

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oi-zhr8
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Unknown

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0080  
Colorado Office of Children, Youth, and Families

---

## Submitter Information

**Name:** Ann Dueñas  
**Address:** 80203  
**Organization:** Colorado Office of Children, Youth and Families

---

## General Comment

See attached

---

## Attachments

Colorado

Colorado administered a survey to gather feedback pertaining to the ANPRM. Feedback was received from various stakeholders including foster parents, child welfare caseworkers and administrators, community mental health providers, and Indian Child Welfare Act (ICWA) task force participants. Index scores were calculated indicating whether or not the new data elements in AFCARS 2.0 were viewed as favorable or unfavorable in the context of a time and cost burden, and whether or not the new data elements were viewed as reliable, necessary, or valuable to collect.

Overall, stakeholder feedback is less favorable towards the collection of new data elements in AFCARS 2.0. However, with an Unfavorable Index of 75 and a Favorable Index of 71, the outcomes are somewhat close, but neither index shows that the survey respondents were strongly opinionated one way or the other.

Generally, survey respondents were concerned that there would be difficulty of gathering information on sexual orientation, whether or not a child was pregnant at the end of the reporting period, if a child was sex trafficked, ICWA related termination of parental rights information, whether or not a child bore a child, and developmental delay information. Survey respondents also voiced concern about the additional workload to capture and record information, redundancy in recording information which resides primarily in another entity (courts for ICWA data), resources needed to change Colorado Rule, additional training of staff to capture information, and programming time to modify the Case Management System to collect and provide an updated AFCARS extract. However, respondents also voiced that there is potential to better connect with children/youth/families and therefore provide better services and possibly outcomes with the additional information which would be required to collect, in particular, the ICWA and gender/sexual orientation information.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oi-znr
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Unknown

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0081  
County Welfare Directors Association of California

---

## Submitter Information

**Name:** Frank Mecca  
**Address:** 95814  
**Organization:** County Welfare Directors Association of California

---

## General Comment

See attached

---

## Attachments

County Welfare Directors Association of California



925 L Street, Suite 350  
Sacramento, CA 95814  
p: 916.443.1749 | f: 916.443.3202  
cwda.org

June 12, 2018

Ms. Kathleen McHugh  
Division of Policy, Children's Bureau  
Administration for Children and Families  
330 C St. SW  
Washington, D.C. 20024

Dear Ms. McHugh:

**RE: ADVANCE NOTICE OF PROPOSED RULEMAKING:  
ADOPTION AND FOSTER CARE ANALYSIS AND  
REPORTING SYSTEM (AFCARS) - RIN 0970-AC72**

The County Welfare Directors Association of California (CWDA), representing the human services directors in California's 58 counties, welcomes the opportunity to comment on Advance Notice of Proposed Rulemaking for the proposed efficiencies to the Adoption and Foster Care Analysis and Reporting System (AFCARS). California has the largest state-supervised, county-administered child welfare system in the nation. AFCARS data elements provide services to nearly 87,300 children, of whom 60,000 are in the foster care system.

CWDA supports the December 2016 final rule's data collection provisions. It is absolutely vital that the federal Administration for Children and Families continues to collect the multitude of data elements of the most vulnerable children as described in the rule, including those children in the child welfare system who are subject to the Indian Child Welfare Act (ICWA) and lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth. CWDA strongly believes that the available data enhances best child welfare practice and the ability of our county child welfare agencies to offer evidence-based services to enhance the safety, permanency, and well-being of all youth in our care. CWDA also wishes to align itself with the comments submitted on June 5, 2018 by California's Department of Social Services (CDSS) and will collaborate with CDSS to ensure that the data elements required by the final rule are collected and reported. In sum, we support the rule without equivocation.

Thank you for the opportunity to provide comment Tom Joseph, Director of CWDA's Washington Office at 202.898.1446 or [tj@paragonlobbying.com](mailto:tj@paragonlobbying.com) should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Mecca", with a long horizontal flourish extending to the right.

Frank J. Mecca | Executive Director

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oi-varf
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0082  
California Tribal Families Coalition.

---

## Submitter Information

**Name:** Delia Sharpe  
**Organization:** California Tribal Families Coalition.

---

## General Comment

See Attached

---

## Attachments

California Tribal Families Coalition.

# CALIFORNIA TRIBAL FAMILIES COALITION

June 12, 2018

Attn: Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Policy Division  
330 C Street SW  
Washington, DC 20024

Via electronic correspondence at: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Re: RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System; Advance Notice of Proposed Rulemaking (3/15/2018)

Dear Sir or Madam,

The California Tribal Families Coalition (CTFC), a non-profit organization dedicated to protecting tribal children and families, submits these comments on behalf of its member tribes to the Advanced Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) for Title IV-B and Title IV-E as they relate to the Indian Child Welfare Act of 1978 (ICWA). Data points specific to ICWA were incorporated into AFCARS as detailed in the Final Rule published on December 14, 2016.

CTFC was formed in 2017 as the successor organization to the California ICWA Compliance Task Force, convened in 2015 at the invitation of the California Attorney General. The Task Force's work culminated in a detailed report to the California Attorney General documenting numerous ICWA compliance issues throughout the state, and offering recommendations to remedy non-compliance. One key recommendation of the Task Force Report targeted for immediate action is the "build[ing] tracking and data systems that accurately account for tribes and tribal families, ICWA compliance and case outcomes."

General Comments:

***The data collection requirements of the Final Rule are consistent with ACF's statutory mission.***

Section 479 of the Social Security Act mandates Health and Human Services collect national, uniform, and reliable information on children in state 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.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

***The administration provided all interested parties with ample notice and opportunities to comment on the final rule.***

Tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS. The initial rules were changed due to comments by these entities and others after reviewing the Administration of Children and Families' February 9, 2015 proposed rule. On April 2, 2015 the Agency issued a Supplemental Notice of Proposed Rulemaking (SNPRM) changing certain data elements. Yet another SNPRM was issued on April 7, 2016. Specifically, the Agency sought comments on the inclusion of the ICWA data points in both the April 2015 Intent to Publish a SNPRM, as well as the April 2016 SNPRM. Ultimately, the Final Rule was published on December 14, 2016 (Final Rule), and included the ICWA data elements.

The Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action. Given the multiple opportunities to comment throughout this time period, any additional collection activity is unnecessary. In addition, tribes, tribal organizations, and advocates received notice of all of these opportunities, and with ample time to comment on this vital and important rule change.

States also had ample opportunity to participate. As the Final Rule explains in detail, ACF engaged in robust consultation with states and responded to their concerns, for example, by streamlining many data elements. 81 Fed. Reg. 90524, 90565-66. States had at least six different opportunities to raise their concerns, which the ACF considered and addressed fully. 81 Fed. Reg. at 90566.

***States are already in the process of implementing these changes.***

Since these regulations have been effective for approximately fifteen months, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes, is already well under way with its implementation efforts, having relied on the final rule. At this stage, any modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

***These regulations are important to us, our families, and state child welfare systems.***

The regulations themselves—in response to the comments from stakeholders across the country—describe the importance of these changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations, and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will



# CALIFORNIA TRIBAL FAMILIES COALITION

likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.

Generally, tribes, organizations representing tribal interests, national child welfare advocacy organizations, and private citizens fully support the overall goal and purpose of including ICWA-related data in AFCARS, and the data elements as proposed in the 2016 SNPRM. These commenters believe that collecting ICWA-related data in AFCARS will:

1. provide data on core ICWA requirements such as “active efforts” and placement preferences, as well as assess how the child welfare system is working for Indian children as defined by ICWA, families and communities;
2. facilitate access to culturally-appropriate services to extended families and other tribal members who can serve as resources and high-quality placements for tribal children;
3. help address and reduce the disproportionality of AI/AN children in foster care; and
4. provide avenues for collaboration between states and tribes that are more meaningful, and outcome driven, including improved policy development, technical assistance, training, and resource allocation as a result of having reliable data available.

Overall, tribal commenters and national child welfare advocacy organizations believe that collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families will be kept together when possible, and will help prevent AI/AN children from entering the foster care system. Many of the tribal commenters that supported the 2016 SNPRM also recommended extensive training for title IV–E agencies and court personnel in order to ensure accurate and reliable data.

Other federal reports have demonstrated the need for quality national data to assess states’ efforts in implementing ICWA. See Government Accountability Office, Indian Child Welfare Act: Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States, GAO-05-290 (Apr. 4, 2005) <http://www.gao.gov/products/GAO-05-290>.

Nothing has changed since ACF made clear in its final rule that data collection is necessary to protect Indian children and families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act’s data collection provisions. And there have been no changes in circumstances that would alter the burdens or benefits of the final rule’s data collection requirements.

***Tribes have relied on the final rule.***

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the final rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the data elements listed in the final rule. To this end, some tribes have worked to develop and update agreements to reflect the data elements in the final rule and the 2016 BIA ICWA Regulations, since a goal of both is to increase uniformity.

***The ANPRM is arbitrary and capricious where it seeks only information on burdens.***

This ANPRM arbitrarily focuses on collecting information about the burdens without considering the benefits. As required by law, the final rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule to achieve a balanced final rule.

The agency “determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data.” 81 Fed. Reg. at 90528. The agency explained how its weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the final rule at 81 Fed Reg. 90528:

In response to state and tribal comments suggesting congruence with the BIA’s final rule, we revised data elements in this final rule as appropriate to reflect the BIA’s regulations including removing requirements that state title IV–E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV–E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance to increase state title IV–E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

There have been no material changes in circumstances justifying the agency’s new approach. The executive order is not a sufficient basis for the agency to act, as the executive order itself is arbitrary and unlawful where it provides an insufficient basis for reasonable decision-making relaying solely on an examination the burden of regulations without the required balancing of benefits. Additionally, the executive orders to fail to provide justification to deviate from the statutory requirement for regulations.

**The foregoing are responses to the Questions for Comment provided in the ANPRM:**

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.

No response.

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

# CALIFORNIA TRIBAL FAMILIES COALITION

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.

The ANPRM requests IV-E states and tribes to provide the number of children in foster care who are considered Indian children as defined in ICWA. However, it is specifically due to the lack of a national data reporting requirement, that any number provided in response to this question would be significantly inaccurate. This speaks to the critical importance of the ICWA-related data points – without a data reporting requirement, many states simply do not appropriately track Indian children in their child welfare system, let alone the individual ICWA-related data points.

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.

As discussed above, there has been ample opportunity for comment and this additional ANPRM is itself both unlawful as crafted and is a waste of finite resources. Tribes and states properly relied on the final rule in working toward implementation for nearly a year and a half. Any modification to the existing data points frustrate those efforts, would require states to begin again collaborating with their tribal partners and ultimately further delay implementation. This comes at the expense of the health, safety and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the final rule would cost resources that are system-wide.

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.

In the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements frustrating a stated purpose of the 2016 BIA ICWA Regulations, to establish uniformity of application throughout the nation. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.

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

RIN: 0970-AC72  
June 12, 2018

Page 2 of 2

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.

Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points are critical.

Further, as discussed above, ICWA is the “gold standard” of child welfare and ensuring compliance with this federal law informs how the existing child welfare system may improve in whole.

For the foregoing reasons, we strongly support each of the ICWA-related data points and believe, as your agency did in publishing the Final Rule in 2016, the benefits of this data collection outweighs any burden.

In closing, the Indian Child Welfare Act is widely considered the “gold standard” of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection significantly impacts tribal children, families, and county agencies trying to comply. In the interest of protecting our children and families, we respectfully submit these comments.

Sincerely,



Delia M. Sharpe  
Executive Director

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oj-x2fw
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0083  
Log Cabin Republicans

---

## Submitter Information

**Name:** Gregory Angelo  
**Organization:** Log Cabin Republicans

---

## General Comment

See attached

---

## Attachments

Log Cabin Republicans

As the nation's voice for LGBT conservatives and straight allies, Log Cabin Republicans writes today to comment on the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) [RIN 0970-AC72].

Log Cabin Republicans urges HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to "family conflict related to child's sexual orientation, gender identity, or gender expression." Studies show that approximately 19% of foster youth identify as LGBT, and they experience worse safety, well-being and permanency outcomes than non-LGBT youth. For states to improve these outcomes and identify best practices for doing so, data collection on the state and national level is needed. Same-sex couples foster at six times the rate of their opposite-sex counterparts, and can provide loving, supportive homes for America's 400,000+ foster youth.

Further, we ask HHS to add voluntary gender identity questions for foster youth over the age of 14 and foster and adoptive parents and guardians to AFCARS. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined, comprehensive services.

As LGBT conservatives, we have long asserted that we have the right to live our lives in quiet dignity, adhering to family values, and raising families as any other couple or individual would.

Personally, as someone who has worked within the foster care system in the United States, I have seen firsthand the impact fostering and adoption by same-sex couples has had on the lives of children who would otherwise have gone without a "forever home".

Ensuring that HHS has the data it needs to ensure that all children are provided with the best possible outcomes is what we are asking today.

Thank you for your consideration of this critical matter.

With great sincerity,

Gregory T. Angelo  
President  
Log Cabin Republicans

202-420-7873

[angelo@logcabin.org](mailto:angelo@logcabin.org)

@gregorytangelo / @LogCabinGOP

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oj-amud
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0084  
Port Gamble S'Klallam Tribe

---

## Submitter Information

**Name:** Jeromy Sullivan  
**Address:** 98346  
**Organization:** Port Gamble S'Klallam Tribe

---

## General Comment

See attached

---

## Attachments

Port Gamble S'Klallam Tribe





June 11, 2018

Attn: Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Policy Division  
330 C Street SW  
Washington, DC 20024

**Re: RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System;  
Advance Notice of Proposed Rulemaking (3/15/2018)**

Dear Ms. McHugh:

The Port Gamble S'Klallam Tribe submits these comments on the Advance Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) for Title IV-E and Title IV-E as related to the Indian Child Welfare Act of 1978 (ICWA), and other data elements. We have run a Tribal Title IV-E child welfare program since 2012 and have commented on previous NPRMs and supplemental NPRMs regarding AFCARS data elements in the past.

It is worth mentioning again, as we did in our comments submitted before promulgation of the Final Rule in December 2016 and again in August 2017, specifically regarding ICWA-related data, that it is within ACF's statutory mission to collect national, uniform, and reliable information on children in state care. This includes the collection of necessary and comprehensive data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care. The Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act. There were numerous opportunities for States, Tribes, and other Tribal organizations to comment on the proposed rule in 2015, and the Final Rule in 2016 responded to comments on both the benefits and burdens of proposed regulatory action. It is unnecessary and inefficient to revisit this issue as it is an additional burden on limited resources, and States and Tribes have already taken steps to comply with the 2016 Final Rule.

**Responses to the 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.*

We do not believe data elements will be overly burdensome to collect. While it will take time to update our data system for collection of data points, the information sought for health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, guardianship, and housing is what we also want to have for efficient and proper management of our child welfare cases. This information is critically important for addressing the myriad of risks facing our most vulnerable populations.

*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.*

The ANPRM requests IV-E states and tribes to provide the number of children in foster care who are considered Indian children as defined in ICWA. Any number provided in response to this question will initially be inaccurate, because of a current lack of a national data reporting requirement. Lack of national data about State practices regarding the segment of the national population who continue to be disproportionately represented in child welfare cases should alarm ACF, not have ACF question why to collect it. Furthermore, the lack of national data makes it difficult if not impossible to determine where states may need additional assistance or resources for their child welfare programs, especially in cases where cultural practices can keep families together.

While we are fortunate to have a good working relationship with the State of Washington, we are also aware Indian children are not adequately tracked in their SACWIS system. Washington State has stated they will submit comments agreeing that collection of ICWA-related data elements is important, although they would not argue with an extension of time to update their data systems. If our state agrees collection of ICWA-related data elements is important for practice, we do not see how ACF considers collection of this information “overly burdensome.”

