9
9	6	.8
10	12	1.5
11	2	.3
12	7	.9
14	7	.9
15	2	.3
16	2	.3
17	1	.1

HOW MANY TOTAL PLACEMENTS?	FREQUENCY	VALID PERCENT
18	1	.1
20	2	.3
25	3	.4
27	1	.1
30	1	.1
32	1	.1
36	1	.1
38	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
HOW MANY PLACEMENTS IN LAST YEAR?	FREQUENCY	VALID PERCENT
DON'T KNOW	9	1.1
REFUSE	2	.3
0	280	35.6
1	309	39.3
2	124	15.8
3	35	4.5
4	14	1.8
5	6	.8
6	4	.5
7	1	.1
10	1	.1
20	1	.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

HOW HAS FOSTER CARE SYSTEM TREATED YOU?	FREQUENCY	VALID PERCENT
DON'T KNOW	3	.4
VERY WELL	465	.1
SOMEWHAT WELL	260	30.4
NOT VERY WELL	58	16.4
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>
WHAT TYPE OF WORK/CAREER IN 5-10 YEARS? <sup>22</sup>	FREQUENCY	VALID PERCENT
BUILDING AND FIXING THINGS	41	5.2
COMPUTERS	19	2.4
HOME OF A RELATIVE	254	32.3
HELPING PEOPLE	118	15.0
LAW	31	3.9
MANAGING MONEY	29	3.7
MATH	38	4.8
MILITARY, AVIATION	87	11.1
MUSIC & ART	43	5.5
NATURE	12	1.5
READING	14	1.8
SCIENCE	4	0.5
SOCIAL STUDIES	44	5.6
SPORTS	7	0.9
OTHER	45	5.7
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>

<sup>22</sup> Raw responses were recoded according to the Bureau of Labor Statistics K12 career interest fields (Available at: <http://www.bls.gov/k12/students.htm>). Examples of "Building and fixing things" careers are: automotive mechanic, architect, and chef. Examples of "Helping people" professions include medical professional, teacher, and firefighter. Examples of "nature" careers include veterinarian, farmer. Examples of "social studies" careers include historian, urban planner.

HOW MANY SPORTS TEAMS?	FREQUENCY	VALID PERCENT
MISSING	102	13.0
1	174	22.1
2	102	13.0
3	61	7.8
4	347	44.1
<b>TOTAL</b>	<b>786</b>	<b>100.0</b>



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### View Completed EO 12866 Meeting

RIN [0970-AC72](#)

Title Adoption and Foster Care Analysis and Reporting System

Agency/Subagency 0970-HHS/ACF

Stage of Rulemaking Final Rule Stage

Meeting Date/Time 04/27/2020 11 00 AM

Requestor Family Equality Requestor's Name Julia Kruse

#### Documents

[List of Documents](#)

[Family Equality Memorandum to OIRA RIN 0970-AC72 4 27 20](#)

#### Attendees

[List of Attendees](#)

[Participation](#)

• Josh Brammer - OMB/OIRA	Teleconference
• Libby Ashley - OMB/O RA	Teleconference
• Kathleen McHugh - HHS/ACF	Teleconference
• Julie Kruse - Family Equality	Teleconference
• Stijn Talloen - Family Equality	Teleconference

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**Comments on Health and Human Services Proposed Rule: Adoption and Foster Care Analysis and Reporting System  
RIN: 0970-AC72**

April 23, 2020

Family Equality submits these supplementary comments in addition to our June 18, 2019 letter on the above rule (RIN 0970-AC72) to address developments since then, including the COVID-19 pandemic and recently published research.

In these comments, we build on the data presented in our June 18, 2019 comments on RIN 0970-AC72<sup>1</sup>. Since then, additional research has pointed to the urgent need for sexual orientation and gender identity data collection for foster youth and parents, collection of ICWA data elements, and collection of educational stability and health assessment data elements. Further, we show how the COVID-19 pandemic is increasing the need for collecting these data elements, both now and in the future.

**The COVID-19 Pandemic Newly Illuminates and Deepens Existing Disparities for LGBTQ and Tribal Foster Youth and Parents, and Confirms the Urgent Need for Sexual Orientation, Gender Identity, and ICWA Data Collection**

The experiences of LGBTQ and tribal foster children, youth, parents, and guardians during the COVID-19 pandemic reaffirms the importance of retaining sexual orientation and ICWA data elements related to the Indian Child Welfare Act.

Hundreds of comment letters for the Notice of Proposed Rulemaking (NPRM) for RIN 0970-AC72 highlighted the need for data collection on LGBTQ foster youth, parents, and guardians, as well as tribal foster children, parents, guardians, and families. Commenters pointed out the worse outcomes in foster care for LGBTQ and tribal youth relative to their non-LGBTQ and non-tribal counterparts; the need for LGBTQ and tribal adoptive and foster families to care for these youth; and the need for affirming services for LGBTQ and tribal families of origin to ensure successful reunification.

The COVID-19 pandemic reveals that in times of great social stress, disparities in experiences of LGBTQ and tribal foster youth and families increase, confirming the urgent need for data collection on these populations.

Secretary Azar himself has recognized the current pandemic as “an unprecedented threat.”<sup>2</sup> As COVID-19’s death toll in America ticks past 50,000, Americans are living under emergency public health orders that have closed schools and workplaces. Staff of countless state, local, and private agencies and other key stakeholders are unable to work due to illness, caring for ill or vulnerable loved ones, closures of schools and childcare, and closures of their own workplaces. Stay-at-home orders, rampant rates of

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<sup>1</sup> Available at <https://www.regulations.gov/document?D=ACF-2018-0003-0358>

<sup>2</sup> HHS.gov “Secretary Azar Statement on Launch of Phase 1 COVID-19 Vaccine Trial” *Health and Human Services Press Office* (March 16, 2020) <https://www.hhs.gov/about/news/2020/03/16/hhs-secretary-azar-statement-on-launch-of-phase-1-covid-19-vaccine-trial.html>



unemployment, the resultant trauma, and the closures of schools and workplaces all have a devastating impact on the child welfare system, exposing existing disparities and confirming the strong need for sexual orientation and ICWA data points in AFCARS.

Jayne Coffman, medical director at Cook's Children's Hospital's in Fort Worth, Texas, predicts the cumulative effects of the COVID-19 pandemic will lead to more child abuse and mistreatment:

"People have so much increased stress right now," "they've got financial stress. Some people have lost their jobs or are worried about keeping their jobs. They've lost income. You've got stress from being overcrowded. Everyone's cooped up together. They feel like they can't get away from each other. **These stressors can lead to abuse.**"<sup>3</sup>

Those fears are well-founded. In a 2019 systematic literature review of 11 studies, the authors found that "emergencies and natural disasters escalate the risk" of violence against children because families "face greater social and economic pressures."<sup>4</sup> An increase in child abuse during a crisis stresses an already overburdened child welfare system. Erica Fener Sitkoff, executive director of Voices for Georgia's Children, told local Atlanta media that "even without the COVID-19 pandemic the division is always in need of foster homes, especially for teens, large sibling groups and children with special needs."<sup>5</sup> As noted in our previous comments, LGBTQ parents are more likely to foster and adopt these hard to place groups – older foster children, sibling groups, and children with special needs - than their non-LGBTQ counterparts<sup>6</sup>.

Since research has found that LGBTQ children are at an increased risk for parental abuse, they are sure to be disproportionately affected by the conditions of this crisis. In a "meta-analysis of adolescent school-based studies that compared the likelihood of childhood abuse among sexual minorities vs sexual nonminorities", researchers found that "**sexual minority individuals were on average 3.8, 1.2, 1.7, and 2.4 times more likely to experience sexual abuse, parental physical abuse, or assault at school or to miss school through fear, respectively.**"<sup>7</sup> The disproportionate experience of child abuse by LGBTQ children will likely be compounded by the increase in child abuse

<sup>3</sup> Riley, Naomi Schaefer "Children in Jeopardy: The Covid-19 lockdown will greatly strain the U.S foster-care system." *City Journal*. April 3, 2020 <https://www.city-journal.org/covid-19-lockdown-foster-care-system>

<sup>4</sup> Seddighi, Hamed, et al. "Child Abuse in Natural Disasters and Conflicts: A Systematic Review." *Trauma, Violence, & Abuse*, Mar. 2019 <https://www.ncbi.nlm.nih.gov/pubmed/30866745>

<sup>5</sup> Staples, Gracie Bonds, "Why surge in foster care placement will follow COVID-19 pandemic" *The Atlanta Journal-Constitution* April 07, 2020 <https://www.ajc.com/lifestyles/why-surge-foster-care-placement-will-follow-covid-pandemic/NKtnijOQwZpfsL8XypJsrL/>

<sup>6</sup> D.M. Brodzinski & Evan B. Donaldson Adoption Institute, *Expanding Resources for Children III: Research-Based Best Practices in Adoption by Gays and Lesbians*, EVAN B. DONALDSON ADOPTION INSTITUTE (2011), available at: [https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011\\_10\\_Expanding\\_Resources\\_BestPractices.pdf](https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011_10_Expanding_Resources_BestPractices.pdf).

<sup>7</sup> Friedman, Mark S et al. "A meta-analysis of disparities in childhood sexual abuse, parental physical abuse, and peer victimization among sexual minority and sexual nonminority individuals." *American Journal of Public Health* vol. 101,8 (2011): 1481-94. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3134495/>

during this pandemic. Now more than ever, data collection on the sexual orientation and gender identity will be critical to understanding and responding effectively to the particular needs and experiences of LGBTQ children.