*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.*

There has been ample opportunity for comment and this additional ANPRM is a waste of finite resources. Tribes and states have relied on the final rule in working toward implementation for nearly a year and a half. Any modification to the existing data points frustrate those efforts, and ultimately further delay implementation. This comes at the expense of the health, safety and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the final rule would waste limited system-wide resources.

Capturing data through case reviews or other qualitative methods will not provide reliable national data for Congress, states and tribes to use as a basis to support necessary changes in practice, policy, or resource allocation. This information would be limited to points in time and random cases, which do not provide a broad overview of system-wide issues and may not provide proper incentive for addressing grave concerns that continue to plague the child welfare system and the vulnerable populations subject to their intervention. The passage of the Family First Prevention Services Act in February 2018 (Division E of the Bipartisan Budget Act, H.R. 1892) also clearly expands the purpose of the Title IV-E program, which makes collection of the data elements in the 2016 Final Rule more important.

*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.*

In the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements frustrating a stated purpose of the 2016 BIA ICWA Regulations, to establish uniformity of application throughout the nation. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most. The issues for our nation's children and families regarding health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, adoption, guardianship, and housing will also remain unaddressed on a national scale without national data reporting requirements.

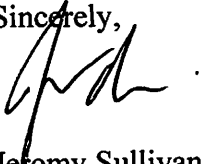
*5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved 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.*

Our tribal children and families rely on our child welfare system, in collaboration with other tribal, state and federal agency partners, to ensure risks to their safety and well-being are addressed in a way that supports them. Information regarding health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, guardianship, and housing are all issues that need to be addressed for effective case management and are critical to address for successful outcomes. National data regarding these issues facing our most vulnerable populations will assist policy makers and service providers to improve and implement successful system-wide change. Lack of this data will continue to result in more of the same practices and minimal resources that continue to fail our children.

Furthermore, all ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points are critical. ICWA is the "gold standard" of child welfare and ensuring

compliance with this federal law informs how the existing child welfare system may improve in whole. **For the foregoing reasons, we strongly support each of the ICWA-related data points, as well as others and believe, as your agency did in publishing the Final Rule in 2016, the benefits of this data collection outweighs any burden.**

Sincerely,



Jeromy Sullivan  
Tribal Chair

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oj-m3at
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0085  
Confederated Tribes of the Umatilla Indian Reservation

---

## Submitter Information

**Name:** Gary Burke  
**Address:** 97801  
**Organization:** Confederated Tribes of the Umatilla Indian Reservation

---

## General Comment

See attached

---

## Attachments

Confederated Tribes of the Umatilla Indian Reservation

**Confederated Tribes** *of the*  
**Umatilla Indian Reservation**

Board of Trustees



46411 Timine Way  
 Pendleton, OR 97801

www.ctuir.org email: bot@ctuir.org  
 Phone 541-429-7030 Fax: 541-276-3095

June 13, 2018

Attn: Kathleen McHugh  
 United States Department of Health and Human Services  
 Administration for Children and Families  
 Policy Division  
 330 C Street SW  
 Washington, DC 20024

Dear Ms. McHugh,

The Confederated Tribes of the Umatilla Indian Reservation oppose any changes to the Adoption and Foster Care Analysis and Reporting System's (AFCARS) Final Rule published on December 14, 2016. The Final Rule incorporates requirements that will help ensure the United States has an accurate understanding of data as it relates to Indian Child Welfare Act (ICWA) cases. This includes data related to core issues such as "active efforts", access to culturally appropriate services, strategies to secure extended family and tribal families as resources, and the engagement of tribal nations in ICWA cases and the impact that has on outcomes. Any streamlining, modification, or elimination of these simple data elements will erode the utility of the information collected.

This year marks the 40<sup>th</sup> anniversary of the Indian Child Welfare Act's adoption. It has been a critical piece of federal legislation in ensuring the safety of native children and the future of tribal nations. However, the federal government has yet to collect, or require states to collect, basic data regarding ICWA cases. This information is critical to informing state and federal policy concerning native children in state child dependency systems.

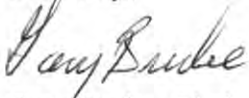
Ample notice has been provided to all interested parties, including states, regarding implementation of the Final Rule. On April 2, 2015 the Administration of Children and Families (ACF) issued a supplemental notice regarding the proposed changes to AFCARS. On April 7, 2016 another supplemental notice was issued proposing the addition of new AFCARS data elements related to native children and families. A Final Rule was then published on December 14, 2016. Tribes have pushed long and hard to get even basic data related to their children in state child dependency systems and the Final Rule is the result of thorough vetting between the federal government, states, and tribes.

Rolling back the rule would be a significant step backward in federal policy as it relates to tribal children and would impede future data driven and data informed laws and policies geared toward the protection of native children. The Government Accountability Office (GAO) itself has indicated the need for improved data in this area. In 2005 the GOA report on ICWA implementation (GAO-05-290) indicated the Office was hindered in their ability to research and understand questions raised by Congress due to unavailability of reliable data. This

lack of basic data is problematic for everyone, unnecessarily cobbles policy development, and prevents lawmakers from understanding the issues. The minor burden the Final Rule may place on states in order to obtain basic and critical information regarding native children in state child dependency systems is minor in comparison to the great need for this information in the development of effective future law and policy at both the state and federal level.

For these reasons the Confederated Tribes of the Umatilla Indian Reservation strongly opposes any roll back of the December 14, 2016 AFCARS Final Rule. If you have any questions feel free to contact Office of Legal Counsel Attorney M. Brent Leonhard at [brentleonhard@ctuir.org](mailto:brentleonhard@ctuir.org) or 541-429-7406. Thank you for your time and consideration.

Sincerely,



Gary Burke, Chairman of the Board of Trustees  
Confederated Tribes of the Umatilla Indian Reservation

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93og-30sl
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0086  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Robin Morgan  
**Address:** 05301  
**Email:** robinlmorgan@gmail.com

---

## General Comment

LGBTQ youth are at a vastly higher risk of becoming victim to violence or suicide. Please don't remove this question which allows these youth to be identified and protected.



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93oj-dq68
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> API

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0087  
Sac and Fox Nation of Missouri in Kansas and Nebraska Department of Social Services

---

## Submitter Information

**Name:** Chasity Davis  
**Address:** 66434  
**Email:** cdavis@sacandfoxcasino.com  
**Organization:** Sac and Fox Nation of Missouri in Kansas and Nebraska Department of Social Services

---

## General Comment

Please see attached file comment from the Indian Child Welfare program of the Sac and Fox Nation of Missouri in Kansas and Nebraska.

---

## Attachments

Sac and Fox Nation of Missouri in Kansas and Nebraska Department of Social Services



## **Sac and Fox Nation of Missouri In Kansas and Nebraska**

Department of Social Services and Indian Child Welfare  
305 N Main Street Reserve KS 66434  
Phone: (785)742-4708 Fax: (785)742-3468

### **AFCARS ANPRM Comments**

The Sac and Fox Nation of Missouri in Kansas and Nebraska does not support changes or delay to the 2016 Final Rule. The data elements included in this rule have been strongly advocated for by tribes for years and would be the only National-level data available for ICWA compliance and indicator of tribal youth's outcomes in the child welfare system.

The Indian Child Welfare Act became law in 1978. To be quite honest, it is difficult for me to understand the state comments regarding exuberant training, time, and costs to report on simple demographic and legal data that has been law for them to do for 40 years now. ACF hosts state and tribal child welfare directors meetings annually in our region. I have attended them for years. In each meeting, and in each Title IV-B Child and Family Services Plan, states are telling the federal government that they are complying with ICWA and working with tribes. Each year, tribes are reporting in the meetings and in their own Title IV-B Child and Family Services Plan that there are significant challenges with state compliance with ICWA regulations. Historically, there has been little federal support available for tribes to address concerns or even get a clear understanding of the scope of the problems without data available. Our reality is that ICWA notices are not being provided in many cases where the state agency has reason to believe ICWA applies. Requiring the states to report basic ICWA eligibility and compliance data through AFCARS is the only tool available to support tribal families in ensuring federal law is complied with. If not this regulation, my question is just what regulation will help address the issue of ICWA compliance by the states?

The fact that so many states are voicing strong objection to the additional ICWA-related data points is extremely telling to me that there are significant deficiencies in their compliance to ICWA regulations. As a tribal child welfare services director, I could confidently respond to each data element for every one of my case files.

Regarding state cost concerns, the decision to delay or rescind the reporting requirements on *already required ICWA regulations* based on the issue of cost and budget would set a precedence. Our tribal appropriation under Child Welfare Social Service program of Title IV-B is \$2,048 annually. However, we are still required to meet the federal reporting requirements and submit CFSPs and APSRs. If data reporting elements are tied to cost and available funding, then our tribal reporting requirements should be essentially non-existent. I have never had the



## **Sac and Fox Nation of Missouri In Kansas and Nebraska**

### **Department of Social Services and Indian Child Welfare**

305 N Main Street Reserve KS 66434

Phone: (785)742-4708 Fax: (785)742-3468

opportunity to account for actual costs for reporting burden into any of my federal funding budgets nor in my reporting requirements. In reviewing state comments, I find it extremely difficult to comprehend that the addition of 65 simple ICWA related data points, most of which would be inapplicable if ICWA doesn't apply to the case, would cost millions of dollars. If so, then what is the cost of the current AFCARS reporting requirements within their budgets? I urge the ACF to consider how a tribal child welfare program such as ours is required and able to meet all of the federal reporting requirements on extremely limited federal funding without the convenience of any form of database system beyond Word and Excel spreadsheets, yet somehow states find it overly burdensome to comply with reporting this information that they, by law, should have been doing in their work with each of their cases since 1978.

As an additional note on reporting requirements, tribes have been required to submit ICWA data to the BIA under OMB Control No. 1076-0131 as a requirement to receiving minimal ICWA funding, in our case \$12,696 this fiscal year. This document has 34 data entry points, many similar to those in the proposed 2016 AFCARS final rule. If tribes have been able to submit this data without delay and with no additional funding, training or TA available to do so, then why should states be immune from reporting similar data as the agencies receiving nearly all of the available federal funding for child welfare services, including those for tribal children?

In review of the briefing presentation available with the comment notice, several areas of concern are noted. Namely, the argument that "HHS has no expertise in ICWA compliance, statute, and regulations". HHS is tasked with the responsibility and is the agency that provides funding to the states to provide child welfare services. ICWA law clearly applies to the practice of child welfare and it is deeply and strongly concerning as a tribal child welfare program director to see a statement that HHS has no expertise in ICWA compliance. If not HHS, then who? This is the exact and primary reason these AFCARS requirements are necessary. Tribal children have not been adequately protected under the ICWA law because every agency that has the ability to ensure their protection makes the choice to pass that responsibility somewhere else. From the tribal perspective, I see that exact issue play out when looking at how federal IV-E dollars are not making it to our tribal children. Tribal children are falling through the cracks of our child welfare systems. We desperately need this data to begin to see what those cracks really are and how we can fix them.



## **Sac and Fox Nation of Missouri In Kansas and Nebraska**

**Department of Social Services and Indian Child Welfare**

305 N Main Street Reserve KS 66434

Phone: (785)742-4708 Fax: (785)742-3468

The fact is we have children going through state child welfare systems that are not being identified as Indian because the states aren't asking the question. Caseworkers aren't asking the questions and aren't providing active efforts because they haven't received adequate training on ICWA. The fact is that many state child welfare policies and procedures do very little to ensure caseworkers are following ICWA requirements. The fact is we have tribes not getting notified of ICWA cases because there is uncertainty within state systems and finger pointing of whether the agency or the courts have the responsibility of sending out notice. The fact is we have tribal children in non-ICWA compliant placements because state child welfare staff haven't reached out to the tribes to collaborate on available placement resources. From the systems perspective, when we can't even identify the number of ICWA cases in the state systems because there is no national reporting requirement, it's that child who is truly suffering from undue burdens. These data elements are absolutely critical to much needed joint planning efforts among states, tribes and the ACF. The needs of tribal children to be measured through these simple data elements should outweigh arguments of state costs and time burdens. The time burden to report data relating to a law that has been in existence since 1978 should be extremely minimal beyond the creation of additional fields in the reporting system if that law has been followed. Staff training should also be minimal if caseworkers are already compliant with ICWA requirements. These proposed AFCARS requirements should not be new workload, as all of this information should already be collected and documented. The fact that it is not and has not been for the 40 years ICWA law has been in place is the exact reason these reporting requirements are crucial to our tribal children.

Respectfully Submitted,

Chasity Davis, LMSW  
Director Social Services

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93ok-dbkm
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> API

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0088  
Bisexual Organizing Project

---

## Submitter Information

**Name:** Sally Corbett  
**Address:** 55403  
**Email:** sally.corbett@bisexualorganizingproject.org  
**Organization:** Bisexual Organizing Project (BOP)

---

## General Comment

See attached file(s)

---

## Attachments

Bisexual Organizing Project

June 13, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).

Dear Ms. McHugh:

On behalf of Bisexual Organizing Project (BOP), please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (“Proposed Rule”) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome. Bisexual Organizing Project requests that U.S. Department of Health and Human Services, Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”), Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to sexual orientation, gender identity, and gender expression. The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

The Bisexual Organizing Project (BOP) is a 501(c)(3) non-profit registered in Minnesota, whose mission is to build, serve and advocate for an empowered bisexual, pansexual, fluid, queer, and unlabeled (bi+) community to promote social justice. BOP was founded in the late 1990's by Minnesota bisexual leaders who were active in local, regional and national bi+ organizing. Our annual national conference, BECAUSE, which stands for “Bisexual Empowerment Conference, A Uniting Supportive Experience” is the largest and longest-running conference for the bi+ community in the United States. BOP's year round programming includes community events, research, outreach, advocacy and education. BOP is a Silver-level GuideStar Exchange participant.

The largest proportion of lesbian, gay, and bisexual (LGB) youth experiencing homelessness and family instability identify as bisexual: in a recent study of street outreach programs by the Administration on Children, Youth, and Families, 20.0% of youth identified as bisexual, compared to 9.9% of youth who identified as gay or lesbian, and 4.1% as “something else.” Gender identity was collected separately from sexual orientation; 6.8% of youth in this survey identified as transgender. Despite bisexual youth comprising the largest proportion of LGB youth, bisexual youth have little access to targeted services. A growing body of research shows

that bisexual youth experience unique challenges and barriers that may put them at an increased risk of experiencing homelessness. Due to the intersections that exist between the populations of bisexual youth and youth within the foster care system and experiencing homelessness, Bisexual Organizing Project finds it critically important to maintain the current data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression, in order to identify and address the factors that contribute to these disparities faced by bisexual and other LGBTQ youth.

A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* ("Family First," P.L. 115-123), as described in examples below.

B. Removal of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression ("SOGIE") Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children and Eliminate Cost Savings

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning ("LGBTQ") foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the

Administration on Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> In April 2011, ACF confirmed and reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."<sup>2</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>3</sup> Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>4</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning ("LGBQ"); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>5</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than "straight" are 14,300 to 24,000.<sup>6</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>7</sup>

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>8</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>9</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they

<sup>1</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>2</sup> 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>

<sup>3</sup> *Ibid.*

<sup>4</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>5</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>6</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (4) and (5) above.

<sup>7</sup> Same as 5 above.

<sup>8</sup> Same as 4 above.

<sup>9</sup> *Ibid.*



experienced homelessness.<sup>10</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children’s Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

We also oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

*The Children’s Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14*

All of the poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children’s Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>11</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>12</sup> Thus, identifying an affirming, supportive family for an LGBQ child leading to adoption – which would be impossible to do if the child’s sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than family foster care.<sup>13</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>14</sup> placing an LGBQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and

---

<sup>10</sup> *Ibid.*

<sup>11</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCF\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCF_ADOPTION_ADVOCATE_NO35.pdf)

<sup>12</sup> *Ibid.*

<sup>13</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>14</sup> Same as 11 above.

the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

*The Children's Bureau should retain the data element related to the reason for removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity, or gender expression."*

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be 3-5 times greater for each child not placed in congregate care.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>15</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

C. The Children's Bureau Should Retain the Voluntary Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>16</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>17</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

---

<sup>15</sup> Same as 4 above.