The COVID-19 pandemic, causing families to stay in close proximity during stay at home orders, could exacerbate the family rejection and abuse faced by LGBTQ children at home. Family rejection and abuse based on their sexual orientation or gender identity are primary causes for LGBTQ youth entering foster care or being homeless. In a position statement on LGBTQ children and youth in foster care and adoption, the North American Council on Adoptable Children, claims **“many LGBTQ youth are in care solely because of their family’s reaction to their sexual orientation or gender identity.”**<sup>8</sup> And in an analysis of data from The Lesbian, Gay, Bisexual, and Transgender (LGBT) Homeless Youth Provider Survey, Laura E. Durso and Gary J. Gates found that **46% of homeless LGBTQ youth ran away because of family rejection of their sexual orientation or gender identity, 43% were forced out by their parents because of such rejection, 32% left home because of physical, emotional, or sexual abuse, and 17% aged out of the foster care system.**<sup>9</sup> Sexual orientation and gender identity data collection could help identify if the disproportionate rejection of LGBTQ children increases during this time of crisis, and help agencies develop more effective responses to ensuring children’s safety and well-being.

Secondly, the closure of schools due to the COVID-19 pandemic will likely lead to significant underreporting of child maltreatment. Debi Grebenik, ex-Director of foster care agency Maple Star Colorado told *City Journal*, a Manhattan Institute publication, that “one of the main ways that we find out about child abuse and neglect is from teachers’ reports.”<sup>10</sup> Star Allen-Pettway told local Detroit news that “when kids are going to school or they’re involved in community activity, there are more people who have access to kids to be able to determine if there are instances of abuse or neglect.”<sup>11</sup> The coupled effect of increased abuse and maltreatment, with reduced reporting opportunities due to school closures, is truly unprecedented.

The predictable consequence is that the current period of underreporting will be “followed by a big spike when things get back to normal,” according to Grebenik.<sup>12</sup> Cheryl Williams, assistant branch director of Bethany Christian Services Georgia told one reporter that “once kids start going back to school, there will be a major increase in

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<sup>8</sup> North American Council on Adoptable Children Positions on Key Issues “LGBTQ Children and Youth in Care” *North American Council on Adoptable Children* (Last Visited April 26, 2020)

<https://www.nacac.org/advocate/nacacs-positions/lgbtq-children-and-youth/>

<sup>9</sup> Durso, L.E., & Gates, G.J. (2012). “Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth who are Homeless or At Risk of Becoming Homeless.” Los Angeles: The Williams Institute with True Colors Fund and The Palette Fund. <https://escholarship.org/uc/item/80x75033>

<sup>10</sup> Riley, 2020 <https://www.city-journal.org/covid-19-lockdown-foster-care-system>

<sup>11</sup> FOX 2 Detroit “COVID-19 crisis increasing the need for foster parents in Michigan” *FOX 2 Detroit* (April 2, 2020) <https://www.fox2detroit.com/news/covid-19-crisis-increasing-the-need-for-foster-parents-in-michigan>

<sup>12</sup> Riley, 2020 <https://www.city-journal.org/covid-19-lockdown-foster-care-system>

referrals.”<sup>13</sup> And it is unlikely the child welfare system will be able to prepare sufficiently for the increase in children that will be flowing into the system soon. The Child Welfare League of America reports that “Child welfare offices and agencies have been forced to shut their doors in order to prevent staff members from becoming ill or because staff have tested positive for the virus.”<sup>14</sup> In response to this unprecedented current and future pressure on the child welfare system, it is more important than ever that we ensure all willing and qualified parents are able to care for children in need of loving homes. As detailed below, LGBTQ parents are extremely willing foster and adoptive parents: same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.<sup>15</sup> Collecting sexual orientation and gender identity data on these parents will help agencies with recruitment of more foster parents as the need surges, and provide a pool of affirming parents for LGBTQ children awaiting placements.

The COVID-19 crisis is revealing and likely deepening existing health and economic disparities and inequities between LGBTQ and non-LGBTQ populations. In a survey of 1,000 U.S. adults conducted by the Human Rights Campaign and research analytic group PSB in April 2020, LGBTQ individuals reported being “much worse off” at almost twice the rate of the general population.<sup>16</sup> They were 36 percent more likely than the general population to have lost work after the closing of nonessential businesses around the country.<sup>17</sup> LGBTQ families, including families of origin and foster and adoptive families, will have increased needs for supportive and preventative services. Just as demographic data is essential in a health care crisis for ensuring an effective health care response, so demographic data is needed in a socioeconomic crisis to ensure an effective child welfare and family services response.

### **The COVID-19 pandemic and new Data Confirm: The Data Elements Related to the Indian Child Welfare Act Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.**

LGBTQ people are not the only demographic disproportionately affected by the COVID-19 pandemic. In normal times, tribal communities already suffer from high rates of

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<sup>13</sup> Staples, 2020 <https://www.ajc.com/lifestyles/why-surge-foster-care-placement-will-follow-covid-pandemic/NKtnijOQwZpfsL8XypJsrl/>

<sup>14</sup> James-Brown, Christine “In Troubled Times, Advocating for Children and Young People who are Vulnerable” *Child Welfare League of America* (April, 2020) <https://www.cwla.org/wp-content/uploads/2020/04/Editorial-Letter- COVID19.pdf>

<sup>15</sup> Shoshana K. Goldberg & Kerith J. Conron, How Many Same-Sex couples are Raising Children?, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>

<sup>16</sup> Lang, Nico. “Coronavirus Finance Troubles Have Hit LGBTQ People Extra Hard” *Vice News* (April 23, 2020) [https://www.vice.com/en\\_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard](https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard)

<sup>17</sup> Lang, 2020 [https://www.vice.com/en\\_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard](https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard)

substance abuse, “one of the top three reasons a child is removed from their home” according to Erica Fener Sitkoff, executive director of Voices for Georgia’s Children.<sup>18</sup>

Tribes will be especially hard hit during the COVID-19 pandemic. Like other nonessential businesses, tribal Casinos have been forced to close as part of State lockdowns and stay-at-home orders. Unlike other nonessential businesses however, tribal Casinos “are the sole source of commercial revenue for dozens of tribes,” according to Reuters.<sup>19</sup> **The prospect of drawn out closures of these casinos pose particularly grave dangers to tribal communities, and thus tribal youth and by extension the child welfare system.** Tribes are already vulnerable to issues like substance abuse mental and health disorders<sup>20</sup>, increasing the risk for child maltreatment and thus placement into foster care. Economic devastation only amplifies this risk.

In addition to these especially dire economic conditions, tribal populations are also at a disproportionate health risk. As Stacy Bohlen, the head of the National Indian Health Board, told ABC News: “We know that we have that vulnerability because of our health disparities.”<sup>21</sup> Bohlen told ABC News that Native Americans have three times the rate of diabetes as non-Hispanic white people, and suffer from higher rates of asthma and cardiovascular disease: all conditions which put them at especially high risk for death by coronavirus.

Furthermore, a recent study in the *American Journal of Public Health* analyzed data from AFCARS, the National Child Abuse and Neglect Data System and population counts from the Centers for Disease Control and Prevention to analyze trends in confirmed child maltreatment and foster care placements in the US between 2011 and 2016. Their analysis “confirmed **child maltreatment and foster care placement continued to be experienced at high rates in the United States in 2012 through 2016, with especially high risks for American Indian/Alaska Native children.**”<sup>22</sup> This

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<sup>18</sup> Lang, 2020 [https://www.vice.com/en\\_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard](https://www.vice.com/en_us/article/y3myq5/coronavirus-finance-troubles-have-hit-lgbtq-folks-extra-hard)

<sup>19</sup> Hay, Andrew. “As American Indian casinos close for coronavirus, industry seeks \$18 billion aid” *Reuters News* (March 17, 2020) [https://www.reuters.com/article/us-health-coronavirus-usa-nativeamerican/as-american-indian-casinos-close-for-coronavirus-industry-seeks-18-billion-aid-idUSKBN214467?fbclid=IwAR1mr25\\_wPssS4U5gKTkpl74NcDFhWpzUI9KrXUB6rNtK9mgLjp\\_o5rKANQ](https://www.reuters.com/article/us-health-coronavirus-usa-nativeamerican/as-american-indian-casinos-close-for-coronavirus-industry-seeks-18-billion-aid-idUSKBN214467?fbclid=IwAR1mr25_wPssS4U5gKTkpl74NcDFhWpzUI9KrXUB6rNtK9mgLjp_o5rKANQ)

<sup>20</sup> *TIP 61 Behavioral Health Services for American Indians and Alaska Natives* February, 2019 Available for download at: <https://store.samhsa.gov/product/TIP-61-Behavioral-Health-Services-For-American-Indians-and-Alaska-Natives/SMA18-5070> “American Indians and Alaska Natives are less likely to drink than White Americans; however, those who do drink are more likely to binge drink and to have a higher rate of past-year alcohol use disorder than other racial and ethnic groups.” (p. 6) and “American Indians and Alaska Natives experience some mental disorders at a higher rate than other Americans (e.g., anxiety disorders).” (p. 7)

<sup>21</sup> Ebbs, Stephanie and Haslett, Cheyenne “Indian Country faces higher risks, lack of resources in COVID-19 fight” *abc News* (April 3, 2020) <https://abcnews.go.com/Politics/indian-country-faces-higher-risks-lack-resources-covid/story?id=69957760>

<sup>22</sup> Youngmin Yi, Frank R. Edwards, and Christopher Wildeman “Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for US Children by Race/Ethnicity, 2011–2016” *American Journal of Public Health* 110 (2020) p. 704-709 <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305554>

is just the most recent confirmation of disparities that have long been known: the same disparities that prompted Congress to pass the Indian Child Welfare Act in the first place. Accurately monitoring this trend requires AFCARS to continue collecting national data on American Indian/Alaska Native youth. As discussed in our previous comments, the ICWA data elements are urgently needed to provide effective services to tribal families and youth, services needed now more than ever.

**New Data Confirms: Data Elements Related to Educational Stability Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.**

Educational stability is of central importance to youth facing family instability. During current cancellations of the school classes due to COVID-19, educational stability is at even greater risk, and the instability caused during these cancellations will likely persist into the future, impacting foster youth, including their eligibility for critical benefits. In the April 16, 2020 Virtual Town Hall for Older Foster Youth hosted by the United States Children’s Bureau and Think of Us, one participant voiced concerns about school stability during the Q & A: “given school work is suspended, those in care are worried that they will lose placements and services because they can no longer meet the requirements.”<sup>23</sup>

Research released following the closing of the comment period on this rule provides more evidence for the conclusion that education instability is detrimental to the well-being of foster youth. One recent study found that “connection with a caring adult, enrollment in school, and employment were inversely related to risk of homelessness.”<sup>24</sup> That is, **education stability decreases the likelihood of homelessness after transitioning out of foster care.** This is congruent with prior research underscoring “the detrimental effects of co-occurring placement changes and school moves in case planning for students in foster care”.<sup>25</sup>

Without the educational stability data point, the Children’s Bureau, States, Tribes, and child welfare providers will be hampered in their ability to accurately track the trends and analyze the repercussions of educational instability, or measure the effectiveness of services provided to enhance that stability. It is paramount foster care systems continue to develop and improve interventions aimed at maximizing educational stability. To do so, thorough and accurate data concerning the educational stability of children in care should be collected, and the educational stability data point should be retained.

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<sup>23</sup> Q&A, Virtual Town Hall for Older Foster Youth, United States Children’s Bureau and Think of Us (April 16, 2020) <https://www.youtube.com/watch?v=0YTTou2pWoA>

<sup>24</sup> Sneddon, D. *Community-level and Individual-level Predictors of Variation in Rates of Homelessness among Youth Transitioning Out of Foster Care* (Doctoral dissertation, 2019) <https://archive.hshsl.umaryland.edu/handle/10713/11612>

<sup>25</sup> Clemens, E. V., Klopfenstein, K., Lalonde, T. L., & Tis, M. (2018). “The effects of placement and school stability on academic growth trajectories of students in foster care.” *Children and Youth Services Review*, 87, 86-94. <https://files.eric.ed.gov/fulltext/ED593232.pdf>

## **New Research Confirms: Eliminating the Data Element Related to Foster Youth's Sexual Orientation Would Negatively Impact the Safety, Permanency, and Well-being of Children.**

AFCARS data elements relating to foster youth's sexual orientation and gender identity are critical to ensuring the safety, permanency, and well-being of LGBTQ youth in the child welfare system.

Existing research and ACF itself recognize that LGBTQ youth are disproportionately represented in out-of-home care, and experience poor treatment at higher rates.<sup>26</sup> New research from Chapin Hall released following the June 2019 closing of the comment period for this rule, based on multiple data sources, confirms that homeless youth “who had been in foster care were... more likely to identify as LGBTQ.”<sup>27</sup> The journal of the Child Welfare League of America, *Child Welfare*, dedicated an entire 2018 issue to the need for data on the sexual orientation and gender identity (SOGI) of youth in the child welfare system, explaining that serving “an especially vulnerable group of children... who have not, in general, [been] served well” requires “infus[ing] the findings of data into our efforts.”<sup>28</sup> These AFCARS sexual orientation data element for foster youth is critical to meeting that widely recognized need.

Recent research continues to confirm the particular vulnerability of LGBTQ youth. Several new studies published in the past year **find disproportionately high levels of suicidal ideation and attempts**. A new analysis of twenty years of data from the Youth Risk Behavior Survey (YRBS) found that, despite a general decline in suicidal ideation among both sexual minority and heterosexual youth in the past two decades, it “remained consistently elevated”<sup>29</sup> among sexual minority youth compared to their peers. Another new analysis of YRBS data found that disparities extend to actual suicidal attempts: “disparities in suicide attempts persist for sexual minority youth as well.”<sup>30</sup>

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<sup>26</sup> See Administration for Children and Families, ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> and <https://cssp.org/wp-content/uploads/2019/08/Policy-AdvancingHealthyOutcomes-Website-1.pdf>: “Children and youth who identify as lesbian, gay, bisexual, transgender, or queer/questioning (LGBTQ+) experience both disproportionate involvement with child welfare, and once involved, disparate outcomes including placement instability and longer stays in foster care.”

<sup>27</sup> Dworsky, A., Gitlow, E., Horwitz, B., & Samuels, G.M. (2019). *Missed opportunities: Pathways from foster care to youth homelessness in America*. Chicago, IL: Chapin Hall at the University of Chicago. [https://www.chapinhall.org/wp-content/uploads/Chapin-Hall\\_VoYC\\_Child-Welfare-Brief\\_2019-FINAL.pdf](https://www.chapinhall.org/wp-content/uploads/Chapin-Hall_VoYC_Child-Welfare-Brief_2019-FINAL.pdf)

<sup>28</sup> Feild, T. (2018). “It is Time to Start Counting Kids Who are LGBTQ in Child Welfare.” *Child Welfare*, 96(1), XIII-XX. <https://search.proquest.com/openview/7a2f876120268afc7c3931ad4337a109/1?pq-origsite=gscholar&cbl=40853>

<sup>29</sup> Richard T. Liu, Rachel F.L. Walsh, Ana E. Sheehan, Shayna M. Cheek and Sarina M. Carter. “Suicidal Ideation and Behavior Among Sexual Minority and Heterosexual Youth: 1995–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20192221>

<sup>30</sup> Julia Raifman, Brittany M. Charlton... Margaret McConnell “Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20191658>

New analyses of YRBS data also confirm that **“sexual and gender minority (SGM) youth are more likely to use alcohol than their heterosexual cisgender peers.”**<sup>31</sup> And while their mental health and substance abuse differs, LGBTQ foster youth of color are in an even more precarious situation than their white counterparts, according to a literature review published in February 2020. Here, the authors concluded that the precarity of **LGBTQ foster youth stems from their “increased risk for social isolation and family rejection,”**<sup>32</sup> funneling them into the child welfare system, and possibly accounting for their disproportionate representation there. “This is particularly true in African American communities,” the authors concluded, “where there is an increased lack of social support and acceptance for LGBTQ youth from their biological families, communities, churches, schools and healthcare systems.”<sup>33</sup>

A March 2020 paper from the Annie E. Casey Foundation and the National Implementation Research Network on “Developing an Evidence-Based Child Welfare Preventive Practice Model” recommends **“targeted services to address risk and protective factors and evidence-based programs that meet the specific goals and needs of families.”**<sup>34</sup> The authors of the recent new research on LGBTQ suicide attempt disparities advise applying this principle “developing and implementing approaches” specific to sexual minority youth.<sup>35</sup> Similarly a recent paper from the Center for the Study of Social Policy (CSSP) points out that **LGBTQ youth often are placed in “inappropriate placements in congregate care settings”** because the feelings of rejection due to a lack of affirming care and family placements is “pathologized” precisely because “systems are not always equipped to identify or address the feelings of rejection.”

Current research shows that **LGBTQ+ youth are more likely to be removed from their homes due to conflicts with their caregivers.** Given these trends, states must assess gaps in their current service continuum and implement prevention services to meet these youth’s needs. States should assess which evidence-based programs have been found to be effective to address these needs and, where there is a gap, **states should invest in building the**

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<sup>31</sup> Watson, R.J., Fish, J.N., Poteat, V.P. et al. “Sexual and Gender Minority Youth Alcohol Use: Within-Group Differences in Associations with Internalized Stigma and Victimization.” *Journal of Youth and Adolescence* 48, 2403–2417 (2019). <https://link.springer.com/article/10.1007/s10964-019-01130-y>

<sup>32</sup> Jamal Hailey, Whitney Burton & Joyell Arscott “We Are Family: Chosen and Created Families as a Protective Factor Against Racialized Trauma and Anti-LGBTQ Oppression Among African American Sexual and Gender Minority Youth” *Journal of GLBT Family Studies*. Vol. 16(2), 176-191 (2020) <https://www.tandfonline.com/doi/full/10.1080/1550428X.2020.1724133>

<sup>33</sup> Jamal Hailey, Whitney Burton & Joyell Arscott “We Are Family: Chosen and Created Families as a Protective Factor Against Racialized Trauma and Anti-LGBTQ Oppression Among African American Sexual and Gender Minority Youth” *Journal of GLBT Family Studies* Vol. 16(2), 176-191(2020) <https://www.tandfonline.com/doi/full/10.1080/1550428X.2020.1724133>

<sup>34</sup> Annie E. Casey Foundation *Putting Family First: Developing an Evidence-Based Child Welfare Preventive Practice Model* (March 20, 2020) <https://www.aecf.org/resources/putting-family-first/>

<sup>35</sup> Julia Raifman, Brittany M. Charlton et al. “Sexual Orientation and Suicide Attempt Disparities Among US Adolescents: 2009–2017” *Pediatrics*. Vol. 145(3) (March 1, 2020) <https://pediatrics.aappublications.org/content/145/3/e20191658>

**evidence for promising and innovative approaches** to ensure solutions have a strong fit with the experiences of LGBTQ+ youth and families.<sup>36</sup>

As another recent study concludes, developing targeted approaches with a strong fit includes “the importance of culturally responsible treatment delivery.”<sup>37</sup> This includes ensuring foster parents understand and are prepared to help children address the unique challenges they face. As a policy paper from a coalition of child welfare and child health experts states, “A major cause of premature placement disruption is the foster parent’s dissatisfaction, associated with a lack of preparation for the type and severity of problems presented by children in their care, and their lack of ability to effectively manage those challenges.”<sup>38</sup>

Given the particular needs of LGBTQ foster youth, it is no surprise that they experience greater placement instability, and thus, on average, more placements than their heterosexual counterparts. A recent literature review describes such placement instability as “a devastating experience” and finds that **“higher levels of placement stability have been linked with less positive mental health outcomes and increased rates of emergency room admissions.”**<sup>39</sup> A recent study based on AFCARS and other data sources also found that placement instability has **“a positive relationship with risk of homelessness.”**<sup>40</sup>

Identifying those States and those practices that are serving this vulnerable population well is only possible if we have national data to make State-by-State comparisons. By contrast, removing sexual orientation data points from AFCARS will continue to obscure and hide the experiences and needs of this vulnerable population, making it impossible to track any systemic improvements and draw accurate conclusions about effective treatments.