<sup>16</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>17</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

In its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>18</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>19</sup> Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

D. The Children’s Bureau Should Add Voluntary Gender Identity Questions for Foster Youth Over the Age of 14 and Foster and Adoptive Parents and Guardians Because this Information is Important and it is Efficient to Collect this Information Along with Current Data Elements.

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>20</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

E. The sexual orientation and gender identity and expression data elements of foster youth can be administered safely, and the Children’s Bureau should provide training and resources to states and tribes to do so.

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity (“SOGI”) information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>21</sup> The guidelines address the need to collect SOGI

---

<sup>18</sup> Same as 2 above.

<sup>19</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

<sup>20</sup> Robinson, Brandon Andrew. Forthcoming. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>21</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children’s Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>22</sup> The regulations promulgated under the Prison Rape Elimination Act (“PREA”) require youth and adult correctional officers to collect SOGI information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>23</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment.

In the Final Rule, the Children’s Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.” Additionally, the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”

#### F. Conclusion

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Children’s Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

Bisexual Organizing Project (BOP)

---

<sup>22</sup> Angela Irvine, “We’ve Had Three of Them”: Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

<sup>23</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 12, 2018
<b>Tracking No.</b> 1k2-93ok-kaif
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0089  
North American Council on Adoptable Children (NACAC)

---

## Submitter Information

**Name:** Mary Boo  
**Organization:** North American Council on Adoptable Children (NACAC)

---

## General Comment

See Attached

---

## Attachments

NACAC



... because every child needs a permanent, loving, and culturally sensitive family

June 12, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

Submitted via email — [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Dear Ms. McHugh:

On behalf of the North American Council on Adoptable Children (NACAC), please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome.

NACAC requests that US Department of Health and Human Services, Administration for Children and Families, Administration on Children Youth and Families, Children's Bureau maintain the current data elements in the December 14, 2016 AFCARS Final Rule, including those related to the Indian Child Welfare Act and sexual orientation, gender identity, and gender expression. The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

NACAC has long been a leader in the effort to ensure that children have families and families have the support they need. We are connected with parent groups, agencies (public and private), and families across the United States, and work on behalf of these organizations to ensure policies and practices are designed to ensure the best possible outcomes for children and families.

**The data elements in the final rule are not overly burdensome and have already been streamlined through numerous comment periods**

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule already represents a streamlining of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final

Rule data elements reflect those numerous public comments, are not overly burdensome, and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most vulnerable children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act*, as described in examples below.

**Data on children affected by the Indian Child Welfare Act (ICWA) will help ensure its enforcement and better outcomes for tribal children.**

Currently, there is little useful data collected at either the state or federal level related to American Indian and Alaska Native (AI/AN) children who are under the custody of state child welfare authorities. Native children are overrepresented in many state foster care systems—in some places by as much as 10 times the general population. The federal protections that ICWA provides these children and their families have the potential to help reduce disproportionality and achieve permanency for more of these children.

We have had no data collection specific to ICWA in the 35+ years since its enactment so these data elements are long overdue. The revised AFCAR rules will provide access to more detailed, case-level data at the federal level. By examining such data, we can improve technical assistance to states, allocate federal program resources more effectively, and help evaluate the extent to which states are working with tribes to successfully implement ICWA. Rather than being a burden, this data collection will provide clarity about implementation of ICWA and is necessary for quality enforcement of the law.

**Removal of data elements related to youth sexual orientation and gender identity and expression would negatively impact the safety, permanency, and well-being of LGBTQ children and eliminate cost savings**

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning (LGBTQ) children in foster care. LGBTQ youth are disproportionately overrepresented in care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy, and funding determinations; to identify best practices for replication; and to enhance the Administration on

Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> In April 2011, ACF confirmed and reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."<sup>2</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>3</sup> But LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in foster care.<sup>4</sup> The purpose of the study was to determine the percentage of youth in Los Angeles County foster care who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12 to 21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (LGBQ); 11 percent of the participants identified as gender-nonconforming, and 5.6 percent identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8 percent of youth in out-of-home care identify as LGBQ.<sup>5</sup>

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>6</sup> More than twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>7</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>8</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children's Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ youth in care and to replicate them to address disparities.

---

<sup>1</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>2</sup> 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>

<sup>3</sup> *Ibid.*

<sup>4</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>5</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>6</sup> Same as 4 above.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*



We also oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

**The Children’s Bureau should retain the voluntary sexual orientation question for youth in care over the age of 14.**

All of the poor outcomes documented for LGBTQ youth in foster care, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBQ youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children’s Bureau to retain the voluntary question in the Final Rule related to sexual orientation of youth in foster care over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>9</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>10</sup> Thus, identifying an affirming, supportive family for an LGBQ child leading to adoption—which would be impossible to do if the child’s sexual orientation was unknown—would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBQ youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3 to 5 times more than family foster care.<sup>11</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>12</sup> placing an LGBQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

---

<sup>9</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCF\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCF_ADOPTION_ADVOCATE_NO35.pdf)

<sup>10</sup> *Ibid.*

<sup>11</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>12</sup> Same as 11 above.

**The Children’s Bureau should retain the data element related to the reason for removal of a child from a family home due to “family conflict related to child's sexual orientation, gender identity, or gender expression.”**

Data regarding the degree to which family conflict affects removal can drive needed funding for family acceptance work leading to family preservation, a priority of ACF. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Using the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be 3 to 5 times greater for each child not placed in congregate care.

Given that an estimated 19 percent of youth in care identify as LGBTQ<sup>13</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on sexual orientation or gender identity results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

**The Children’s Bureau should retain the voluntary sexual orientation question for adoptive and foster parents and guardians.**

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising 6 percent of children in US foster care, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>14</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>15</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available foster homes for children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

In its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>16</sup> Almost 40 years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>17</sup> Recruitment of LGBQ families could provide a source of

---

<sup>13</sup> Same as 4 above.

<sup>14</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>15</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007).

<https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>16</sup> Same as 2 above.

<sup>17</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

affirming, supportive homes for LGBTQ youth in foster care, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

**The Children’s Bureau should add voluntary gender identity questions for youth in foster care over the age of 14 and foster and adoptive parents and guardians because this information is important and it is efficient to collect this information along with current data elements.**

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>18</sup> Because of the particular challenges faced by transgender youth, adding gender identity questions for both youth in care and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

**The sexual orientation and gender identity and expression data elements of youth in care can be administered safely, and the Children’s Bureau should provide training and resources to states and tribes to do so.**

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing sexual orientation/gender identity information in child welfare systems.<sup>19</sup> The guidelines address the need to collect this information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect sexual orientation/gender identity information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children’s Bureau comments to the Final Rule) and sexual orientation/gender identity information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s

---

<sup>18</sup> Robinson, Brandon Andrew. Forthcoming. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>19</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>20</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of sexual orientation/gender identity data as part of the initial intake and assessment.

In the Final Rule, the Children's Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that "[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." In addition, the rule directed agencies to guidance and recommended practices developed by "state and county agencies, advocacy organizations and human rights organizations."

### **Conclusion**

For the reasons outlined above, we urge the U.S. Department of Health and Human Services to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to ICWA and to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

A handwritten signature in black ink that reads "Mary Boo". The signature is written in a cursive, flowing style.

Mary Boo  
Executive Director

---

<sup>20</sup> Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oi-y3va
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0090  
Virginia Department of Social Services

---

## Submitter Information

**Name:** Carl E. Ayers  
**Organization:** Director, Division of Family Services, Virginia Department of Social Services

---

## General Comment

Please see two attachments for comments from Virginia Department of Social Services (VDSS). Thank you.

---

## Attachments

Virginia Department of Social Services AFCARS Elements Estimate for Public Comment  
Virginia Department of Social Services

AFCARS Data Elements Side

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	AFCARS Foster Care and Adoption Data Elements as Published in the <a href="#">Appendix to 45 CFR part 1355</a>
1. IV-E Agency	1. IV-E Agency
2. Report date	2. Report date
3. Local agency	3. Local agency
4. Child record number	4. Child's Record number
<b>(b) Child information</b>	<b>Child's Demographic Information</b>
5. (b.1) Child's date of birth	5. Date of birth
6. (b.2.i) Child's gender	7. Child's Sex
7. (b.2.ii) Child's sexual orientation	N/A not in the current AFCARS collection
8 – 14. (b.3) Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.	N/A not in the current AFCARS collection
15 - 17. (b.4) Application of ICWA.	N/A not in the current AFCARS collection
18 – 20. (b.5) Court determination that ICWA applies	N/A not in the current AFCARS collection
21 – 23. (b.6) Notification - ICWA	N/A not in the current AFCARS collection

24. (b.7) Request to transfer to tribal court - ICWA	N/A not in the current AFCARS collection
25 - 28. (b.8) Denial of transfer - ICWA	N/A not in the current AFCARS collection
29 - 36. (b.9) Child's race	8. Child's Race
37. (b.10) Hispanic/Latino origin	9. Child's Hispanic or Latino Ethnicity
38. (b.11.i) Health assessment	10. Child diagnosed with disability and response options of yes, no, not yet determined.
39. (b.11.ii) Date of health assessment	N/A not in the current AFCARS collection
40. (b.12) Timely Health Assessment	N/A not in the current AFCARS collection
41. (b.13) Health, behavioral or mental health conditions	10. Has the Child Been Clinically Diagnosed with a Disability(ies)?
42. (b.13.i) Intellectual disability	11. Mental Retardation
43. (b.13.ii) Autism spectrum disorder	15 Other Medically Diagnosed Conditions Requiring Special Care
44. (b.13.iii) Visual impairment and blindness	12 Visually or Hearing Impaired
45. (b.13.iv) Hearing impairment and deafness	12 Visually or Hearing Impaired
46. (b.13.v) Orthopedic impairment or other physical condition	13. Physically Disabled
47. (b.13.vi) Mental/emotional disorders	14. Emotionally Disturbed (DSM- IV)
48. (b.13.vii) Attention deficit hyperactivity disorder.	14. Emotionally Disturbed (DSM- IV)

49. (b.13.viii) Serious mental disorders	14. Emotionally Disturbed (DSM- IV)
50. (b.13.ix) Developmental delay	N/A not in the current AFCARS collection
51. (b.13.x) Developmental disability	N/A not in the current AFCARS collection
52. (b.13.xi) Other diagnosed condition	15. Other Medically Diagnosed Conditions Requiring Special Care
53. (b.14) School enrollment	N/A not in the current AFCARS collection
54. (b.15) Educational level	N/A not in the current AFCARS collection
55. (b.16) Educational stability	N/A not in the current AFCARS collection
56. (b.16.i) Proximity	N/A not in the current AFCARS collection
57. (b.16.ii) District/zoning rules	N/A not in the current AFCARS collection
58. (b.16.iii) Residential facility	N/A not in the current AFCARS collection
59. (b.16.iv) Services/programs	N/A not in the current AFCARS collection
60. (b.16.v) Child request	N/A not in the current AFCARS collection
61. (b.16.vi) Parent/Legal Guardian request	N/A not in the current AFCARS collection
62. (b.16.vii) Other	N/A not in the current AFCARS collection
63. (b.17.i) Pregnant as of the end of the report period	N/A not in the current AFCARS collection
64. (b.17.ii) Ever fathered or bore children	N/A not in the current AFCARS collection
65. (b.17.iii) Child and his/her child(ren) placed together at any point during the report period?	N/A not in the current AFCARS collection

66. (b.18) Special education	N/A not in the current AFCARS collection
67. (b.19) Prior adoption(s)	16. Has this Child Ever Been Adopted?
68. (b.19.i) Prior adoption date	N/A not in the current AFCARS collection



69. (b.19.ii) Prior adoption type - <i>intercountry</i>	N/A not in the current AFCARS collection
70. Prior Guardianship (b.20i)	N/A not in the current AFCARS collection
71. (b.20.ii) Prior guardianship date	N/A not in the current AFCARS collection
72. (b.21) Child financial and medical assistance	59 -65 Sources of Federal Financial Support/Assistance for Child
73. (b.21.i) SSI or Social Security benefits	64. SSI or Other Social Security Benefits
74. (b.21.ii) Title XIX Medicaid	63. Title XIX (Medicaid)
75. (b.21.iii) Title XXI SCHIP	65. None of the Above
76. (b.21.iv) State/Tribal adoption assistance	65. None of the Above
77. (b.21.v) State/Tribal foster care	65. None of the Above
78. (b.21.vi) Child support	62. Title IV-D (Child Support)
79. (b.21.vii) Title IV-E adoption subsidy	60. Title IV-E (Adoption Assistance)
80. (b.21.viii) Title IV-E guardianship assistance	65. None of the Above
81. (b.21.ix) Title IV-A TANF	61. Title IV-A
82. (b.21.x) Title IV-B	65. None of the Above
83. (b.21.xi) SSBG	65. None of the Above
84. (b.21.xii) Chafee Foster Care Independence Program.	65. None of the Above
85. (b.21.xiii) Other	65. None of the Above
86. (b.22) Title IV-E foster care during report period	59. Title IV-E (Foster Care)
87. (b.23) Total Number of siblings	N/A not in the current AFCARS collection
88. (b.24) Siblings in foster care	N/A not in the current AFCARS collection
89. (b.25) Siblings in living arrangement	N/A not in the current AFCARS collection
<b>(c) Parent or legal guardian information</b>	<b>Principal Caretaker Information</b>
90. (c.1) Year of birth of first parent or legal guardian	45. Year of Birth (1 <sup>st</sup> Principal Caretaker)
91. (c.2) Year of birth of second parent or legal guardian	46. Year of Birth (2 <sup>nd</sup> Principal Caretaker - if applicable)
92. (c.3) Tribal membership mother	N/A not in the current AFCARS collection

93. (c.4) Tribal membership father	N/A not in the current AFCARS collection
94. (c.5) Termination/modification of parental rights.	N/A not in the current AFCARS collection
95. (c.5.i) Termination/modification of parental rights petition	N/A not in the current AFCARS collection
96. (c.5.ii) Termination/modification of parental rights	47. Date of Mother's Parental Rights Termination (if applicable) 48. Date of Legal or Putative Father's Parental Rights Termination (if applicable)
97 - 99 Involuntary termination/modification of parental rights under ICWA	N/A not in the current AFCARS collection
100. Voluntary termination/modification of parental rights under ICWA	N/A not in the current AFCARS collection
<b>(d) Removal Information</b>	<b>Removal/Placement Setting Indicators</b>
101. (d.1) Date of child's removal	18 Date of first removal from home and 21. Date of latest removal
102. (d.2) Transaction date: removal	22. Removal Transaction Date
103 -105 Removals under ICWA.	N/A not in the current AFCARS collection
106. (d.4) Environment at removal	N/A not in the current AFCARS collection
107. (d.5) Authority for placement and care responsibility	25. Manner of Removal from Home for Current Removal Episode
<b>(d)(6) Child and family circumstances at removal</b>	<b>Circumstances Associated with Removal</b>
108. (d.6.i) Runaway	N/A not in the current AFCARS collection

109. (d.6.ii) Whereabouts unknown	N/A not in the current AFCARS collection
110. (d.6.iii) Physical abuse	26. Physical Abuse (alleged/reported)