### **New Research Confirms: Excluding Data Elements Related to Foster and Adoptive Parents’ Sexual Orientation Would Negatively Impact the Safety, Permanency, and Well-being of Children.**

The need to recruit as many parents into the system as possible remains strong: every year, thousands of children age out of the system without parents, and congregate care

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<sup>36</sup> Alexandra Citrin and Megan “Martin Advancing Healthy Outcomes “Eight Ways to Promote the Health and Well-Being of LGBTQ+ Youth Involved with Child Welfare through FFPSA” *Center for the Study of Social Policy* (August 2019) <https://cssp.org/wp-content/uploads/2019/08/Policy-AdvancingHealthyOutcomes-Website-1.pdf>

<sup>37</sup> Ayanda Chakawa, William Frye, Jamie Travis and Elizabeth Brestan-Knight. “Parent-child interaction therapy: Tailoring treatment to meet the sociocultural needs of an adoptive foster child and family” *Journal of Family Social Work* Vol. 23(1) (2020)

<https://www.tandfonline.com/doi/full/10.1080/10522158.2019.1681336>

<sup>38</sup> *CHAMPSPolicy Playbook*, 2nd ed. (January 2019) <https://playbook.fosteringchamps.org/wp-content/uploads/2019/01/champs-playbook.pdf>

<sup>39</sup> Donna F. Ossorio, Jackson de Carvalho “Foster Care Placement and the Impact of Placement Instability” *International Journal of Humanities and Social Science Review* Vol. 5(4) (December 2019) <http://www.ijhssrnet.com/uploads/volumes/1577287331.pdf>

<sup>40</sup> Sneddon, D. <https://archive.hshsl.umaryland.edu/handle/10713/11612>



use remains prevalent. Simply put, there are not enough families to welcome foster youth, and adopt them if they are unable to return to their families of origin.

LGBTQ parents are extremely willing foster and adoptive parents: same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.<sup>41</sup> Meanwhile, almost half of millennial LGBTQ individuals are planning on having a family. More than 40% are considering foster care and adoption to do so.<sup>42</sup> But despite significant interest in foster care and adoption from the LGBTQ community, new research based on interviews with LGBTQ prospective parents finds that they continue to “face multiple challenges to parenthood because of barriers such as discriminatory legislation and policies” and denial of services.<sup>43</sup>

This study concluded that **anti-LGBTQ “attitudes and discrimination can lead to debilitating and enduring harm upon the economic, emotional, and relational well-being of growing LGBTQ+ families.”**<sup>44</sup> Another new study of 337 LGBTQ adults in the United States who reported delays or disruptions in the adoption or foster care process found that anti-LGBTQ attitudes and practices **discourage prospective parents from entering the system, or prevents and delays them from actually parenting children.**<sup>45</sup> In particular, they concluded that “placement delays and disruptions discourage LGBTQ people from adopting.”<sup>46</sup>

Collecting basic demographic data about these parents would help States effectively address barriers to recruiting them, first and foremost by sending a positive signal to these parents by giving them confidence that they will not be discriminated against. In the healthcare field, a recent paper based on interviews with health care administrators found growing agreement that routinely collecting SOGI data in fact makes these minorities feel more welcome and seen, as well as allowing the providers to provide better care for these patients.<sup>47</sup> Given the common experiences of discrimination in both healthcare and child welfare services, there is strong reason to suppose that collecting

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<sup>41</sup> Shoshana K. Goldberg & Kerith J. Conron, How Many Same-Sex couples are Raising Children?, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>

<sup>42</sup> Family Equality (2019) LGBTQ Family Building Survey. <https://www.familyequality.org/fbs> (April 21, 2019) <https://www.familyequality.org/wp-content/uploads/2019/02/LGBTQ-Family-Building-Study-Summary-1.pdf>

<sup>43</sup> Levitt, H. M., Schuyler, S. W., Chickerella, R., Elber, A., White, L., Troeger, R. L., ... & Collins, K. M. (2020). “How discrimination in adoptive, foster, and medical systems harms LGBTQ+ families: Research on the experiences of prospective parents.” *Journal of Gay & Lesbian Social Services*, 1-22. <https://www.tandfonline.com/doi/abs/10.1080/10538720.2020.1728461>

<sup>44</sup> *Ibid.* “Findings indicate that heteronormative attitudes and discrimination can lead to debilitating and enduring harm upon the economic, emotional, and relational well-being of growing LGBTQ+ families.”

<sup>45</sup> Abbie E. Goldberg, Reihonna L. Frost, Liam Miranda, Ellen Kahn “LGBTQ individuals' experiences with delays and disruptions in the foster and adoption process.” *Children and Youth Services Review*, Vol. 106 (2019) <https://www.sciencedirect.com/science/article/pii/S0190740919305791>

<sup>46</sup> *Ibid.*

<sup>47</sup> The Fenway Institute and NORC “Helping Your Organization Collect Sexual Orientation and Gender Identity Data” *The Fenway Institute* 2019 [https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_HelpingYourOrganization.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf) See page 2

data on the sexual orientation of foster and adoption parents would likewise have a dual benefit. First, the data would allow child welfare providers, like health care providers, to better serve these parents. As with LGBTQ foster youth, only thorough data allows targeted responses. Second, these parents would feel more welcome and experience less discrimination if data collection is coupled with staff cultural competency training as health care providers suggest.

Given the need for more parents in foster care and adoption remains strong, the child welfare system stands to benefit from doing everything it can to welcome as many parents into the system as possible. Any exclusion of qualified, willing, and able parents constitutes a detriment to the safety, permanency, and well-being of the children these parents could care for. To welcome more LGBTQ parents, discrimination and stigma against them, and their particular needs, must be addressed. The experience of health care providers sets a clear precedent: effective treatment started with thorough data collection. National AFCARS data will be important for research affecting the safety, permanency, and well-being of children. A better understanding of, for example, how often LGBTQ parents foster disabled children and sibling groups, will allow the child welfare system to better serve children in need.

### **New Research Confirms: HHS Should Refine Sex Data Elements to Collect Data on Transgender Youth and Parents.**

Sexual orientation is not the only data AFCARS should collect to better serve LGBTQ children in the child welfare system. An estimated 1.4 million US adults are transgender, as are hundreds of youths of youth.

Recent research in *Children and Youth Services Review* identifies specific barriers that transgender adults face in adopting and fostering children. The authors conclude that **“Trans adults report more fears about discrimination than cisgender sexual minorities,”** whilst also being **“more open to older children and trans children than cisgender sexual minorities.”** Hence, the authors suggest that, “Trans parents could be a unique asset to children involved in child welfare who are most vulnerable.”<sup>48</sup> Transgender parents thus have even greater fears of discrimination and could serve particularly vulnerable children. Transgender youth also face extraordinary barriers that can be even greater than those facing cisgender sexual minority youth. A recent study in the journal *Pediatrics* including 1,148 transgender adolescents found that this group had **“higher odds of all suicidality outcomes than their cisgender peers.”**<sup>49</sup>

By refining sex data elements to collect data on both sex assigned at birth and gender identity, AFCARS data would enable the Children’s Bureau, States, Tribes, and all child

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<sup>48</sup> Abbie E. Goldberg, Samantha Tornello, Rachel Farr, JuliAnna Z. Smith, Liam Miranda. “Barriers to adoption and foster care and openness to child characteristics among transgender adults.” *Children and Youth Services Review*, Vol. 109 (2020)

<https://www.sciencedirect.com/science/article/pii/S0190740919311144>

<sup>49</sup> Brian C. Thoma, Rachel H. Salk, Sophia Choukas-Bradley, Tina R. Goldstein, Michele D. Levine, Michael P. Marshal, “Suicidality Disparities Between Transgender and Cisgender Adolescents.” *Pediatrics* Nov 2019, 144 (5) <https://pediatrics.aappublications.org/content/144/5/e20191183>

welfare providers to better serve transgender foster youth, and to more effectively recruit and support transgender parents. Doing so will improve the safety, permanency, and well-being of children insofar as it would improve the safety, permanency, and well-being of transgender youth in care, and open up more homes for all children. Only comprehensive data through AFCARS can provide the necessary data to properly evaluate the needs and treatments of transgender youth and parents in the child welfare system

**New Data Confirms: The Data Elements Related to Health Assessments Should Be Retained to Protect Youth and Ensure Compliance with Federal Law.**

According to recent research by the National Conference of State Legislatures, issued since the June 2019 closing of the comment period for this rule, **mental health is a critical issue in foster care.**<sup>50</sup> Eighty percent of foster youth have mental health issues, and they fare worse in areas ranging from substance and alcohol abuse, to post traumatic stress disorder. Given the dire mental health needs of foster youth, timely health assessments are absolutely critical to their safety and well-being. Without data on whether such health assessments are being conducted, however, we simply do not know the extent to which this need is being met. Nor do we know how different states compare in addressing this need.

This is especially worrying for LGBTQ foster youth, since, as proven by research cited above, they fare even worse in amongst other things, substance abuse and suicidal ideation and attempts. Other health disparities, including mental health, also remain.<sup>51</sup> Thus, it is incredibly important to the well-being of foster youth that AFCARS continues to collect data both on the provision of health assessments, and on sexual orientation and gender identity of children in care. Such data would allow the child welfare system to confidently draw conclusions about the particular needs and experiences of children in care, develop appropriate and targeted treatments to address these needs and experiences, and evaluate the relative success of such treatments.

**New Research and Expert Recommendations Confirm: Collecting LGBTQ Demographic Data Is Not Overly Burdensome.**

New research and expert recommendations also confirm that the collection of SOGI data is not burdensome. In June 2019, The Fenway Institute and NORC at the University of Chicago released three briefs on the collection of SOGI data in health care settings.<sup>52</sup> According to their research, based on interviews with health care administrators:

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<sup>50</sup> National Conference of State Legislatures *Mental Health and Foster Care* (Nov 1, 2019) <https://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx>

<sup>51</sup> Emma C. Potter and Charlotte J. Patterson “Gay, and Bisexual Adults: The Burden of Health Disparities in 2016 Behavioral Risk Factor Surveillance System Data” *LGBT Health*. Oct 2019. p. 357-369. <https://www.liebertpub.com/doi/10.1089/lgbt.2019.0013>

<sup>52</sup> The Fenway Institute and NORC, “Helping Your Organization Collect Sexual Orientation and Gender Identity Data!” (June 2019), [https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_HelpingYourOrganization.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_HelpingYourOrganization.pdf); The Fenway Institute and NORC, “Eight Tips for Building Coalition Support and Moving SOGI Data Collection Forward in Your

**SOGI questions are widely understood and accepted by diverse patient populations from across the country, and that that providers often overestimate the number of patients who will be uncomfortable or offended by SOGI questions.** For example, a survey of 1,516 patients and 429 providers found that while approximately 80% of providers thought that patients would refuse to answer SO questions, only 10% of patients said that they would refuse to answer.<sup>53</sup>

Those findings and recommendations are in line with previous research on data collection in health care, which found that “patients feel routine SO/GI collection allows for recognition of individual identity and improved therapeutic relationships in the ED”.<sup>54</sup> One major study found that: “Collection of SOGI data as a part of the routine clinical patient intake process is not distressing to 97 percent of patients who are heterosexual, cisgender, and older than 50 years.”<sup>55</sup> Other research “found a high response rate to questions about sexual orientation and gender identity” and also argues that such “data can help organizations identify health inequities related to sexual orientation and gender identity.”<sup>56</sup>

Thus, there is overwhelming evidence that collection of SOGI data is possible, and that those who are surveyed do not find the collection of such data burdensome.

### **New Research Confirms: Collecting the Data Elements in the Final Rule will Decrease Costs in the Child Welfare System by Improving Outcomes for LGBTQ Youth.**

High placement instability among LGBTQ youth means more time spent in congregate care. Congregate care, of course, is less optimal for children and more expensive to the child welfare system than stable foster care placements or adoption. A study released in 2020 found that “**residential treatment and group home placements and services**

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Organization” (June 2019), [https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_EightTips.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_EightTips.pdf); The Fenway Institute and NORC, “The Nuts and Bolts of SOGI Data Implementation: A Troubleshooting Toolkit” (June 2019), “[https://fenwayhealth.org/wp-content/uploads/TFI-54\\_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month\\_NutsAndBolts.pdf](https://fenwayhealth.org/wp-content/uploads/TFI-54_SOGI-Data-Collection-Series-of-3-Tip-Sheets-for-pride-month_NutsAndBolts.pdf).”

<sup>53</sup> The Fenway Institute and NORC

<sup>54</sup> Kodadek, L. M., Peterson, S., Shields, R. Y., German, D., Ranjit, A., Snyder, C., ... & Haider, A. H. (2019). “Collecting sexual orientation and gender identity information in the emergency department: the divide between patient and provider perspectives.” *Emergency Medicine Journal*, 36(3), 136-141. <https://emj.bmj.com/content/36/3/136.abstract>

<sup>55</sup> Rullo, J. E., Foxen, J. L., Griffin, J. M., Geske, J. R., Gonzalez, C. A., Faubion, S. S., & van Ryn, M. (2018). “Patient acceptance of sexual orientation and gender identity questions on intake forms in outpatient clinics: a pragmatic randomized multisite trial.” *Health Services Research*, 53(5), 3790-3808. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6153164/>

<sup>56</sup> Pinto, A. D., Aratangy, T., Abramovich, A., Devotta, K., Nisenbaum, R., Wang, R., & Kiran, T. (2019). “Routine collection of sexual orientation and gender identity data: a mixed-methods study.” *CMAJ*, 191(3), E63-E68. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6336479/>

**were also associated with having high costs.**<sup>57</sup> Meanwhile another study analyzed how states are currently using therapeutic foster care, suggesting that this “is more cost-effective than congregate care.”<sup>58</sup>

Insofar as the collection of SOGI data through AFCARS will allow the child welfare system to better serve LGBTQ foster youth and therefore decrease their placement instability, such data collection will reduce costs to the child welfare system by reducing the requirement for congregate care, and the reduction in the costs associated with each new placement.

Informed and well-prepared foster parents and social workers facilitate permanency. But we can only inform and prepare foster parents and social workers in the child welfare system if we have thorough and accurate data on the needs and experiences of foster youth. A complete understanding of the needs and experiences of youth in care must include SOGI data, given their distinct experiences. Effective leveraging of such data into better treatments, reducing the placement instability of LGBTQ foster youth and the system’s dependence on congregate care to care for them, will reduce the overall cost to the system.

**AFCARS remains the most appropriate vehicle for collecting this data and no other adequate system exists to do so.**

AFCARS is the only available vehicle to collect this kind of national and state-based data on foster youth and parents. The lack of nation-wide SOGI data on foster youth in the absence of AFCARS collecting it, only exemplifies the fact that AFCARS remains the only existing vehicle to collect it. Considering AFCARS’ existing infrastructure to readily collect nation-wide data on the foster care system, and the high barriers to developing and implementing a new system, AFCARS is the most appropriate vehicle for collecting any data that is essential to improving the functioning of the child welfare system by improving children’s’ safety, permanency, and well-being.

Thorough data is critical to the child welfare system, as evidenced by the Children’s Bureau’s own reliance on this data for everything from determining funding, the strengths and weaknesses of programs, analyzing and tracking trends, to developing the annual report to Congress.

Following the closing of the comment period for this rule, CSSP conducted **a study asking Federal, State, and local government officials “to reflect on what evidence they had used in reaching” the most important decisions in the past year. First**

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<sup>57</sup> Yampolskaya, S., Robst, J., & Armstrong, M. I. (2020). “High cost child welfare cases: Child characteristics and child welfare services.” *Children and Youth Services Review*, 111 (2020)

<https://www.sciencedirect.com/science/article/pii/S0190740919312423>

<sup>58</sup> Seibert, J., Romaine, M., Cowell, A., Hinde, J., Mills, M., Cool, A., ... & Orlebeke, B. (2019). “Patterns of Treatment/Therapeutic Foster Care and Congregate Care Placements in Three States” *Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy - U.S. Department of Health and Human Services* (August 2019)

[https://pdfs.semanticscholar.org/e000/79e22718c5b90b66c46a8d9c82a1fd8b2d61.pdf?\\_ga=2.224428506.1505451321.1587505100-1995808140.1587505100](https://pdfs.semanticscholar.org/e000/79e22718c5b90b66c46a8d9c82a1fd8b2d61.pdf?_ga=2.224428506.1505451321.1587505100-1995808140.1587505100)

**and foremost was “data from agency operations,** typically in order to better understand the characteristics of the populations being served and the results of their encounters with the system or organization,” specifically **“national trend data, for example about changes in... [the] composition of the foster care population.”**<sup>59</sup> And another recent paper from Chapin Hall finds that, “If Congress and HHS invested in research on the factors that drive youth of color and LGBTQ youth to run away from foster care at disproportionate rates, and on developing and testing data-driven interventions, child welfare systems and practitioners can be better prepared to prevent this from occurring.”<sup>60</sup>

Only through AFCARS can standardized national data be collected, allowing for accurate state-by-state comparisons to determine effective treatments and problem areas. Only if AFCARS collects such national data can the Children’s Bureau accurately analyze trends in foster care, provide a comprehensive and accurate analysis of foster care to Congress, and know when and where state reviews are in order so as to develop Program Improvement Plans to improve the care for especially vulnerable foster youth.

**OMB review should be extended, and publication of a final rule delayed, during the unprecedented COVID-19 National Emergency.**

As noted above, most Americans across the country, including staff of countless state, local, and private agencies and other key stakeholders, are unable to work due to illness, caring for ill or vulnerable loved ones, closures of schools and child care, and closures of their own workplaces. These conditions mean that the vast majority of individuals and organizations in this country have faced massive disruptions in their ability to participate in any public comment period; to participate in the public input process through the Office of Management and Budget required by Executive Order 12866 for proposed and final rules; or to prepare for implementation of any regulatory changes.

Here, the circumstances of the current COVID-19 National Emergency prohibit many stakeholders from meaningfully participating in the OMB public input process established by Executive Order 12866. For this reason alone, OMB should extend its review process for non-emergency rules such as this one through at least 30 days after the termination of the current COVID-19 National Emergency, as declared by President Trump on March 13, 2020.