<b>AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)</b>	<b>AFCARS Foster Care and Adoption Data Elements as Published in the <a href="#">Appendix to 45 CFR part 1355</a></b>
111. (d.6.iv) Sexual abuse	27. Sexual Abuse (alleged/reported)
112. (d.6.v) Psychological or emotional abuse	N/A not in the current AFCARS collection
113. (d.6.vi) Neglect	28. Neglect (alleged/reported)
114. (d.6.vii) Medical neglect	N/A not in the current AFCARS collection
115. (d.6.viii) Domestic violence	N/A not in the current AFCARS collection
116. (d.6.ix) Abandonment	38. Abandonment
117. (d.6.x) Failure to return	N/A not in the current AFCARS collection
118. (d.6.xi) Caretaker's alcohol use	29. Alcohol Abuse (parent)
119. (d.6.xii) Caretaker's drug use	30. Drug Abuse (parent)
120. (d.6.xiii) Child alcohol use	31. Alcohol Abuse (child)
121. (d.6.xiv) Child drug use	32. Drug Abuse (child)
122. (d.6.xv) Prenatal alcohol exposure	31. Alcohol Abuse (child)
123. (d.6.xvi) Prenatal drug exposure	32. Drug Abuse (child)
124. (d.6.xvii) Diagnosed Condition	33. Child's Disability
125. (d.6.xviii) Inadequate access to mental health services	N/A not in the current AFCARS collection
126. (d.6.xix) Inadequate access to medical services	N/A not in the current AFCARS collection
127. (d.6.xx) Child behavior problem	34. Child's Behavior Problem
128. (d.6.xxi) Death of caretaker	35. Death of Parent(s)
129. (d.6.xxii) Incarceration of caretaker	36. Incarceration of Parent(s)

130. (d.6.xxiii) Caretakers significant impairment – physical/emotional	37. Caretaker’s Inability to Cope Due to Illness or Other Reason
131. (d.6.xxiv) Caretaker’s significant impairment – cognitive	37. Caretaker’s Inability to Cope Due to Illness or Other Reason
132. (d.6.xxv) Inadequate housing	40. Inadequate Housing
133. (d.6.xxvi) Voluntary relinquishment for adoption	39. Relinquishment
134. (d.6.xxvii) Child requested placement	N/A not in the current AFCARS collection
135. (d.6.xxviii) Sex trafficking	N/A not in the current AFCARS collection
136. (d.6.xxix) Parental immigration detainment or deportation	N/A not in the current AFCARS collection
137. (d.6.xxx) Family conflict related to child’s sexual orientation, gender identity, or gender expression.	N/A not in the current AFCARS collection
138. (d.6.xxxi) Educational Neglect	N/A not in the current AFCARS collection
139. (d.6.xxxii) Public agency title IV-E agreement	N/A not in the current AFCARS collection
140. (d.6.xxxiii) Tribal title IV-E agreement	N/A not in the current AFCARS collection
141 (d.6.xxxiv) Homelessness.	40. Inadequate Housing
142. (d.7) Victim of sex trafficking prior to entering foster care	N/A not in the current AFCARS collection
143. (d.7.i) Report to Law Enforcement	N/A not in the current AFCARS collection
144. (d.7.ii) Dates of each report	N/A not in the current AFCARS collection
145. (d.8) Victim of sex trafficking while in foster care	N/A not in the current AFCARS collection
146. (d.8.i) Report to law enforcement	N/A not in the current AFCARS collection
147. (d.8.ii) Date	N/A not in the current AFCARS collection
<b>(e) Living arrangement and provider information.</b>	<b>Current Placement Settings</b>
148. (e.1) Date of living arrangement	23. Date of Placement in Current Foster Care Setting
149. (e. 2) Foster family home	41. Current Placement Setting
150. (e.3.i.) Foster family home type: Licensed home	N/A not in the current AFCARS collection

<p>151. (e.3.ii) Foster family home type: Therapeutic foster family</p>	<p>N/A not in the current AFCARS collection</p>
<p>152. (e.3.iii) Foster family home type: Shelter care foster family home.</p>	<p>N/A not in the current AFCARS collection</p>
<p>153. (e.3.iv) Foster family home type: Relative foster family</p>	<p>41. Current Placement Setting - Foster Family Home (Relative)</p>
<p>154. (e.3.v) Foster family home type: Pre-adopt home</p>	<p>41. Current Placement Setting - Pre-Adoptive Home</p>
<p>155. (e.3.vi) Foster family home type: Kin foster family home</p>	<p>41. Current Placement Setting - Foster Family Home (NonRelative)</p>
<p>156. (e.4) Other living arrangement type</p>	<p>41. Current Placement Setting</p>
<p>157. (e.5) Private agency living arrangement.</p>	<p>N/A not in the current AFCARS collection</p>
<p>158. (e.6) Location of living arrangement</p>	<p>42. Is Current Placement Setting Outside of State or Tribal Service Area?</p>
<p>159. (e.7) Jurisdiction or country where child is living</p>	<p>N/A not in the current AFCARS collection</p>
<p>160 -164 (e.8) Available ICWA foster care and pre-adoptive placement preferences: a member of the Indian child's extended family</p>	<p>N/A not in the current AFCARS collection</p>
<p>165. (e.9) Foster care and pre-adoptive</p>	

165. (e.9) Foster care and pre-adoptive placement preferences under ICWA.	N/A not in the current AFCARS collection
166. (e.10) Good cause under ICWA.	N/A not in the current AFCARS collection
167 - 171. (e.11) Basis for good cause.	N/A not in the current AFCARS collection
172. (e.12) Marital status of the foster parent(s)	49. Foster Family Structure
173. (e.13) Child's relationships to the foster parent(s).	N/A not in the current AFCARS collection
174. (e.14) Year of birth for first foster parent	50. Year of Birth (1 <sup>st</sup> Foster Caretaker)
175. (e.15) First foster parent tribal membership.	N/A not in the current AFCARS collection
176 -182. (e.16) Race of first foster parent.	52. Race of 1 <sup>st</sup> Foster Caretaker
183. (e.17) Hispanic or Latino ethnicity of first foster parent.	53. Hispanic or Latino Ethnicity of 1 <sup>st</sup> Foster Caretaker
184. (e.18) Gender of first foster parent.	N/A not in the current AFCARS collection
185. (e.19) First foster parent sexual orientation.	N/A not in the current AFCARS collection
186. (e.20) Year of birth for second foster parent.	51. Year of Birth (2 <sup>nd</sup> Foster Caretaker)
187. (e.21) Second foster parent tribal membership.	N/A not in the current AFCARS collection

188 - 194. (e.22) Race of second foster parent.	N/A not in the current AFCARS collection
195. (e.23) Hispanic origin of the second foster parent	55. Hispanic or Latino Ethnicity of 2 <sup>nd</sup> Foster Caretaker (if applicable)
196. (e.24) Gender of second foster parent.	N/A not in the current AFCARS collection
197. (e.25) Second foster parent sexual orientation.	N/A not in the current AFCARS collection
<b>(f) Permanency planning</b>	<b>Most Recent Case Plan Goal</b>
198. (f.1) Permanency plan	43. Case Plan Goal
199. (f.2) Date of permanency plan	N/A not in the current AFCARS collection
200 (f.3) Date of periodic review	5. Date of Most Recent Periodic Review (if applicable)
201 (f.4) Date of permanency hearing	5. Date of Most Recent Periodic Review (if applicable)
202 (f.5) Juvenile justice	N/A not in the current AFCARS collection
203 (f.6) Caseworker visit dates	N/A not in the current AFCARS collection
204 (f.7) Caseworker visit location	N/A not in the current AFCARS collection
205 Transition plan.	N/A not in the current AFCARS collection
206 Date of transition plan	N/A not in the current AFCARS collection
207 - 219 (f.10) Active Efforts.	N/A not in the current AFCARS collection
<b>(g) General exit information</b>	<b>Discharge Data</b>

220. (g.1) Date of exit.	56. Date of Discharge from Foster Care (in foster care data file) and 21. Date adoption legalized (in adoption data file)
221. (g.2) Exit transaction date.	57. Foster Care Discharge Transaction Date

222. (g.3) Exit reason.	58. Reason for Discharge
223. (g.4) Transfer to another agency	N/A not in the current AFCARS collection
<b>(h) Exit to adoption and guardianship information</b>	<b>Adoption Data File Data Elements – for adoptions only, guardianship not collected currently</b>
224. (h.1) Marital status of the adoptive parent(s) or guardian(s).	22. Adoptive Parents' Family Structure
<b>(h.2) Child's relationship to the adoptive parent(s) or guardian(s).</b>	<b>29 – 32. Relationship to Adoptive Parent (Adoption only)</b>
225. (h.2.i) Child's relationship to the adoptive parent(s) or guardian(s). Paternal grandparent(s).	30. Relationship - other relative
226. (h.2.ii) Child's relationship to the adoptive parent(s) or guardian(s). Maternal grandparent(s).	30. Relationship - other relative
227. (h.2.iii) Child's relationship to the adoptive parent(s) or guardian(s). Other paternal relative(s)	30. Relationship - other relative
228 (h.2.iv) Child's relationship to the adoptive parent(s) or guardian(s). Other maternal relative(s)	30. Relationship - other relative
229 (h.2.v) Child's relationship to the adoptive parent(s) or guardian(s). Sibling(s).	30. Relationship - other relative (Adoption only)
230 (h.2.vi) Child's relationship to the adoptive parent(s) or guardian(s). Kin	30. Relationship - other relative or 32. Relationship - other nonrelative (Adoption only)
231. (h.2.vii) Child's relationship to the adoptive parent(s) or guardian(s). Non-relative(s)	32. Relationship - other non-relative (Adoption only)
232. (h.2.viii) Child's relationship to the adoptive parent(s) or guardian(s).Foster parent(s)	31. Relationship - foster parent (Adoption only)
233. (h.3) Date of birth of first adoptive parent or guardian.	23. Adoptive Mother's Year of Birth 24. Adoptive Father's Year of Birth
234. (h.4) First adoptive parent or guardian	



234. (h.4) First adoptive parent or guardian tribal membership.	N/A not in the current AFCARS collection
235 - 241 (h.5) Race of first adoptive parent or guardian.	25. Adoptive Mother's Race 27. Adoptive Father's Race
242. (h.6) Hispanic or Latino ethnicity of first adoptive parent or guardian.	26. Adoptive Mother's Hispanic Origin 28. Adoptive Father's Hispanic Origin
243. (h.7) Gender of first adoptive parent or guardian	N/A not in the current AFCARS collection
244. (h.8) First adoptive parent or legal guardian sexual orientation.	N/A not in the current AFCARS collection
245. (h.9) Date of birth of second adoptive parent, guardian, or other member of the couple.	23. Adoptive Mother's Year of Birth 24. Adoptive Father's Year of Birth
246. (h.10) Second adoptive parent, guardian, or other member of the couple tribal membership.	N/A not in the current AFCARS collection
247 - 253. (h.11) Race of second adoptive parent, guardian, or other member of the couple.	25. Adoptive Mother's Race 27. Adoptive Father's Race
254. (h.12) Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.	26. Adoptive Mother's Hispanic Origin 28. Adoptive Father's Hispanic Origin
255. (h.13) Sex of second adoptive parent, guardian, or other member of the couple.	N/A not in the current AFCARS collection
256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.	N/A not in the current AFCARS collection
257. (h.15) Inter/Intrajurisdictional adoption or guardianship.	33. Child was placed from (Adoption only)

258. (h.16) Interjurisdictional adoption or guardianship jurisdiction	N/A not in the current AFCARS collection
259. (h.17) Adoption or guardianship placing agency.	34. Child was placed by (Adoption only)
260. (h.18) Assistance agreement type.	35 – 37. Financial Adoption Support (Adoption only)
261. (h.19) Siblings in adoptive or guardianship home.	N/A not in the current AFCARS collection
262 – 265. (h.20) Available ICWA Adoptive placements.	N/A not in the current AFCARS collection
266. (h.21) Adoption placement preferences under ICWA.	N/A not in the current AFCARS collection
267. (h.22) Good cause under ICWA.	N/A not in the current AFCARS collection
268 – 272. (h.23) Basis for good cause.	N/A not in the current AFCARS collection

<b>AFCARS <b>Adoption</b> and Guardianship Assistance Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)</b>	<b>AFCARS Adoption Data Elements as Published in the Appendix to 45 CFR part 1355</b>  <b>(Note: Guardianship not currently collected)</b>
1. IV-E Agency	1. IV-E Agency code
2. Report date	2. Report period ending date
3. Child record number	3. Record number
4. Child's date of birth	5. Child's date of birth
5. Child's gender	6. Sex
6. Child's race	7. Race
7. Hispanic or Latino Ethnicity	8. Hispanic origin
8. Assistance agreement type	37. Title IV-E Adoption assistance
9. Subsidy amount	36. Monthly amount

10. Adoption finalization or guardianship legalization date	21. Date adoption legalized
11. Agreement termination date	N/A not in the current AFCARS collection

<b>BA Estimates</b>	<b>1,382</b>
<b>Developer Estimates</b>	<b>6,290</b>
<b>Total Hours = 7,672</b>	

**Side-by-Side Comparison**

<b>Changes Needed to OASIS and/or Code for the new</b>	<b>BA Estimates</b>	<b>Development Estimates</b>
<p>Add to OASIS &amp; Report</p> <p>Question with picklist that has 6 options.</p>	<p>Requirements – 8 hrs. Testing – 10 hrs.</p>	<p>OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; report</p> <p>Add a new ICWA screen or section on the client level tool bar or client gen info screen. Would need approximately 7 questions each with 3 radio buttons for answers like yes/no/not applicable</p>	<p>Requirements – 20 hrs Testing -32 hrs</p>	<p>OASIS - 80 hrs. Report - 50 hrs. Unit Testing - 8 hrs.</p>
<p>Add to: OASIS &amp; report</p> <p>Add 2 questions - one with date field and one with radio buttons (Yes/No/NA)</p>	<p>Requirements – 8 hrs Testing – 10 hrs</p>	<p>OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; report</p> <p>Add 2 questions - one with date field and one with radio buttons (Yes/No/NA)</p>	<p>Requirements – 8 hrs. Testing – 10 hrs.</p>	<p>OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; report</p> <p>Add 2 questions - both with radio buttons (Yes/No/NA) and add picklist of tribes</p>	<p>Requirements – 8 hrs. Testing – 10 hrs.</p>	<p>OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; report</p>	<p>Requirements – 8 hrs.</p>	<p>OASIS - 40 hrs.</p>

<p>Add 2 questions - both with radio buttons (Yes/No/NA) and add picklist of tribes</p>	<p>Testing – 10 hrs.</p>	<p>Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; report</p> <p>Add question with pick list of up to 10 options</p>	<p>Requirements – 8 hrs. Testing – 10 hrs.</p>	<p>OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: Report only</p> <p>Info is already captured in OASIS</p>	<p>Requirements – 5 hrs Testing – 6 hrs</p>	<p>Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: Report only</p> <p>Info is already captured in OASIS</p>	<p>Requirements – 5 hrs Testing – 6 hrs</p>	<p>Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>ITEMS 41 through 52: Modify OASIS &amp; Report:</p> <p>We would have to change OASIS to report whether each of these items are "existing condition," "previous condition" or "does not apply,"</p> <p>Change pick list to a list of the options that have corresponding radio buttons for the above three options.</p>	<p>Requirements – 20 hrs Testing – 30 hrs</p>	<p>OASIS - 60 hrs. Report - 80 hrs. Unit Testing - 8 hrs.</p>

Add two options for 50 and 51		
Add to: Report Only	Requirements – 5 hrs Testing – 6 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: Report Only	Requirements – 5 hrs Testing – 6 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
ITEMS 55-62  Add to: OASIS & Report  Would have to add pick list to OASIS to capture these Educational Stability (Items 55-62). Pick list would contain 7 options	Requirements – 20 hrs Testing – 25 hrs	OASIS - 60 hrs. Report - 60 hrs. Unit Testing - 8 hrs.
ITEMS 63-65  Add to: OASIS & Report  Add new 3 new questions with radio buttons for Yes/No/Unknown to OASIS and add to report	Requirements – 13 hrs Testing – 16 hrs	OASIS - 50 hrs. Report - 60 hrs. Unit Testing - 8 hrs.
Add to: Report Only	Requirements – 5 hrs Testing – 6 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: Report Only  Items: 66, 68, 69, 70 and 71	Requirements – 8 hrs Testing – 10 hrs	Report - 60 hrs. Unit Testing - 8 hrs.



Add 2 questions with both having Yes/No/NA radio buttons		
Add to: Report Only  Items: 94 & 95  Add picklist with 3 options and two date fields	Requirements – 9 hrs Testing – 11 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report  97-99 and 100 add 4 questions with Yes/No/NA options	Requirements – 15 hrs Testing – 19 hrs	OASIS - 60 hrs. Report - 60 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report  At least two new questions with Yes/No/ N/A radio buttons,	Requirements – 8 hrs Testing – 9 hrs	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report  I think we would need to modify one of the pick list on the removal screen.	Requirements – 8 hrs Testing – 9 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs.



Would need to add two questions with radio Yes/No or N/A options		Unit Testing - 5 hrs.

<b>Changes Needed to OASIS and/or Code for the new</b>		
--	--	--

Add to: OASIS & Report  Modify OASIS pick list and add to the report.  Items: 112, 114, 115, 117, 125, 126	Requirements – 8 hrs Testing – 10 hrs	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
--	--	--

See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
-----------------------	--	---

See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
-----------------------	--	---

See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
-----------------------	--	---


See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
-----------------------	--	---

See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
-----------------------	--	---


See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
See note for item 112	Requirements – 8 hrs Testing – 10 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: Report Items 142 - 147  Already in OASIS	Requirements – 8 hrs Testing – 11 hrs	Report - 70 hrs. Unit Testing - 5 hrs.
Add to: Report Items 150-151	Requirements – 6 hrs Testing – 7 hrs	Report - 60 hrs. Unit Testing - 5 hrs.

<p>Add to: Report Items 150-151</p>	<p>Requirements – 6 hrs Testing – 7 hrs</p>	<p>Report - 60 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; Report Modify OASIS pick list and add to the report.</p>	<p>Requirements – 8 hrs Testing – 10 hrs</p>	<p>OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; Report Add a question field and radio yes/no or n/a buttons</p>	<p>Requirements – 8 hrs Testing – 10 hrs</p>	<p>OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; Report Add a picklist to placement screen</p>	<p>Requirements – 8 hrs Testing – 10 hrs</p>	<p>OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Add to: OASIS &amp; Report Add a picklist to placement screen</p>	<p>Requirements – 8 hrs Testing – 10 hrs</p>	<p>OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.</p>
<p>Items 160-164 Add to: OASIS and Report Add question with Yes/No radio buttons and a question with pick list options (about four options)</p>	<p>Requirements – 7 hrs Testing – 8 hrs</p>	<p>OASIS - 50 hrs. Report - 60 hrs. Unit Testing - 5 hrs.</p>
<p>Items 165 Add to: OASIS and Report</p>	<p>Requirements – 8 hrs Testing – 9 hrs</p>	<p>OASIS - 30 hrs. Report - 30 hrs. Unit Testing - 5 hrs.</p>

Add question with Yes/No radio buttons and a question with pick list options (about four options)		
Items 166-167		
Add to: OASIS and Report		OASIS - 50 hrs.
Add two question with Yes/No radio buttons	Requirements – 7 hrs Testing – 8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add a question and pick list		
Add to: OASIS & Report	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add a question and pick list		
Add to: OASIS and Report	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add question with Yes/No/unknown radio buttons		
Add to: Report	Requirements – 7 hrs Testing – 8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS and Report	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Question with picklist that has 6 options.		
Add to OASIS & Report	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add fields for yes/no/unknown		

Add to OASIS & Report Add question and pick list	Requirements – 8 hrs Testing –10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS and Report Question with pick list	Requirements – 8 hrs Testing –10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to OASIS & Report Question with picklist that has 6 options.	Requirements – 8 hrs Testing –10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: Report	Requirements – 7 hrs Testing –8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to OASIS	Requirements – 7 hrs Testing –8 hrs	OASIS - 50 hrs. Unit Testing - 5 hrs.
Add to Report – Already in OASIS	Requirements – 7 hrs Testing –8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to Report – Already in OASIS	Requirements – 7 hrs Testing –8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to Report – Already in OASIS	Requirements – 7 hrs Testing –8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to Report – Already in OASIS	Requirements – 7 hrs Testing –8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to OASIS	Requirements – 7 hrs Testing –8 hrs	OASIS - 50 hrs. Unit Testing - 5 hrs.

Add to: Report only This discharge reason already exist	Requirements – 7 hrs Testing –8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.

Indicate "yes," "no" or "unknown."		
Add to: Report  We would have to use "adoptive mother" as the 1st adoptive parent	Requirements – 6 hrs Testing – 8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to OASIS & Report  Question with picklist that has 6 options.	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report  Indicate "yes," "no" or "unknown."	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: Report  We would have to use "adoptive mother" as the 1st adoptive parent	Requirements – 6 hrs Testing – 8 hrs	Report - 50 hrs. Unit Testing - 5 hrs.
Add to OASIS & Report  Question with picklist that has 6 options.	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.

<p>Add to: OASIS (modify) &amp; Report</p> <p>Modify the current pick list in OASIS to include 1 more option</p>	<p>Requirements – 8 hrs</p> <p>Testing – 10 hrs</p>	<p>OASIS - 50 hrs.</p> <p>Report - 50 hrs.</p> <p>Unit Testing - 5 hrs.</p>
<p>Add to: Report</p>	<p>Requirements – 6 hrs</p> <p>Testing – 8 hrs</p>	<p>Report - 50 hrs.</p> <p>Unit Testing - 5 hrs.</p>
<p>Add to: Report</p>	<p>Requirements – 6 hrs</p> <p>Testing – 8 hrs</p>	<p>Report - 50 hrs.</p> <p>Unit Testing - 5 hrs.</p>
<p>Add to: OASIS and Report</p> <p>Add question with Yes/No radio buttons and a question with pick list options (about four options)</p>	<p>Requirements – 8 hrs</p> <p>Testing – 10 hrs</p>	<p>OASIS - 50 hrs.</p> <p>Report - 50 hrs.</p> <p>Unit Testing - 5 hrs.</p>
<p>Items 267-268</p> <p>Add to: OASIS and Report</p> <p>Add two question with Yes/No radio buttons</p>	<p>Requirements – 8 hrs</p> <p>Testing – 10 hrs</p>	<p>OASIS - 50 hrs.</p> <p>Report - 60 hrs.</p> <p>Unit Testing - 5 hrs.</p>




Add to OASIS & Report	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add a Date Field		

BA Cost at \$45.07 / hour = \$62,286.74

Developer Cost at \$66.21 / hour = \$416,460.90

**Total Cost = \$478,747.64**

**Virginia Department of Social Services (VDSS) Division of Family Services (DFS)**

**Response to the Advanced Notice of Proposed Rulemaking Regarding the Adoption and Foster Care Analysis and Reporting System (AFCARS) Regulations**

VDSS DFS supports some of the proposed changes in AFCARS data structure. We support the inclusion of data elements that would support statutory requirements. We also agree that there is benefit in collecting longitudinal data.

**Overarching Comments and Recommendations**

***AFCARS is not the best tool for collecting certain types of information.*** It is understood that AFCARS must meet federal requirements for reporting to Congress and for public accountability. But, child welfare data can only improve outcomes when it is germane to the jurisdiction in which services are delivered. And, because information needs vary to some degree by practice setting, some data are better left collected by state, local and tribal governments.

The NPRM appears to be turning the AFCARS into a research tool rather than an instrument to provide federal monitoring and guidance for continuous quality improvement. But, even if that is a legitimate end, adding measures to AFCARS that don't or can't capture the realities of child welfare practice at the state or tribal level will not promote useful research.

**Align rule making and support interoperability within HHS and ACF and across departments to reduce duplication of effort.** This would be cost effective, leverage workforce capacity and result in more comprehensive and accurate information. ACF released the requirements for a Comprehensive Child Welfare Information Systems (CCWIS) and it would be more cost effective and efficient to align AFCARS and CCWIS requirements.

The CCWIS requirements include data interfaces with other systems. The data in other systems such as health, education, courts, child support, and others would be useful to child welfare and could potentially reduce the burden of duplicate data entry. If the expectation is that states will be moving towards CCWIS compliance it would make sense to wait to see how data sharing improves data available to measure outcomes. Leadership from ACF should facilitate cooperation, better communication and fiscal and technical support to build the interfaces to ensure that data sharing across systems is helpful. (See specific examples in the Out-of-Home data file comments below).

**Focus on practice.** Child welfare agencies and staff are first and foremost accountable to the children and families that come to their attention. Adding too many elements risks shifting focus away from improving practice, to regulatory compliance. As a result, caseworkers will have to spend more on completing checklists than building relationships with clients and providing services. We risk losing focus on what is really critical to ensuring safety, permanency, and well-being. The proposed changes do not

account for caseworker time to collect data; training regarding the new, changed or modified elements and the ability to collect data reliably without impeding the relationship/service component of case practice; and technical assistance. The number of elements added will impact caseworker time with children and families. At some point we are looking at diminishing returns. In addition, supervisors and quality assurance staff will be engaged to monitor compliance.

**Consider time needed for implementation.** No changes should take place until states have been given enough time to implement CCWIS.

The amount of work that will need to occur to bring Virginia's legacy case management system up to requirements is extensive. It is estimated we will need at least 18 months to make the system compliant if all these changes go into effect. A testing phase to ensure that the technology is functioning will be required and end users will need training to use that system and to complete the new and changed fields accurately. The Child Welfare Implementation Centers have suggested that it takes two to four years to implement a new initiative and another two to four years to sustain that initiative. In Virginia, this would overlap the CCWIS implementation period.

#### **Data System**

As stated, Virginia is replacing the current case management system. There is concern that Virginia will be expending resources to make changes to the current system, which could be used to implement those changes in a new system.

We respectfully request consideration be given to states that are in the process of updating their case management system be given additional time beyond the original proposed delay of 2021.

#### **Recommendations Regarding Specific Data Elements**

***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.***

Virginia has developed an estimate of the resources that will be needed to make the significant changes to our legacy system at the same time that we are replacing our case management system to become CCWIS compliant (see attachment). The estimate includes the cost of searching data sources, gathering information, developing/modifying the system, and developing/modifying procedures and systems to collect and validate the systems. The projected cost is approximately \$373,897.51. Completing the work will take approximately 5,073 hours. In addition, 114 hours at an estimated cost of \$5,137.98, which will be required to verify the information, and adjust existing procedures to comply with the requirements each year after the changes have been made.

In regards to training and administrative tasks including reviewing instructions, developing training and materials, implementing training, deploying system updates state-wide, etc., there is an estimated cost of \$43,731.60 associated with the new data elements.

Therefore, an estimated total for development and implementation of the new non-ICWA-related data elements would approximately be \$422,767.09.

***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.***

As of 05/01/2018, Virginia has two American Indian/Native Alaskan children in care, which is less than less than .05%. Virginia will be incurring a substantial cost, for a very small amount of data collection and reporting. Virginia supports collecting the data related to ICWA elements once we are CCWIS compliant, but not in our current legacy system.

The projected cost is approximately \$104,850.13. Completing the work will take approximately 2,599 hours. In addition, 86 hours at an estimated cost of \$3,876.02, which will be required to verify the information, and adjust existing procedures to comply with the requirements each year after the changes have been made.

In regards to training and administrative tasks including reviewing instructions, developing training and materials, implementing training, deploying system updates state-wide, etc, there is an estimated cost of \$37,858.80 associated with the new data elements.

Therefore, an estimated total for development and implementation of the new-ICWA related data elements would approximately be \$146,584.95.

*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.*

Virginia supports the collection of data which aids in performance monitoring and evaluation, but requirements should be coordinated with the new CCWIS requirements.

*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.*

#### Child Information

**Element 41 – Health, Behavioral or Mental Health Assessment:** VDSS relies on children and parents to self-report health conditions. We believe obtaining information on physical health, behavioral health and mental health from electronic medical records (EMR) would be a more accurate way to gather the information. Additionally, we do not see the utility of collecting data on previous conditions that occurred before a child enters care.

**Element 53 – School Enrollment, Element 54 – Education Level and Element 55 – Educational Stability (to include Elements 56-62):** These elements will differ across states and within states. There is a risk that the element will not be reported consistently resulting in unreliable data.

As with the health conditions, we believe obtaining information from the Department of Education would be a more accurate way to gather information. Virginia does not have FERPA access at the state level and we are state supervised, locally administered.

School systems across the state have differing definition of elementary, secondary and high school so there would not be consistency within Virginia. The number of children enrolled and the number that should be enrolled is relevant but could not be accurately pulled out of the reporting element as presented. We propose deleting school enrollment and just reporting the educational (grade) level.

Additionally, there is a concern that if you are reporting the highest educational level completed there will be children in Kindergarten who will be recorded as “not school age” when they are in fact attending school for at least one submission period.

#### **Living Arrangement and Provider Information**

**Element 151 – Foster Family Home Type: Therapeutic Foster Family and Element 152 – Foster Family Home Type: Shelter Care Foster Family Home:** In Virginia, there are not clear and consistent definitions for Therapeutic Foster Families and Shelter Care Foster Family Homes; therefore, we believe that any data collected would differ between and within states.

*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.*

#### **Child Information**

**Element 7 - Child’s Sexual Orientation:** Virginia recognizes that information on self-identified LGBTQ youth is helpful when making decisions on service provision and placements; however we are unsure of the purpose of the data collection and future use of the information. Additionally, we believe it is enough to capture LGBTQ status through the NYTD report. Furthermore, sexual orientation for youth is not static and can change over time. Therefore, a one-time reporting will not necessarily capture this information accurately. Furthermore, Virginia believes that this is best assessed through qualitative methods.

**Element 87 – Total Number of Siblings, Element 88 – Siblings in Foster Care, and Element 89 – Siblings in Living Arrangement:** This is an important at the practice level when planning for children, but it is a qualitative issue. The numbers requested will not provide meaningful valid information for national review. There are many and varied reasons when sibling should not be placed together. In addition, it will be burdensome to continually update the data element about siblings being placed together. The

title IV-E agencies may never know how many siblings the child has due complicated family structures including step-parenting and uncertain parentage.

**Living Arrangement and Provider Information**

**Element 185 – First Foster Parent Sexual Orientation and Element 197 – Second Foster Parent Sexual Orientation:** Virginia recognizes that information on self-identified LGBTQ information is helpful when making decisions on service provision and placements; however we are unsure of the purpose of the data collection and future use of the information.

**Child’s Relationship to the Adoptive Parent(s) or Guardian(s)**

**Element 244 – First Adoptive Parent or Legal Guardian Sexual Orientation and Element 256 – Second Adoptive Parent, Guardian, or Other Member of the Couple Sexual Orientation:** This is the same as information that was provided for Element 185 and 187. Virginia recognizes that information on self-identified LGBTQ information is helpful when making decisions on service provision and placements; however we are unsure of the purpose of the data collection and future use of the information.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93op-w22s
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> API

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0091  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Rhonda Curt  
**Address:** 93021  
**Email:** societyrhonnie@gmail.com  
**Organization:** none

---

## General Comment

I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93op-ywwe
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0092  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Amy Meyer

---

## General Comment

As a past worker with disadvantaged and at risk youth, it is imperative that we continue to gather data on LGBTQ issues related to youth and family history to assist us in providing better services for all.

This is not something that can be ignored, as it is a crucial part of any persons being and identity. Health and Human Services should serve all people, should identify and respect all people of all races, creeds and sexualities.

Please do not remove this data collection point of your services. Do not ignore this population.

You cannot make them go away, they are here to stay and they need your services.