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<sup>59</sup> Steven D. Cohen “The Evidence Decision-Makers Wants” *Center for the Study of Social Policy* (December 2019) <https://cssp.org/wp-content/uploads/2019/12/FutureofEvidenceReport-Dec-2019.pdf>

<sup>60</sup> Morton, M. H. & Horwitz, B. (2019). *Federal actions to prevent & end youth homelessness: Recommendations based on research and a national convening of experts and stakeholders*. Chicago, IL: Chapin Hall at the University of Chicago. <https://www.chapinhall.org/wp-content/uploads/Federal-actions-to-prevent-and-end-youth-homelessness-final.pdf>

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# Presidential Documents

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Title 3—

Executive Order 12866 of September 30, 1993

The President

## Regulatory Planning and Review

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

With this Executive order, the Federal Government begins a program to reform and make more efficient the regulatory process. The objectives of this Executive order are to enhance planning and coordination with respect to both new and existing regulations; to reaffirm the primacy of Federal agencies in the regulatory decision-making process; to restore the integrity and legitimacy of regulatory review and oversight; and to make the process more accessible and open to the public. In pursuing these objectives, the regulatory process shall be conducted so as to meet applicable statutory requirements and with due regard to the discretion that has been entrusted to the Federal agencies.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

### **Section 1.** *Statement of Regulatory Philosophy and Principles.*

(a) *The Regulatory Philosophy.* Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(b) *The Principles of Regulation.* To ensure that the agencies' regulatory programs are consistent with the philosophy set forth above, agencies should adhere to the following principles, to the extent permitted by law and where applicable:

- (1) Each agency shall identify the problem that it intends to address (including, where applicable, the failures of private markets or public institutions that warrant new agency action) as well as assess the significance of that problem.
- (2) Each agency shall examine whether existing regulations (or other law) have created, or contributed to, the problem that a new regulation is

intended to correct and whether those regulations (or other law) should be modified to achieve the intended goal of regulation more effectively.

(3) Each agency shall identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

(4) In setting regulatory priorities, each agency shall consider, to the extent reasonable, the degree and nature of the risks posed by various substances or activities within its jurisdiction.

(5) When an agency determines that a regulation is the best available method of achieving the regulatory objective, it shall design its regulations in the most cost-effective manner to achieve the regulatory objective. In doing so, each agency shall consider incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(7) Each agency shall base its decisions on the best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

(8) Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt.

(9) Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, as appropriate, agencies shall seek to harmonize Federal regulatory actions with related State, local, and tribal regulatory and other governmental functions.

(10) Each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(12) Each agency shall draft its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

**Sec. 2. Organization.** An efficient regulatory planning and review process is vital to ensure that the Federal Government's regulatory system best serves the American people.

(a) *The Agencies.* Because Federal agencies are the repositories of significant substantive expertise and experience, they are responsible for developing regulations and assuring that the regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order.



(b) *The Office of Management and Budget.* Coordinated review of agency rulemaking is necessary to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order, and that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. The Office of Management and Budget (OMB) shall carry out that review function. Within OMB, the Office of Information and Regulatory Affairs (OIRA) is the repository of expertise concerning regulatory issues, including methodologies and procedures that affect more than one agency, this Executive order, and the President's regulatory policies. To the extent permitted by law, OMB shall provide guidance to agencies and assist the President, the Vice President, and other regulatory policy advisors to the President in regulatory planning and shall be the entity that reviews individual regulations, as provided by this Executive order.

(c) *The Vice President.* The Vice President is the principal advisor to the President on, and shall coordinate the development and presentation of recommendations concerning, regulatory policy, planning, and review, as set forth in this Executive order. In fulfilling their responsibilities under this Executive order, the President and the Vice President shall be assisted by the regulatory policy advisors within the Executive Office of the President and by such agency officials and personnel as the President and the Vice President may, from time to time, consult.

**Sec. 3. Definitions.** For purposes of this Executive order: (a) "Advisors" refers to such regulatory policy advisors to the President as the President and Vice President may from time to time consult, including, among others: (1) the Director of OMB; (2) the Chair (or another member) of the Council of Economic Advisers; (3) the Assistant to the President for Economic Policy; (4) the Assistant to the President for Domestic Policy; (5) the Assistant to the President for National Security Affairs; (6) the Assistant to the President for Science and Technology; (7) the Assistant to the President for Intergovernmental Affairs; (8) the Assistant to the President and Staff Secretary; (9) the Assistant to the President and Chief of Staff to the Vice President; (10) the Assistant to the President and Counsel to the President; (11) the Deputy Assistant to the President and Director of the White House Office on Environmental Policy; and (12) the Administrator of OIRA, who also shall coordinate communications relating to this Executive order among the agencies, OMB, the other Advisors, and the Office of the Vice President.

(b) "Agency," unless otherwise indicated, means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10).

(c) "Director" means the Director of OMB.

(d) "Regulation" or "rule" means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency. It does not, however, include:

(1) Regulations or rules issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557;

(2) Regulations or rules that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services;

(3) Regulations or rules that are limited to agency organization, management, or personnel matters; or

(4) Any other category of regulations exempted by the Administrator of OIRA.

(e) "Regulatory action" means any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices

of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

- (1) 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;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

**Sec. 4. Planning Mechanism.** In order to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President's priorities and the principles set forth in this Executive order, these procedures shall be followed, to the extent permitted by law:

(a) *Agencies' Policy Meeting.* Early in each year's planning cycle, the Vice President shall convene a meeting of the Advisors and the heads of agencies to seek a common understanding of priorities and to coordinate regulatory efforts to be accomplished in the upcoming year.

(b) *Unified Regulatory Agenda.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). Each agency shall prepare an agenda of all regulations under development or review, at a time and in a manner specified by the Administrator of OIRA. The description of each regulatory action shall contain, at a minimum, a regulation identifier number, a brief summary of the action, the legal authority for the action, any legal deadline for the action, and the name and telephone number of a knowledgeable agency official. Agencies may incorporate the information required under 5 U.S.C. 602 and 41 U.S.C. 402 into these agendas.

(c) *The Regulatory Plan.* For purposes of this subsection, the term "agency" or "agencies" shall also include those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(10). (1) As part of the Unified Regulatory Agenda, beginning in 1994, each agency shall prepare a Regulatory Plan (Plan) of the most important significant regulatory actions that the agency reasonably expects to issue in proposed or final form in that fiscal year or thereafter. The Plan shall be approved personally by the agency head and shall contain at a minimum:

- (A) A statement of the agency's regulatory objectives and priorities and how they relate to the President's priorities;
- (B) A summary of each planned significant regulatory action including, to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits;
- (C) A summary of the legal basis for each such action, including whether any aspect of the action is required by statute or court order;
- (D) A statement of the need for each such action and, if applicable, how the action will reduce risks to public health, safety, or the environment, as well as how the magnitude of the risk addressed by the action relates to other risks within the jurisdiction of the agency;
- (E) The agency's schedule for action, including a statement of any applicable statutory or judicial deadlines; and

(F) The name, address, and telephone number of a person the public may contact for additional information about the planned regulatory action.

(2) Each agency shall forward its Plan to OIRA by June 1st of each year.

(3) Within 10 calendar days after OIRA has received an agency's Plan, OIRA shall circulate it to other affected agencies, the Advisors, and the Vice President.

(4) An agency head who believes that a planned regulatory action of another agency may conflict with its own policy or action taken or planned shall promptly notify, in writing, the Administrator of OIRA, who shall forward that communication to the issuing agency, the Advisors, and the Vice President.

(5) If the Administrator of OIRA believes that a planned regulatory action of an agency may be inconsistent with the President's priorities or the principles set forth in this Executive order or may be in conflict with any policy or action taken or planned by another agency, the Administrator of OIRA shall promptly notify, in writing, the affected agencies, the Advisors, and the Vice President.

(6) The Vice President, with the Advisors' assistance, may consult with the heads of agencies with respect to their Plans and, in appropriate instances, request further consideration or inter-agency coordination.

(7) The Plans developed by the issuing agency shall be published annually in the October publication of the Unified Regulatory Agenda. This publication shall be made available to the Congress; State, local, and tribal governments; and the public. Any views on any aspect of any agency Plan, including whether any planned regulatory action might conflict with any other planned or existing regulation, impose any unintended consequences on the public, or confer any unclaimed benefits on the public, should be directed to the issuing agency, with a copy to OIRA.

(d) *Regulatory Working Group.* Within 30 days of the date of this Executive order, the Administrator of OIRA shall convene a Regulatory Working Group ("Working Group"), which shall consist of representatives of the heads of each agency that the Administrator determines to have significant domestic regulatory responsibility, the Advisors, and the Vice President. The Administrator of OIRA shall chair the Working Group and shall periodically advise the Vice President on the activities of the Working Group. The Working Group shall serve as a forum to assist agencies in identifying and analyzing important regulatory issues (including, among others (1) the development of innovative regulatory techniques, (2) the methods, efficacy, and utility of comparative risk assessment in regulatory decision-making, and (3) the development of short forms and other streamlined regulatory approaches for small businesses and other entities). The Working Group shall meet at least quarterly and may meet as a whole or in subgroups of agencies with an interest in particular issues or subject areas. To inform its discussions, the Working Group may commission analytical studies and reports by OIRA, the Administrative Conference of the United States, or any other agency.

(e) *Conferences.* The Administrator of OIRA shall meet quarterly with representatives of State, local, and tribal governments to identify both existing and proposed regulations that may uniquely or significantly affect those governmental entities. The Administrator of OIRA shall also convene, from time to time, conferences with representatives of businesses, nongovernmental organizations, and the public to discuss regulatory issues of common concern.

**Sec. 5. Existing Regulations.** In order to reduce the regulatory burden on the American people, their families, their communities, their State, local, and tribal governments, and their industries; to determine whether regulations promulgated by the executive branch of the Federal Government have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not

duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive order, within applicable law; and to otherwise improve the effectiveness of existing regulations: (a) Within 90 days of the date of this Executive order, each agency shall submit to OIRA a program, consistent with its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified or eliminated so as to make the agency's regulatory program more effective in achieving the regulatory objectives, less burdensome, or in greater alignment with the President's priorities and the principles set forth in this Executive order. Any significant regulations selected for review shall be included in the agency's annual Plan. The agency shall also identify any legislative mandates that require the agency to promulgate or continue to impose regulations that the agency believes are unnecessary or outdated by reason of changed circumstances.