Thank you for your consideration.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93op-eqrm
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0093  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** GEORGIA MORGAN

---

## General Comment

There is no good reason to cease asking clients if children left home because of family conflict related to child's sexual orientation, gender identity, or gender expression. This is a good question to ask. Asking questions like this protects the rights of LGBTQ foster children & parents.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93op-d2za
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> API

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0094  
One Million Kids for Equality

---

## Submitter Information

**Name:** Curtis Galloway  
**Address:** 98119  
**Email:** curtis@onemillionkids.org  
**Organization:** One Million Kids for Equality

---

## General Comment

See attached file(s)

---

## Attachments

One Million Kids for Equality

June 13, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

**Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).**

Dear Ms. McHugh:

On behalf of One Million Kids for Equality, please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (“Proposed Rule”) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome. One Million Kids for Equality requests that U.S. Department of Health and Human Services, Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”), Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to sexual orientation, gender identity, and gender expression. The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

One Million Kids For Equality works to advocate for, engage, educate, and empower LGBTQ youth to share their stories for social change. We work with youth and their allies around the world to help elevate their stories and create change in legislatures, courts, and most importantly hearts and minds. As such, when issues arise, and specifically in this case around LGBTQ foster care, we take notice and address the issue thoroughly. One Million Kids for Equality is very concerned with the wellbeing of LGBTQ foster children due to this proposed rule, and feel very strongly that the streamlining of AFCARS will have an overwhelming negative impact on LGBTQ foster children and potential adoptive families due to the reasons outlined below.

**A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods**

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public

comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* (“Family First,” P.L. 115-123), as described in examples below.

B. Removal of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression (“SOGIE”) Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children and Eliminate Cost Savings

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families’ efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> In April 2011, ACF confirmed and reiterated “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>2</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>3</sup> Yet, LGBTQ youth will be inadequately served

<sup>1</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>2</sup> 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>

<sup>3</sup> *Ibid.*

until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>4</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (“LGBQ”); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>5</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than “straight” are 14,300 to 24,000.<sup>6</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>7</sup>

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>8</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>9</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>10</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children’s Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

We also oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

---

<sup>4</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pij\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pij_rise_lafys_report.pdf)

<sup>5</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>6</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (4) and (5) above.

<sup>7</sup> Same as 5 above.

<sup>8</sup> Same as 4 above.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

*The Children's Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14*

All of the poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBTQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children's Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>11</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>12</sup> Thus, identifying an affirming, supportive family for an LGBTQ child leading to adoption – which would be impossible to do if the child's sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBTQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than family foster care.<sup>13</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>14</sup> placing an LGBTQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

*The Children's Bureau should retain the data element related to the reason for removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity, or gender expression."*

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per

<sup>11</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCEA\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCEA_ADOPTION_ADVOCATE_NO35.pdf)

<sup>12</sup> *Ibid.*

<sup>13</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>14</sup> Same as 11 above.

child per year for each child not placed in a foster home; the annual savings would be 3-5 times greater for each child not placed in congregate care.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>15</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

C. The Children's Bureau Should Retain the Voluntary Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>16</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>17</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

In its April 2011 guidance, ACF confirmed that "LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes."<sup>18</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples<sup>19</sup> are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents. Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

---

<sup>15</sup> Same as 4 above.

<sup>16</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>17</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>18</sup> Same as 2 above.

<sup>19</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)



D. The Children’s Bureau Should Add Voluntary Gender Identity Questions for Foster Youth Over the Age of 14 and Foster and Adoptive Parents and Guardians Because this Information is Important and it is Efficient to Collect this Information Along with Current Data Elements.

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>20</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

E. The sexual orientation and gender identity and expression data elements of foster youth can be administered safely, and the Children’s Bureau should provide training and resources to states and tribes to do so.

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity (“SOGI”) information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>21</sup> The guidelines address the need to collect SOGI information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children’s Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>22</sup> The regulations

<sup>20</sup> Robinson, Brandon Andrew. Forthcoming. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>21</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>22</sup> Angela Irvine, “We’ve Had Three of Them”: Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

promulgated under the Prison Rape Elimination Act (“PREA”) require youth and adult correctional officers to collect SOGI information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>23</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment.

In the Final Rule, the Children’s Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.” Additionally, the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”

F. Conclusion

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Children’s Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

A handwritten signature in black ink that reads "Curtis D. Galloway". The signature is written in a cursive style with a large, looped initial "C".

**Curtis D. Galloway**  
Executive Director  
One Million Kids for Equality  
curtis@onemillionkids.org

---

<sup>23</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oq-ulwr
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0095  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Anonymous Anonymous

---

## General Comment

I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oq-t504
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0096  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Debra Sideris

---

## General Comment

I am writing to comment on the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (Proposed Rule) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) (RIN 0970-AC72).

I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.

Studies show that approximately 19% of foster youth identify as LGBTQ, and they experience worse safety, well-being, and permanency outcomes than non-LGBTQ youth. For states and tribes to improve these outcomes and identify best practices for doing so, data collection on the state and national level is urgently needed. Same-sex couples foster at six times the rate of their opposite-sex counterparts, and can provide loving, supportive homes for America's 400,000+ foster youth.

I also urge HHS to retain the data elements related to the Indian Child Welfare Act, as American Indian and Native Alaskan foster youth are another vulnerable population overrepresented in foster care with worse safety, well-being, and permanency outcomes than non-Native youth.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oq-zp96
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0097  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Linda Warren

---

## General Comment

Kids can't advocate for themselves, so we have to. I am AGAINST the proposed streamlining of the Adoption and Foster Care Analysis and Reporting System.

I am in favor of HHS retaining the data elements related to the Indian Child Welfare Act, as American Indian and Native Alaskan foster youth are another vulnerable population overrepresented in foster care with worse safety, well-being, and permanency outcomes than non-Native youth.

Same goes for LGBTQ kids in foster care. Approx 19% of foster youth identify as LGBTQ, & they experience worse safety, well-being, & permanency outcomes than non-LGBTQ youth.

For states and tribes to improve these outcomes and identify best practices for doing so, data collection on the state and national level is urgently needed. The retention of the questions which currently exist will better protect foster youth.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oq-swca
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0098  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Matthew Wolff  
**Address:** 10536  
**Email:** Matthewwolfff@gmail.com

---

## General Comment

I am writing to comment on the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (Proposed Rule) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) (RIN 0970-AC72).

I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.

Studies show that approximately 19% of foster youth identify as LGBTQ, and they experience worse safety, well-being, and permanency outcomes than non-LGBTQ youth. For states and tribes to improve these outcomes and identify best practices for doing so, data collection on the state and national level is urgently needed.

Same-sex couples foster at six times the rate of their opposite-sex counterparts, and can provide loving, supportive homes for America's 400,000+ foster youth.

I also urge HHS to retain the data elements related to the Indian Child Welfare Act, as American Indian and Native Alaskan foster youth are another vulnerable population overrepresented in foster care with worse safety, well-being, and permanency outcomes than non-Native youth

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oq-jand
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0099  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** V Anonymous

---

## General Comment

As a parent of an gay child, I know how important it is to protect our LGBTQ youth. My child was raised in a safe and supportive environment, but their friends, many of whom I know personally, were not as fortunate. We need to keep the question about family conflict in the HHS document so we can fully support and understand the context by which a child left home and be able to arrange for appropriate accommodations. Do to anything less would risk childrens overall health, well-being, and susceptibility to trauma.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93or-aj4t
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0100  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Linda Gottlieb

---

## General Comment

I urge HHS to keep asking if children were removed from their home due to family conflict related to child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents. Protecting the most vulnerable citizens is imperative to our ideology as a nation & must be a priority.



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93or-30b4
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0101  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Valery St. James  
**Address:** 08081  
**Email:** ValeryGirl@gmail.com

---

## General Comment

I urge HHS to keep asking if children were removed from their home due to family conflict related to child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents. Protecting the most vulnerable citizens is imperative to our ideology as a nation & must be a priority.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93os-3bod
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0102  
Casey Family Programs

---

## Submitter Information

**Name:** Susan Smith  
**Organization:** Casey Family Programs

---

## General Comment

See attached file(s)

---

## Attachments

Casey Family Programs

June 13, 2018

Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C St. SW  
Washington, D.C. 20024

RE: Advance notice of proposed rulemaking  
Docket Number: ACF-2018-0003  
Docket Name: AFCARS  
Docket RIN: 0970-AC72

Dear Ms. McHugh:

Thank you for the opportunity to provide comments on the U.S. Department of Health and Human Services Notice of Proposed Rule Making RIN 0970-AC72. Casey Family Programs is the nation's largest operating foundation that focuses on safely reducing the need for foster care and building communities of hope for children and families across America. We provide ongoing strategic consultation, technical assistance, data analysis and independent research, and work in all 50 states, the District of Columbia, in two U.S. territories and with more than a dozen tribal nations to assist child welfare leaders in their efforts.

We commented previously on these rules and remain unflinching in our commitment to improving the quality and type of data collected on the families we serve in child welfare. The Adoption and Foster Care Analysis and Reporting System (AFCARS) is the only national tool for tracking children in foster care and monitoring outcomes such as safety, permanency, time to reunification and increases and decreases in the number of children in out-of-home care. It allows ACF to track Title IV-E eligible children and to monitor capacity and outcomes across states. Significant improvements in technology and data management, along with major changes in federal law, have occurred since the inception of AFCARS. Revisiting the reports' structure and content makes sense.

The final rule included provisions on the reporting population, file structure and data elements. While the current request from ACF is primarily regarding data elements, we will comment on all three areas, as all are equally important to children and youth, and to the child welfare agency serving them. While we fully appreciate the administrative burden associated with this regulatory activity, we encourage the Administration for Children and Families to maximize the flexibility and opportunity provided by advances in technology to reduce state burden rather than eliminating important measures for monitoring child safety and ensuring that caring adults raise children in families.

## **Reporting Populations**

The final rule included two reporting populations: children in out-of-home care and those receiving adoption or guardianship assistance payments. We support collecting data on both of these populations.

In addition, with the passage of the Family First Prevention Services Act (FFPSA), it will be necessary for ACF to develop or adjust existing data elements for the new population of children and families that will be served under this legislation — particularly those children with open cases, as well as their parents or kinship caregivers served in their home with prevention services.

## **File Structure**

Significant changes are underway in child welfare technology as states begin to explore and implement provisions of the Comprehensive Child Welfare Information System (CCWIS) funding environment. As noted above, passage of the FFPSA also will require collection of data when cases are opened, not only at the point of placement out of home. Not only will additional and/or different data be required, but more children will be subject to reporting as IV-E supported services begin earlier in a case and are provided to more children and families.

We recognize that the Children's Bureau is currently considering a delay in the compliance and effective dates of implementing the 2016 final rule. The idea of states continually appending an incredibly large rectangular file with additional data elements and ongoing tracking of post-permanency assistance recipients is difficult, so we appreciate your thoughtful consideration of how best to approach this. At the same time, the use of data for policy and planning is growing at an exponential rate, and we can expect the same trends in child welfare as statutory requirements and public expectations for integrated systems and services continue to grow.

We recommend that the Children's Bureau seriously assess the most efficient and sustainable method for states and tribes to transmit data and other information. The notion of a flat file transfer every six months was conceived of more than two decades ago. With advances in technology, this is inefficient. We encourage the Children's Bureau to explore alternate methods of data submission, such as monthly (or even weekly) automated data transfers. Data storage could be cloud based with system components modularized.

## **Data Elements**

We are keenly aware of the need to balance the increasing need for timely and relevant data for the appropriate oversight and monitoring of these children with the considerable burden tied to its collection. Further, statutory requirements tied to the Fostering Connections to Success and Increasing Adoptions Act of 2008, as well as the Preventing Sex Trafficking and Strengthening Families Act, have significantly expanded

the scope of AFCARS for the first time since its inception in 1998. Older youth who exit care without permanency, as well as child victims of sex crimes, are important subgroups warranting oversight. In addition, the data elements identified in the final rule published in December 2016, protected the rights of Indian children placed out of home by tracking state compliance with the provisions of the Indian Child Welfare Act (ICWA). Additional data elements approved in the final rule will be useful for service provision and research purposes, including detail on sibling placement and sexual orientation. Further, we expect that the FFPSA will further expand the scope of AFCARS.

Rather than reduce the number of data elements, we strongly encourage the Children's Bureau to modernize their approach to data transfer and structure as well as the electronic retrieval and linking of information from other federal data repositories. The burden for electronic transfer and file linkage is on ACF; states should be mandated to provide information on children in the care of the state Title IV-E agency (whether in placement or in their own homes), but should not be responsible for conducting linkages with Medicaid, behavioral health or education. We encourage the Children's Bureau to consider a modernization effort that integrates the regulatory mandates of FFPSA with the flexibility of CCWIS. This would optimize technology to create and maintain a longitudinal file structure to track children from first allegation through prevention and in-home services to placement and return home and, when necessary, back into care and possibly to adulthood. Beginning and end dates of in-home spells will be important.

We expect that, for many data elements over time, manual data entry will be replaced by elements that are automatically pre-populated, reducing the burden of data collection. However, that capacity must be built rail-by-rail, optimizing opportunities for trusted relationships across state agencies that lead to mutually beneficial information sharing. We see numerous fields in the current and proposed list of AFCARS data elements with potential for electronic data transfer.

Table 1 lists approved data elements, noting whether the element should be kept and if it lends itself to electronic data transfer. We also recommend federal technical assistance to accelerate with modernization efforts, in coordination with CCWIS implementation. Further, we recommend that decisions around elimination of data elements tied to ICWA implementation, if any, be decided in consultation with tribes and states.

Thank you for the opportunity to submit comments on this important regulation. Please contact Christine Calpin, Managing Director - Public Policy, at 202-728-2001 if you have any questions.

Sincerely,

David Sanders  
Executive Vice President

## Systems Improvement

<b>AFCARS Data Elements Side-by-Side Comparison with Recommendation</b>		
<b>K = Keep</b>		
<b>R = Remove</b>		
<b>E = Electronic Exchange</b>		
<b>AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)</b>	<b>AFCARS Foster Care and Adoption Data Elements as Published in the <a href="#">Appendix to 45 CFR part 1355</a></b>	<b>Recommendation</b>
1. IV-E Agency	1. IV-E Agency	K
2. Report date	2. Report date	K
3. Local agency	3. Local agency	K
4. Child record number	4. Child's Record number	K
<b>(b) Child information</b>	<b>Child's Demographic Information</b>	
5. (b.1) Child's date of birth	5. Date of birth	K
6. (b.2.i) Child's gender	7. Child's Sex	K
7. (b.2.ii) Child's sexual orientation	N/A not in the current AFCARS collection	R
8 – 14. (b.3) Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.	N/A not in the current AFCARS collection	K
15 - 17. (b.4) Application of ICWA.	N/A not in the current AFCARS collection	K
18 – 20. (b.5) Court determination that ICWA applies	N/A not in the current AFCARS collection	K
21 – 23. (b.6) Notification - ICWA	N/A not in the current AFCARS collection	K
24. (b.7) Request to transfer to tribal court - ICWA	N/A not in the current AFCARS collection	K
25 - 28. (b.8) Denial of transfer - ICWA	N/A not in the current AFCARS collection	K
29 - 36. (b.9) Child's race	8. Child's Race	K
37. (b.10) Hispanic/Latino origin	9. Child's Hispanic or Latino Ethnicity	K