(b) The Administrator of OIRA shall work with the Regulatory Working Group and other interested entities to pursue the objectives of this section. State, local, and tribal governments are specifically encouraged to assist in the identification of regulations that impose significant or unique burdens on those governmental entities and that appear to have outlived their justification or be otherwise inconsistent with the public interest.

(c) The Vice President, in consultation with the Advisors, may identify for review by the appropriate agency or agencies other existing regulations of an agency or groups of regulations of more than one agency that affect a particular group, industry, or sector of the economy, or may identify legislative mandates that may be appropriate for reconsideration by the Congress.

**Sec. 6. Centralized Review of Regulations.** The guidelines set forth below shall apply to all regulatory actions, for both new and existing regulations, by agencies other than those agencies specifically exempted by the Administrator of OIRA:

(a) *Agency Responsibilities.* (1) Each agency shall (consistent with its own rules, regulations, or procedures) provide the public with meaningful participation in the regulatory process. In particular, before issuing a notice of proposed rulemaking, each agency should, where appropriate, seek the involvement of those who are intended to benefit from and those expected to be burdened by any regulation (including, specifically, State, local, and tribal officials). In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days. Each agency also is directed to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

(2) Within 60 days of the date of this Executive order, each agency head shall designate a Regulatory Policy Officer who shall report to the agency head. The Regulatory Policy Officer shall be involved at each stage of the regulatory process to foster the development of effective, innovative, and least burdensome regulations and to further the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedure Act, the Regulatory Flexibility Act, the Paperwork Reduction Act, and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(A) Each agency shall provide OIRA, at such times and in the manner specified by the Administrator of OIRA, with a list of its planned regulatory actions, indicating those which the agency believes are significant regulatory actions within the meaning of this Executive order. Absent a material change in the development of the planned regulatory action, those not designated as significant will not be subject to review under this section unless, within 10 working days of receipt

of the list, the Administrator of OIRA notifies the agency that OIRA has determined that a planned regulation is a significant regulatory action within the meaning of this Executive order. The Administrator of OIRA may waive review of any planned regulatory action designated by the agency as significant, in which case the agency need not further comply with subsection (a)(3)(B) or subsection (a)(3)(C) of this section.

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

- (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and
- (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law):

- (i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;
- (ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and
- (iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(D) In emergency situations or when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall notify OIRA as soon as possible and, to the extent practicable, comply with subsections (a)(3)(B) and (C) of this section. For those regulatory actions that are governed by a statutory or court-imposed deadline, the agency shall, to the extent practicable, schedule rule-making proceedings so as to permit sufficient time for OIRA to conduct its review, as set forth below in subsection (b)(2) through (4) of this section.

(E) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, the agency shall:

- (i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);
- (ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.

(b) *OIRA Responsibilities.* The Administrator of OIRA shall provide meaningful guidance and oversight so that each agency's regulatory actions are consistent with applicable law, the President's priorities, and the principles set forth in this Executive order and do not conflict with the policies or actions of another agency. OIRA shall, to the extent permitted by law, adhere to the following guidelines:

(1) OIRA may review only actions identified by the agency or by OIRA as significant regulatory actions under subsection (a)(3)(A) of this section.

(2) OIRA shall waive review or notify the agency in writing of the results of its review within the following time periods:

(A) For any notices of inquiry, advance notices of proposed rulemaking, or other preliminary regulatory actions prior to a Notice of Proposed Rulemaking, within 10 working days after the date of submission of the draft action to OIRA;

(B) For all other regulatory actions, within 90 calendar days after the date of submission of the information set forth in subsections (a)(3)(B) and (C) of this section, unless OIRA has previously reviewed this information and, since that review, there has been no material change in the facts and circumstances upon which the regulatory action is based, in which case, OIRA shall complete its review within 45 days; and

(C) The review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director and (2) at the request of the agency head.

(3) For each regulatory action that the Administrator of OIRA returns to an agency for further consideration of some or all of its provisions, the Administrator of OIRA shall provide the issuing agency a written explanation for such return, setting forth the pertinent provision of this Executive order on which OIRA is relying. If the agency head disagrees with some or all of the bases for the return, the agency head shall so inform the Administrator of OIRA in writing.

(4) Except as otherwise provided by law or required by a Court, in order to ensure greater openness, accessibility, and accountability in the regulatory review process, OIRA shall be governed by the following disclosure requirements:

(A) Only the Administrator of OIRA (or a particular designee) shall receive oral communications initiated by persons not employed by the executive branch of the Federal Government regarding the substance of a regulatory action under OIRA review;

(B) All substantive communications between OIRA personnel and persons not employed by the executive branch of the Federal Government regarding a regulatory action under review shall be governed by the following guidelines: (i) A representative from the issuing agency shall be invited to any meeting between OIRA personnel and such person(s);

(ii) OIRA shall forward to the issuing agency, within 10 working days of receipt of the communication(s), all written communications, regardless of format, between OIRA personnel and any person who is not employed by the executive branch of the Federal Government, and the dates and names of individuals involved in all substantive oral communications (including meetings to which an agency representative was invited, but did not attend, and telephone conversations between OIRA personnel and any such persons); and

(iii) OIRA shall publicly disclose relevant information about such communication(s), as set forth below in subsection (b)(4)(C) of this section.

(C) OIRA shall maintain a publicly available log that shall contain, at a minimum, the following information pertinent to regulatory actions under review:

(i) The status of all regulatory actions, including if (and if so, when and by whom) Vice Presidential and Presidential consideration was requested;

(ii) A notation of all written communications forwarded to an issuing agency under subsection (b)(4)(B)(ii) of this section; and

(iii) The dates and names of individuals involved in all substantive oral communications, including meetings and telephone conversations, between OIRA personnel and any person not employed by the executive branch of the Federal Government, and the subject matter discussed during such communications.

(D) After the regulatory action has been published in the **Federal Register** or otherwise issued to the public, or after the agency has announced its decision not to publish or issue the regulatory action, OIRA shall make available to the public all documents exchanged between OIRA and the agency during the review by OIRA under this section.

(5) All information provided to the public by OIRA shall be in plain, understandable language.

**Sec. 7. Resolution of Conflicts.** To the extent permitted by law, disagreements or conflicts between or among agency heads or between OMB and any agency that cannot be resolved by the Administrator of OIRA shall be resolved by the President, or by the Vice President acting at the request of the President, with the relevant agency head (and, as appropriate, other interested government officials). Vice Presidential and Presidential consideration of such disagreements may be initiated only by the Director, by the head of the issuing agency, or by the head of an agency that has a significant interest in the regulatory action at issue. Such review will not be undertaken at the request of other persons, entities, or their agents.

Resolution of such conflicts shall be informed by recommendations developed by the Vice President, after consultation with the Advisors (and other executive branch officials or personnel whose responsibilities to the President include the subject matter at issue). The development of these recommendations shall be concluded within 60 days after review has been requested.

During the Vice Presidential and Presidential review period, communications with any person not employed by the Federal Government relating to the substance of the regulatory action under review and directed to the Advisors or their staffs or to the staff of the Vice President shall be in writing and shall be forwarded by the recipient to the affected agency(ies) for inclusion in the public docket(s). When the communication is not in writing, such Advisors or staff members shall inform the outside party that the matter is under review and that any comments should be submitted in writing.

At the end of this review process, the President, or the Vice President acting at the request of the President, shall notify the affected agency and the Administrator of OIRA of the President's decision with respect to the matter.

**Sec. 8. Publication.** Except to the extent required by law, an agency shall not publish in the **Federal Register** or otherwise issue to the public any regulatory action that is subject to review under section 6 of this Executive order until (1) the Administrator of OIRA notifies the agency that OIRA has waived its review of the action or has completed its review without any requests for further consideration, or (2) the applicable time period in section 6(b)(2) expires without OIRA having notified the agency that it is returning the regulatory action for further consideration under section 6(b)(3), whichever occurs first. If the terms of the preceding sentence have not been satisfied and an agency wants to publish or otherwise issue a

regulatory action, the head of that agency may request Presidential consideration through the Vice President, as provided under section 7 of this order. Upon receipt of this request, the Vice President shall notify OIRA and the Advisors. The guidelines and time period set forth in section 7 shall apply to the publication of regulatory actions for which Presidential consideration has been sought.

**Sec. 9. Agency Authority.** Nothing in this order shall be construed as displacing the agencies' authority or responsibilities, as authorized by law.

**Sec. 10. Judicial Review.** Nothing in this Executive order shall affect any otherwise available judicial review of agency action. This Executive order is intended only to improve the internal management of the Federal Government and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

**Sec. 11. Revocations.** Executive Orders Nos. 12291 and 12498; all amendments to those Executive orders; all guidelines issued under those orders; and any exemptions from those orders heretofore granted for any category of rule are revoked.



THE WHITE HOUSE,  
*September 30, 1993.*

[FR citation 58 FR 51735]



EPA has created for this rulemaking. The docket for this petition is available at <http://www.regulations.gov>.

As specified in FFDC section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

*PP 6F8521.* (EPA-HQ-OPP-2015-0787). K-I Chemical USA, Inc., 11 Martine Ave., Suite 970, White Plains, NY 10606, requests to establish tolerances in 40 CFR 180.659 for residues of the herbicide, pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole), and its metabolites in or on Crop Subgroup 1C, tuberous and corm vegetables (except granular/flakes and chips) at 0.05 part per million (ppm); Crop Subgroup 3-07, bulb vegetables at 0.15 ppm; potatoes, granular/flakes at 0.3 ppm and potato chips at 0.06 ppm. The high performance liquid chromatography/triple quadrupole mass spectrometry (LC/MS/MS) methods has been proposed to enforce the tolerance expression for pyroxasulfone. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: February 28, 2018.

**Michael L. Goodis,**

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2018-05291 Filed 3-14-18; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1355

RIN 0970-AC72

#### Adoption and Foster Care Analysis and Reporting System

**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:** 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.

**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 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,
  - 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**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1355

RIN 0970–AC47

### Adoption and Foster Care Analysis and Reporting System

**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:** 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.

monitoring, and five-year reviews have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This action is effective August 21, 2018.

**ADDRESSES:** *Docket:* EPA has established a docket for this action under Docket Identification No. EPA-HQ-SFUND-1986-0005. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at:

U.S. EPA Region III, Superfund Records Center, 6th Floor, 1650 Arch Street, Philadelphia, PA 19103-2029; (215) 814-3157, Monday through Friday 8:00 a.m. to 5:00 p.m.

Morgantown Public Library, 373 Spruce Street, Morgantown, WV 26505; (304) 291-7425, Monday through Saturday 9:00 a.m. to 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Thomas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 3, 3HS23 1650 Arch Street Philadelphia, PA 19103, (215) 814-3377, email [thomas.jeffrey@epa.gov](mailto:thomas.jeffrey@epa.gov).

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is: Ordnance Works Disposal Areas, Morgantown, West Virginia. A Notice of Intent to Delete for this Site was published in the *Federal Register* 83 FR 28586 on June 20, 2018.

The closing date for comments on the Notice of Intent to Delete was July 20, 2018. No public comments were received and EPA believes the deletion action remains appropriate.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 31, 2018.

**Cosmo Servidio,**

*Regional Administrator, U.S. Environmental Protection Agency Region 3.*

For reasons set out in the preamble, 40 CFR part 300 is amended as follows:

**PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(d); 42 U.S.C. 9601-9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

**Appendix B to Part 300—[Amended]**

■ 2. Table 1 of Appendix B to part 300 is amended by removing “WV”, “Ordnance Works Disposal Areas”, “Morgantown”.

[FR Doc. 2018-18032 Filed 8-20-18; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 1355**

**RIN 0970-AC76**

**Adoption and Foster Care Analysis and Reporting System**

**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, 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).

**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 §§ 1355.41 through 1355.47 (81 FR 90529). On February 24, 2017, the President issued 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). 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(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.

### 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 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 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 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 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 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) 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.

#### *Congressional Review*

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

#### *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 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”—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) &

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) 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, 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.

#### **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**

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 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, 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 Filed 8–20–18; 8:45 am]

**BILLING CODE 4184–25–P**

#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 170817779–8161–02]

**RIN 0648–XG428**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating the projected unused amount of Pacific cod total allowable catch (TAC) from vessels using jig gear and catcher vessels greater than or equal to 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line gear to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2018 TAC of Pacific cod to be harvested.

**DATES:** Effective August 16, 2018, through 2400 hours, Alaska local time (A.l.t.), December 31, 2018.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2018 Pacific cod TAC specified for vessels using jig gear in the BSAI is 1,149 metric tons (mt) as established by the final 2018 and 2019 harvest specifications for groundfish in the

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,
  - 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**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### 45 CFR Part 1355

RIN 0970–AC47

#### Adoption and Foster Care Analysis and Reporting System

**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:** 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. 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).
- 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*

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 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

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 54

[WC Docket Nos. 17–287, 11–42, and 09–197; Report No. 3087]

#### Petitions for Reconsideration of Action in Rulemaking Proceeding

**AGENCY:** Federal Communications Commission.

**ACTION:** Petitions for Reconsideration; correction.

**SUMMARY:** The Federal Communications Commission (Commission) published a document in the **Federal Register** of March 2, 2018 (83 FR 8962), regarding Petitions for Reconsideration filed in the Commission's rulemaking proceeding. The document contained the incorrect deadline for filing replies to an opposition to the Petitions. This document corrects the deadline for replies to an opposition to the Petitions. **DATES:** Oppositions to the Petitions must be filed on or before March 19, 2018. Replies to an opposition must be filed on or before March 29, 2018.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.



the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 18, 2018.

**Cathy Stepp,**

*Regional Administrator, Region 5.*

[FR Doc. 2018-08807 Filed 4-25-18; 8:45 am]

**BILLING CODE 6560-50-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration for Children and Families

#### 45 CFR Part 1355

**RIN 0970-AC76**

##### Adoption and Foster Care Analysis and Reporting System

**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:** Notice of Proposed Rulemaking; correction.

**SUMMARY:** This document corrects the Regulatory Identification Number (RIN) that appeared in the heading of a Notice of Proposed Rulemaking published in the **Federal Register** of March 15, 2018. Through that document, the Children's Bureau proposed 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.

**DATES:** April 26, 2018.

**SUPPLEMENTARY INFORMATION:** In the Notice of Proposed Rulemaking FR Doc 2018-05038, beginning on page 11450 in the issue of March 15, 2018, the RIN appeared incorrectly in the heading of the document as RIN 0970-AC47. The RIN is corrected to read "RIN 0970-AC76".

Dated: April 20, 2018.

**Ann C. Agnew,**

*Executive Secretary to the Department, Department of Health and Human Services.*

[FR Doc. 2018-08736 Filed 4-25-18; 8:45 am]

**BILLING CODE 4184-25-P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 10

[PS Docket Nos. 15-91, 15-94; DA 18-302]

##### Parties Asked To Refresh the Record on Facilitating Multimedia Content in Wireless Emergency Alerts

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Public Safety and Homeland Security Bureau (Bureau) seeks to refresh the record on the issue of facilitating multimedia content (such as photos and maps) in Wireless Emergency Alert (WEA) messages raised in the 2016 *Report and Order and Further Notice of Proposed Rulemaking* in this proceeding.

**DATES:** Comments are due on or before May 29, 2018 and reply comments are due on or before June 11, 2018.

**ADDRESSES:** You may submit comments, identified by PS Docket Nos. 15-91 and 15-94, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Website:* <https://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.

- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by Email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** John A. Evanoff, Attorney-Advisor, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-0848 or [john.evanoff@fcc.gov](mailto:john.evanoff@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's document in PS Docket Nos. 15-91, 15-94; DA 18-302, released on March 28, 2018. It is available on the

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 1355**

**RIN 0970-AC72**

**Adoption and Foster Care Analysis and Reporting System**

**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:** 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 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:**

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**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 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 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 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 (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.

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 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 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 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 ongoing 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, 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 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 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 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.

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.

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.

*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 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.

*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 diagnosis 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.

*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 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, 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*

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 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 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, postpartum, 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) 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.

#### *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 CFPSR 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.

*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 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 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 assistant 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 category 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 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 is 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 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 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 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 annual burden hours	Average hourly labor rate	Total cost	Estimate Federal 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

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, 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 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 × 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 × 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 × 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 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

Burden hour savings of NPRM	Total annual burden hours for 2016 final rule	Total annual burden hours for NPRM	Difference (hours)
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*. 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 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.

■ 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 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 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.

(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 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 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 (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 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 (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 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 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. 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 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.

(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 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 caregiving 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 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 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.

(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.

(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.

(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 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 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, 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 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]

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**45 CFR Part 1355**

**RIN 0970-AC72**

**Adoption and Foster Care Analysis and Reporting System**

**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, and delayed August 21, 2018, at 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).

**SUPPLEMENTARY INFORMATION:**

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**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 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 *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, 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, we published in the **Federal Register** an Advance Notice of Proposed Rulemaking on March 15, 2018 (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, hereafter referred to as the 2019 NPRM). This final rule is an E.O. 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.*

(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).

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.

### 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](https://www.regulations.gov).

*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.

In drafting the 2019 NPRM, we balanced the commenters' desires for more information with the need to minimize burden pursuant to E.O. 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.

#### 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:

- 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.

*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). 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.

Lastly, in the 2019 NPRM preamble (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 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).

#### *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.

#### *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.

*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 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.

*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.

*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 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.

*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.

*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.

*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

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.

*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.

*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.

*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.

#### 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.

*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 to 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.

#### 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 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.

#### 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 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, entitled Reducing Regulation and Controlling Regulatory Costs (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 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(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) 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

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 rule will not have an impact on family well-being as defined in the law.

#### Executive Order 13132 on Federalism

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 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



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. 3501–3520. 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.
- 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), 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.

As we explained in the 2019 NPRM (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

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) 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.

*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.

Collection—AFCARS	Total annual burden hours	Average hourly labor rate	Total cost	Estimate Federal costs (50% FFP)
Recordkeeping .....	1,178,304	\$73	\$86,016,192	\$43,008,096
Reporting .....	2,346	73	171,258	85,629
Total .....	.....	.....	.....	43,093,725

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

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.

*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.

Collection—AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Recordkeeping .....	69	2	8,538	1,178,304

Collection—AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Reporting .....	69	2	17	2,346
Total .....				1,180,650

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, 2022 (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

Burden hour savings of this final rule	Total annual burden hours for 2016 final rule	Total annual burden hours for this final rule	Difference (hours)
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 *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 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.

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), 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*

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**

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 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. Revise § 1355.40(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, 2022. As of October 1, 2022, state and tribal title IV–E agencies must comply with §§ 1355.41 through 1355.47.

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#### **§ 1355.41 [Amended]**

- 3. Remove § 1355.41(c).
- 4. Revise § 1355.43(b)(3) to read as follows:

#### **§ 1355.43 Data reporting requirements.**

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(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.

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- 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."

(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.

(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 (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.

(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.

(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.

(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 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 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.

(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 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 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 (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 "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 (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 "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 (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.

(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.

(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.

(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.

(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) 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.

(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.

(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 caregiving 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 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.

(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.

(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.

(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.

(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.

(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.

(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.”

(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.”

(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 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.

(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.

(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."

■ 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) \* \* \*

(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). \* \* \*

\* \* \* \* \*

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