38. (b.11.i) Health assessment	10. Child diagnosed with disability and response options of yes, no, not yet determined.	K
39. (b.11.ii) Date of health assessment	N/A not in the current AFCARS collection	E
40. (b.12) Timely Health Assessment	N/A not in the current AFCARS collection	E
41. (b.13) Health, behavioral or mental health conditions	10. Has the Child Been Clinically Diagnosed with a Disability(ies)?	E
42. (b.13.i) Intellectual disability	11. Mental Retardation	E
43. (b.13.ii) Autism spectrum disorder	15 Other Medically Diagnosed Conditions Requiring Special Care	E
44. (b.13.iii) Visual impairment and blindness	12 Visually or Hearing Impaired	E
45. (b.13.iv) Hearing impairment and deafness	12 Visually or Hearing Impaired	E
46. (b.13.v) Orthopedic impairment or other physical condition	13. Physically Disabled	E
47. (b.13.vi) Mental/emotional disorders	14. Emotionally Disturbed (DSM- IV)	E
48. (b.13.vii) Attention deficit hyperactivity disorder.	14. Emotionally Disturbed (DSM- IV)	E
49. (b.13.viii) Serious mental disorders	14. Emotionally Disturbed (DSM- IV)	E
50. (b.13.ix) Developmental delay	N/A not in the current AFCARS collection	E
51. (b.13.x) Developmental disability	N/A not in the current AFCARS collection	E
52. (b.13.xi) Other diagnosed condition	15. Other Medically Diagnosed Conditions Requiring Special Care	E
53. (b.14) School enrollment	N/A not in the current AFCARS collection	E
54. (b.15) Educational level	N/A not in the current AFCARS collection	E
55. (b.16) Educational stability	N/A not in the current AFCARS collection	E
56. (b.16.i) Proximity	N/A not in the current AFCARS collection	E
57. (b.16.ii) District/zoning rules	N/A not in the current AFCARS collection	E
58. (b.16.iii) Residential facility	N/A not in the current AFCARS collection	E



59. (b.16.iv) Services/programs	N/A not in the current AFCARS collection	E
60. (b.16.v) Child request	N/A not in the current AFCARS collection	E
61. (b.16.vi) Parent/Legal Guardian request	N/A not in the current AFCARS collection	E
62. (b.16.vii) Other	N/A not in the current AFCARS collection	E
63. (b.17.i) Pregnant as of the end of the report period	N/A not in the current AFCARS collection	K
64. (b.17.ii) Ever fathered or bore children	N/A not in the current AFCARS collection	K
65. (b.17.iii) Child and his/her child(ren) placed together at any point during the report period?	N/A not in the current AFCARS collection	K
66. (b.18) Special education	N/A not in the current AFCARS collection	E
67. (b.19) Prior adoption(s)	16. Has this Child Ever Been Adopted?	K
68. (b.19.i) Prior adoption date	N/A not in the current AFCARS collection	K
69. (b.19.ii) Prior adoption type - <i>intercountry</i>	N/A not in the current AFCARS collection	K
70. Prior Guardianship (b.20i)	N/A not in the current AFCARS collection	K
71. (b.20.ii) Prior guardianship date	N/A not in the current AFCARS collection	K
72. (b.21) Child financial and medical assistance	59 -65 Sources of Federal Financial Support/Assistance for Child	E
73. (b.21.i) SSI or Social Security benefits	64. SSI or Other Social Security Benefits	E
74. (b.21.ii) Title XIX Medicaid	63. Title XIX (Medicaid)	E
75. (b.21.iii) Title XXI SCHIP	65. None of the Above	E
76. (b.21.iv) State/Tribal adoption assistance	65. None of the Above	E
77. (b.21.v) State/Tribal foster care	65. None of the Above	E
78. (b.21.vi) Child support	62. Title IV-D (Child Support)	E
79. (b.21.vii) Title IV-E adoption subsidy	60. Title IV-E (Adoption Assistance)	E

80. (b.21.viii) Title IV-E guardianship assistance	65. None of the Above	E
81. (b.21.ix) Title IV-A TANF	61. Title IV-A	E
82. (b.21.x) Title IV-B	65. None of the Above	E
83. (b.21.xi) SSBG	65. None of the Above	E
84. (b.21.xii) Chafee Foster Care Independence Program.	65. None of the Above	E
85. (b.21.xiii) Other	65. None of the Above	E
86. (b.22) Title IV-E foster care during report period	59. Title IV-E (Foster Care)	K
87. (b.23) Total Number of siblings	N/A not in the current AFCARS collection	K
88. (b.24) Siblings in foster care	N/A not in the current AFCARS collection	K
89. (b.25) Siblings in living arrangement	N/A not in the current AFCARS collection	K
<b>(c) Parent or legal guardian information</b>	<b>Principal Caretaker Information</b>	
90. (c.1) Year of birth of first parent or legal guardian	45. Year of Birth (1 <sup>st</sup> Principal Caretaker)	E
91. (c.2) Year of birth of second parent or legal guardian	46. Year of Birth (2 <sup>nd</sup> Principal Caretaker - if applicable)	E
92. (c.3) Tribal membership mother	N/A not in the current AFCARS collection	K
93. (c.4) Tribal membership father	N/A not in the current AFCARS collection	K
94. (c.5) Termination/modification of parental rights.	N/A not in the current AFCARS collection	K
95. (c.5.i) Termination/modification of parental rights petition	N/A not in the current AFCARS collection	K
96. (c.5.ii) Termination/modification of parental rights	47. Date of Mother's Parental Rights Termination (if applicable) 48. Date of Legal or Putative Father's Parental Rights Termination (if applicable)	K

97 - 99 Involuntary termination/modification of parental rights under ICWA	N/A not in the current AFCARS collection	K
100. Voluntary termination/modification of parental rights under ICWA	N/A not in the current AFCARS collection	K
<b>(d) Removal Information</b>	<b>Removal/Placement Setting Indicators</b>	
101. (d.1) Date of child's removal	18 Date of first removal from home and 21. Date of latest removal	K
102. (d.2) Transaction date: removal	22. Removal Transaction Date	K
103 -105 Removals under ICWA.	N/A not in the current AFCARS collection	K
106. (d.4) Environment at removal	N/A not in the current AFCARS collection	R
107. (d.5) Authority for placement and care responsibility	25. Manner of Removal from Home for Current Removal Episode	R
<b>(d)(6) Child and family circumstances at removal</b>	<b>Circumstances Associated with Removal</b>	
108. (d.6.i) Runaway	N/A not in the current AFCARS collection	K
109. (d.6.ii) Whereabouts unknown	N/A not in the current AFCARS collection	K
110. (d.6.iii) Physical abuse	26. Physical Abuse (alleged/reported)	K
111. (d.6.iv) Sexual abuse	27. Sexual Abuse (alleged/reported)	K
112. (d.6.v) Psychological or emotional abuse	N/A not in the current AFCARS collection	K
113. (d.6.vi) Neglect	28. Neglect (alleged/reported)	K
114. (d.6.vii) Medical neglect	N/A not in the current AFCARS collection	K
115. (d.6.viii) Domestic violence	N/A not in the current AFCARS collection	K
116. (d.6.ix) Abandonment	38. Abandonment	K
117. (d.6.x) Failure to return	N/A not in the current AFCARS collection	K
118. (d.6.xi) Caretaker's alcohol use	29. Alcohol Abuse (parent)	K
119. (d.6.xii) Caretaker's drug use	30. Drug Abuse (parent)	K
120 (d.6.xiii) Child alcohol use	31. Alcohol Abuse (child)	K

121. (d.6.xiv) Child drug use	32. Drug Abuse (child)	K
122. (d.6.xv) Prenatal alcohol exposure	31. Alcohol Abuse (child)	K
123. (d.6.xvi) Prenatal drug exposure	32. Drug Abuse (child)	K
124. (d.6.xvii) Diagnosed Condition	33. Child's Disability	K
125. (d.6.xviii) Inadequate access to mental health services	N/A not in the current AFCARS collection	K
126. (d.6.xix) Inadequate access to medical services	N/A not in the current AFCARS collection	K
127. (d.6.xx) Child behavior problem	34. Child's Behavior Problem	K
128. (d.6.xxi) Death of caretaker	35. Death of Parent(s)	K
129. (d.6.xxii) Incarceration of caretaker	36. Incarceration of Parent(s)	K
130. (d.6.xxiii) Caretakers significant impairment – physical/emotional	37. Caretaker's Inability to Cope Due to Illness or Other Reason	K
131. (d.6.xxiv) Caretaker's significant impairment – cognitive	37. Caretaker's Inability to Cope Due to Illness or Other Reason	K
132. (d.6.xxv) Inadequate housing	40. Inadequate Housing	K
133. (d.6.xxvi) Voluntary relinquishment for adoption	39. Relinquishment	K
134. (d.6.xxvii) Child requested placement	N/A not in the current AFCARS collection	K
135. (d.6.xxviii) Sex trafficking	N/A not in the current AFCARS collection	K
136. (d.6.xxix) Parental immigration detainment or deportation	N/A not in the current AFCARS collection	K
137. (d.6.xxx) Family conflict related to child's sexual orientation, gender identity, or gender expression.	N/A not in the current AFCARS collection	K
138. (d.6.xxxi) Educational Neglect	N/A not in the current AFCARS collection	K
139. (d.6.xxxii) Public agency title IV-E agreement	N/A not in the current AFCARS collection	K

140. (d.6.xxxiii) Tribal title IV-E agreement	N/A not in the current AFCARS collection	K
141 (d.6.xxxiv) Homelessness.	40. Inadequate Housing	K
142. (d.7) Victim of sex trafficking prior to entering foster care	N/A not in the current AFCARS collection	K
143. (d.7.i) Report to Law Enforcement	N/A not in the current AFCARS collection	K
144. (d.7.ii) Dates of each report	N/A not in the current AFCARS collection	K
145. (d.8) Victim of sex trafficking while in foster care	N/A not in the current AFCARS collection	K
146. (d.8.i) Report to law enforcement	N/A not in the current AFCARS collection	K
147. (d.8.ii) Date	N/A not in the current AFCARS collection	K
<b>(e) Living arrangement and provider information.</b>	<b>Current Placement Settings</b>	
148. (e.1) Date of living arrangement	23. Date of Placement in Current Foster Care Setting	K
149. (e. 2) Foster family home	41. Current Placement Setting	K
150. (e.3.i.) Foster family home type: Licensed home	N/A not in the current AFCARS collection	K
151. (e.3.ii) Foster family home type: Therapeutic foster family	N/A not in the current AFCARS collection	K
152. (e.3.iii) Foster family home type: Shelter care foster family home.	N/A not in the current AFCARS collection	K
153. (e.3.iv) Foster family home type: Relative foster family	41. Current Placement Setting - Foster Family Home (Relative)	K
154. (e.3.v) Foster family home type: Pre-adopt home	41. Current Placement Setting - Pre-Adoptive Home	K
155. (e.3.vi) Foster family home type: Kin foster family home	41. Current Placement Setting - Foster Family Home (NonRelative)	K
156. (e.4) Other living arrangement type	41. Current Placement Setting	K

157. (e.5) Private agency living arrangement.	N/A not in the current AFCARS collection	K
158. (e.6) Location of living arrangement	42. Is Current Placement Setting Outside of State or Tribal Service Area?	K
159. (e.7) Jurisdiction or country where child is living	N/A not in the current AFCARS collection	K
160 -164 (e.8) Available ICWA foster care and pre-adoptive placement preferences: a member of the Indian child's extended family	N/A not in the current AFCARS collection	K
165. (e.9) Foster care and pre-adoptive placement preferences under ICWA.	N/A not in the current AFCARS collection	K
166. (e.10) Good cause under ICWA.	N/A not in the current AFCARS collection	K
167 - 171. (e.11) Basis for good cause.	N/A not in the current AFCARS collection	K
172. (e.12) Marital status of the foster parent(s)	49. Foster Family Structure	R
173. (e.13) Child's relationships to the foster parent(s).	N/A not in the current AFCARS collection	R
174. (e.14) Year of birth for first foster parent	50. Year of Birth (1 <sup>st</sup> Foster Caretaker)	R
175. (e.15) First foster parent tribal membership.	N/A not in the current AFCARS collection	K
176 -182. (e.16) Race of first foster parent.	52. Race of 1 <sup>st</sup> Foster Caretaker	R
183. (e.17) Hispanic or Latino ethnicity of first foster parent.	53. Hispanic or Latino Ethnicity of 1 <sup>st</sup> Foster Caretaker	R
184. (e.18) Gender of first foster parent.	N/A not in the current AFCARS collection	R
185. (e.19) First foster parent sexual orientation.	N/A not in the current AFCARS collection	R

186. (e.20) Year of birth for second foster parent.	51. Year of Birth (2 <sup>nd</sup> Foster Caretaker)	R
187. (e.21) Second foster parent tribal membership.	N/A not in the current AFCARS collection	K
188 - 194. (e.22) Race of second foster parent.	N/A not in the current AFCARS collection	R
195. (e.23) Hispanic origin of the second foster parent	55. Hispanic or Latino Ethnicity of 2 <sup>nd</sup> Foster Caretaker (if applicable)	R
196. (e.24) Gender of second foster parent.	N/A not in the current AFCARS collection	R
197. (e.25) Second foster parent sexual orientation.	N/A not in the current AFCARS collection	R
<b>(f) Permanency planning</b>	<b>Most Recent Case Plan Goal</b>	
198. (f.1) Permanency plan	43. Case Plan Goal	K
199. (f.2) Date of permanency plan	N/A not in the current AFCARS collection	K
200 (f.3) Date of periodic review	5. Date of Most Recent Periodic Review (if applicable)	R
201 (f.4) Date of permanency hearing	5. Date of Most Recent Periodic Review (if applicable)	R
202 (f.5) Juvenile justice	N/A not in the current AFCARS collection	K
203 (f.6) Caseworker visit dates	N/A not in the current AFCARS collection	R
204 (f.7) Caseworker visit location	N/A not in the current AFCARS collection	R
205 Transition plan.	N/A not in the current AFCARS collection	R
206 Date of transition plan	N/A not in the current AFCARS collection	R
207 - 219 (f.10) Active Efforts.	N/A not in the current AFCARS collection	K
<b>(g) General exit information</b>	<b>Discharge Data</b>	
220. (g.1) Date of exit.	56. Date of Discharge from Foster Care (in foster care data file) and 21. Date adoption legalized (in adoption data file)	K
221. (g.2) Exit transaction date.	57. Foster Care Discharge Transaction Date	K
222. (g.3) Exit reason.	58. Reason for Discharge	K

223. (g.4) Transfer to another agency	N/A not in the current AFCARS collection	K
<b>(h) Exit to adoption and guardianship information</b>	<b>Adoption Data File Data Elements – for adoptions only, guardianship not collected currently</b>	
224. (h.1) Marital status of the adoptive parent(s) or guardian(s).	22. Adoptive Parents' Family Structure	K
<b>(h.2) Child's relationship to the adoptive parent(s) or guardian(s).</b>	<b>29 – 32. Relationship to Adoptive Parent (Adoption only)</b>	
225. (h.2.i) Child's relationship to the adoptive parent(s) or guardian(s). Paternal grandparent(s).	30. Relationship - other relative	K
226. (h.2.ii) Child's relationship to the adoptive parent(s) or guardian(s). Maternal grandparent(s).	30. Relationship - other relative	K
227. (h.2.iii) Child's relationship to the adoptive parent(s) or guardian(s). Other paternal relative(s)	30. Relationship - other relative	K
228 (h.2.iv) Child's relationship to the adoptive parent(s) or guardian(s). Other maternal relative(s)	30. Relationship - other relative	K
229 (h.2.v) Child's relationship to the adoptive parent(s) or guardian(s). Sibling(s).	30. Relationship - other relative (Adoption only)	K
230 (h.2.vi) Child's relationship to the adoptive parent(s) or guardian(s). Kin	30. Relationship - other relative or 32. Relationship - other nonrelative (Adoption only)	K
231. (h.2.vii) Child's relationship to the adoptive parent(s) or guardian(s). Non-relative(s)	32. Relationship - other non-relative (Adoption only)	K
232. (h.2.viii) Child's relationship to the adoptive parent(s) or guardian(s). Foster parent(s)	31. Relationship - foster parent (Adoption only)	K
233. (h.3) Date of birth of first adoptive parent or guardian.	23. Adoptive Mother's Year of Birth 24. Adoptive Father's Year of Birth	R



234. (h.4) First adoptive parent or guardian tribal membership.	N/A not in the current AFCARS collection	K
235 - 241 (h.5) Race of first adoptive parent or guardian.	25. Adoptive Mother's Race 27. Adoptive Father's Race	R
242. (h.6) Hispanic or Latino ethnicity of first adoptive parent or guardian.	26. Adoptive Mother's Hispanic Origin 28. Adoptive Father's Hispanic Origin	R
243. (h.7) Gender of first adoptive parent or guardian	N/A not in the current AFCARS collection	R
244. (h.8) First adoptive parent or legal guardian sexual orientation.	N/A not in the current AFCARS collection	R
245. (h.9) Date of birth of second adoptive parent, guardian, or other member of the couple.	23. Adoptive Mother's Year of Birth 24. Adoptive Father's Year of Birth	R
246. (h.10) Second adoptive parent, guardian, or other member of the couple tribal membership.	N/A not in the current AFCARS collection	K
247 – 253. (h.11) Race of second adoptive parent, guardian, or other member of the couple.	25. Adoptive Mother's Race 27. Adoptive Father's Race	R
254. (h.12) Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.	26. Adoptive Mother's Hispanic Origin 28. Adoptive Father's Hispanic Origin	R
255. (h.13) Sex of second adoptive parent, guardian, or other member of the couple.	N/A not in the current AFCARS collection	R
256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.	N/A not in the current AFCARS collection	R
257. (h.15) Inter/Intrajurisdictional adoption or guardianship.	33. Child was placed from (Adoption only)	K
258. (h.16) Interjurisdictional adoption or guardianship jurisdiction	N/A not in the current AFCARS collection	K

259. (h.17) Adoption or guardianship placing agency.	34. Child was placed by (Adoption only)	K
260. (h.18) Assistance agreement type.	35 – 37. Financial Adoption Support (Adoption only)	K
261. (h.19) Siblings in adoptive or guardianship home.	N/A not in the current AFCARS collection	K
262 – 265. (h.20) Available ICWA Adoptive placements.	N/A not in the current AFCARS collection	K
266. (h.21) Adoption placement preferences under ICWA.	N/A not in the current AFCARS collection	K
267. (h.22) Good cause under ICWA.	N/A not in the current AFCARS collection	K
268 – 272. (h.23) Basis for good cause.	N/A not in the current AFCARS collection	K

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93ot-2zg1
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0103  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Eileen Peterson

---

## General Comment

As a parent of a LGBTQIA child whom I adopted out of foster care, I know how important it is to protect our youth, especially LGBTQIA kids who face exponentially greater incidents of depression, self harm and suicide. Some are lucky to grow up in nurturing, understanding homes that allow such children to thrive as they are. Most, especially those in fundamentalist or orthodox religious homes, experience emotional agony and terrible conflict related almost entirely around their maturing sexuality. Not because they are gay, but because of the bigotry, prejudice and lack of support by those they encounter.

My child was raised in a safe and supportive environment, but many of her friends, were not as fortunate. We need to keep the question about family conflict in the HHS document so we can fully support and understand the context by which a child left home and be able to arrange for appropriate accommodations. Doing anything less would risk childrens mental, emotional and physical health for a lifetime. This change is cruel, harmful and utterly unnecessary for streamlining. Keep the questions. Support the children.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93ov-trpu
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0104  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Cathy Harrison  
**Address:** 55014  
**Email:** charrison1026@me.com

---

## General Comment

I urge HHS to keep asking if children were removed from their home due to family conflict related to child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents. Protecting the most vulnerable citizens is imperative to our ideology as a nation & must be a priority.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93ow-lfnm
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> API

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0105  
Center for the Study of Social Policy

---

## Submitter Information

**Name:** Megan Martin  
**Address:** 20005  
**Email:** megan.martin@cssp.org  
**Organization:** Center for the Study of Social Policy

---

## General Comment

See attached file(s)

---

## Attachments

Center for the Study of Social Policy



June 13, 2018

Ms. Kathleen McHugh, Director  
Policy Division  
Administration for Children and Families  
United States Department of Health and Human Services  
330 C Street, SW  
Washington, DC 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

**Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).**

The Center for the Study of Social Policy (CSSP) is a national nonprofit organization recognized for its leadership in reforming public systems. We work directly with state and local child welfare systems providing technical assistance on policy and practice strategies impacting families with young children, adolescents, transition age youth and expectant and parenting youth in foster care, youth facing homelessness, and youth who identify as lesbian, gay, bisexual, transgender or questioning (LGBTQ). We also serve as a federal court-appointed monitor in several states engaged in system improvement while under a class action Settlement Agreement. All of our work is devoted to ensuring that all children and youth served by public systems including the child welfare system achieve positive outcomes and can maximize their potential.

CSSP welcomes the opportunity to provide comments on the Advance Notice of Public Rulemaking (ANPRM) regarding the proposal to streamline data collection through the Adoption and Foster Care Analysis and Reporting System (AFCARS). CSSP previously provided comment on the NPRM for the 2016 Final Rule (81 FR 90524), the Supplemental Notice of Proposed Rulemaking (SNPRM) for AFCARS data elements related to the Indian Child Welfare Act of 1978 (ICWA) (81 FR20283), and the most recent NPRM regarding the proposed delay for compliance and effective date for the AFCARS 2016 Final Rule (83 FR 11450).

CSSP strongly opposes reducing the data elements in AFCARS as proposed in the current ANPRM. In order to use data to effectively drive policy, program, and resource development, allocation, and implementation – the states and the federal government need accurate and relevant data that are aligned with current best practice in child welfare. The 2016 Final Rule was a positive step toward collecting currently unavailable data. Without such data, federal, state and local leaders are unable to assess and evaluate the impact of their work and investments. There is broad state and local support to expand the AFCARS data elements. The AFCARS 2016 Final Rule was adopted following an extensive and thorough comment process and many states, including California, Minnesota, and the District of Columbia, have already started to collect these new data elements.

As described in more detail below, the benefit of adding these data elements far outweigh any associated costs and data collection burdens; they are each critically important to improving child welfare systems' ability to better support and promote the safety, permanency, and well-being of the children they serve.

#### *Alignment with Federal Laws and Reporting Requirements*

AFCARS data are used by HHS and state governments in multiple ways including assessing agency compliance with Title IV-E; preparing reports to Congress and state legislatures; budgeting based on trends in child welfare populations; identifying areas for technical assistance; and justifying policy changes and legislative proposals. The 2016 Final Rule was the first update to AFCARS since 1993, when AFCARS was first implemented. Since that time, several key pieces of federal child welfare legislation have passed, including the *Fostering Connections to Success and Increasing Adoptions Act (PL 110-351, 2008)* and the *Preventing Sex Trafficking and Strengthening Families Act (PL 113-183, 2014)*, both of which require the Children's Bureau to collect and report on critical data elements that are currently not included in AFCARS. The required data elements included in these statutes are important for policy and program development aimed at promoting overall well-being outcomes for children and youth in foster care. Specifically, these statutes require states to implement new programs and policies for improving education outcomes for children and youth in care and promoting well-being for children and youth who have been or are at risk of experiencing commercial sexual exploitation (CSEC).

Most recently with the *Family First Prevention Services Act (Family First)*, which was passed as part of the *Bipartisan Budget Act (PL 116-123, 2018)*, it is even more important for states and the federal government to have accurate and relevant data about the children and youth currently in care and potential foster and adoptive parents. These data are central to states' abilities to identify and implement services to prevent the removal and placement of children in foster care as well as reduce reliance on congregate care in favor of placing children in family-like settings whenever possible.

The production of relevant and accurate data is foundational to ensuring that desired policy changes are in fact reaching the intended beneficiaries and objectives of new laws. These data can support better decision-making which can lead to improved outcomes (including expedited permanency for children and youth) which can ultimately lead to more effective and in some cases lower federal and state expenditures on high cost and ineffective placements and supports.

#### *Benefits of the Expanded 2016 Final Rule Data Elements*

AFCARS is an essential tool for collecting national and state data to inform policy development, identify gaps in services, and highlight populations that are experiencing disparate outcomes. These data need to identify the distinct reasons for entry into foster care and child demographic information – including sexual orientation, gender identity, race, tribal affiliation, and whether youth are pregnant or parenting. Being able to disaggregate overall population data will permit us to better understand barriers to achieving positive well-being and permanency outcomes for youth in foster care.

Particularly in light of the recently passed *Family First* legislation, child welfare systems must have data to inform the development and implementation of evidence-based prevention services, reduce the reliance on congregate care, and improve recruitment and retention of foster parents. Without understanding the reasons for entry into care – for example, how many children enter foster care due to parent child conflict related to the child's sexual orientation or gender identity– child welfare systems will not be able to design prevention services to meet the needs of these candidates of foster care. Furthermore, if child welfare systems are unable to disaggregate well-being and permanency outcomes including the reason for entry into care, placement type, length of stay in foster care, permanency goal, or receipt of health care, states' ability to make smart, data-driven investments that reduce the costs associated with placement in foster care while maximizing opportunities to promote the well-being of children and families will be hindered.

*Support for Including Expanded Demographic Data on Key Population Characteristics*

Youth who are Pregnant or Parenting

Given the high percentage of youth in foster care who are pregnant or already parents, it is vital that states and the federal government collect data on a youth's parenting status. The pregnancy rate for youth in foster care is higher than their peers who are not in foster care and youth in foster care who are pregnant or parenting face unique challenges. For youth in foster care who are pregnant or parenting, the government has a responsibility to promote their healthy development and well-being and that of their children. *Family First* provides that youth in foster care who are pregnant or parenting and their children are newly eligible for prevention services financed through Title IV-E. Removing this data element from AFCARS now will hinder a state's ability to have the needed data to drive practice, policy and resource decisions regarding pregnant and parenting youth – in terms of meeting current needs as they transition from the child welfare system and preventing future child welfare system involvement for their children. The burden and cost of collecting this data element is minimal in comparison to the potential cost savings from reducing future placements in foster care, decreasing time to permanency, and ensuring needed medical and mental health care for these youth and their children.

Children and Youth Who Identify as LGBTQ

Research indicates that LGBTQ youth are involved with child welfare systems at high rates and that these youth experience poorer health, safety, and well-being outcomes compared to their cisgender, heterosexual peers. One study in Los Angeles County found that LGBTQ youth were over represented in foster care at a rate of 1.5 to 2 times, often due to being rejected by their families, and that approximately one-fifth of youth in foster care identify along the LGBTQ spectrum.

We know from the places that do collect this data that LGBTQ youth in foster care are subjected to higher numbers of placement changes, lower rates of permanency, and are more likely to be placed in congregate care settings. We need these data from all states in order to develop foster care recruitment, retention and support strategies and evidence-based interventions to meet these youth's unique needs. *Family First* requirements for Title IV-E reimbursement for the placement of children in family foster homes and reducing reliance on congregate care facilities further heightens the need for these data for both planning and implementation.

*Need to Collect Data related to the Indian Child Welfare Act (ICWA)*

The 2016 Final Rule included the addition of critical data elements related to American Indian/Alaska Native (AI/AN) children, who are subject to the *Indian Child Welfare Act (ICWA) of 1978 (PL 95-608, 1978)*. These data elements, as reported in a 2005 report from the Government Accountability Office are not currently collected at a national level. It has been almost four decades since ICWA enactment and there remain substantial gaps in data, practice, and policy that need attention in order to reduce AI/AN disproportionality and improve tribal, state, and federal responses to child abuse and neglect. AI/AN children are overrepresented within state foster care systems nationally and in some states are overrepresented in care at a rate as high as 10 times their population rate.

The 2016 Final Rule includes the first federal data elements that can provide detailed information on ICWA implementation, allowing tribes, states and federal agencies to develop a greater understanding of the trends in out-of-home placement and barriers to permanency for AI/AN children. Improved policy development, technical assistance, training and resource allocation can and should stem from having access to these data. Removing or reducing any of these data elements in AFCARS will only continue to hinder, rather than support, child welfare's ability to respond to the well-being and permanency needs of AI/AN children.



*Promoting Education and Healthy Development for Youth in Foster Care*

The 2016 Final Rule included the addition of data elements related to the receipt of health care services and educational status of children placed in foster care. These data are aligned with the *Fostering Connections to Success and Increasing Adoptions Act's* (PL 110-351, 2008) emphasis on meeting the health and well-being of children and youth in foster care. Available research shows that children and youth in foster care have significant health care needs and graduate from high school at lower rates compared to their peers who are not in foster care. Child welfare systems are required to ensure the health and well-being of children and youth in foster care as well as promote their success in school. Having timely and accurate information on a state and national level about children's health and educational status is a basic responsibility of a child welfare system and should be monitored on a regular basis by child welfare workers. Any potential cost and burden of collecting these data within AFCARS is far overshadowed by the absolute necessity of having this data available to both states and the federal government for basic accountability as well as policy and investment decisions. Further, being able to disaggregate health and education data by demographic indicators will help policymakers and administrators allocate dollars to targeted populations with specialized needs.

*Ensuring Permanency for Youth in Foster Care*

Every child and youth in foster care deserves to be raised in a permanent family. However, as current AFCARS data show, on September 30, 2016, 117,794 children were waiting to be adopted from foster care. States need additional data to understand existing gaps in recruitment strategies and supports to adoptive parents. The 2016 Final Rule included demographic information for adoptive parents. This information, which adoptive parents have the option to share, can provide insights about who chooses to become adoptive parents and can help inform recruitment strategies to better attract potential adoptive parents for the many waiting children and youth.

*Alignment with a Comprehensive Child Welfare Information System (CCWIS)*

AFCARS implementation depends significantly on the ability of state agencies to implement a comprehensive child welfare information system. As we noted in our response to the CCWIS NPRM (81 FR 35449), the upcoming changes in AFCARS should be aligned with the redesign of CCWIS. Many states are well into their planning to implement a new CCWIS; a delay in the effective date of the 2016 Final Rule will cause confusion for states and prevent them from adequately building their systems to collect these important data. Lessons from previous system updates have shown that it is much more difficult to retrofit a system to collect information than to include essential data elements in the system at the time that it is being built. Any attempt to remove important data elements from AFCARS now will create regulatory uncertainty and undermine the implementation of an effective CCWIS – and possibly lead to additional future costs to states who may need to retrofit their systems later on.

*Supporting Reliable Data Collection*

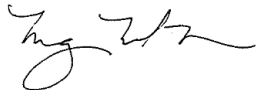
The data elements included in the 2016 Final Rule are not only important to driving policy and financial investments at a system-level but are also central to daily case planning activities for each and every child involved with child welfare. Without collecting information on reasons for entry into care; demographic data including information related to tribal affiliation, sexual orientation, and gender identity; receipt of health care; and educational status, frontline child welfare workers will continue to be at a disadvantage and face barriers in fulfilling their job responsibilities to promote children's safety, permanency, and well-being. Collecting these data routinely and as part of a state's administrative data should be, and in many places has become, standard practice. Having these data available through the national AFCARS data base is an important accountability tool for child welfare system performance and for ensuring individual, child, and family outcomes consistent with federal law.

*Conclusion*

Reliable and complete state and national data are needed to guide decision-making and financial investments for achieving better child and family well-being outcomes, including shorter stays in foster care. By updating AFCARS through the 2016 Final Rule, HHS had taken a significant step toward correcting extensive gaps in federal child welfare data collection and analysis. Any attempt to remove data elements from the 2016 Final Rule will be detrimental and inhibit states' abilities to effectively promote permanency and well-being outcomes – directly undermining their legal responsibility to children, youth and families, decreasing the ability of the federal government and the states to use data to promote improved outcomes and ultimately increasing the financial burden to the federal government, states, and the public of ineffective child welfare programs and systems. Rather than reducing data collection, we strongly encourage HHS to move ahead with the 2016 Final Rule and additionally support state agencies with direct technical assistance as they work to implement changes in their data collection.

We look forward to working with HHS in the future on how to best use the data available in AFCARS to promote accountability and improved outcomes for all children and youth. If you have any questions, please don't hesitate to contact me, (202) 371-1565; [megan.martin@cssp.org](mailto:megan.martin@cssp.org).

Sincerely,



Megan Martin  
Vice President, Director of Public Policy  
Center for the Study of Social Policy

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93ox-77f3
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0106  
Rep. Karen Bass

---

## Submitter Information

**Name:** Karen Bass  
**Organization:** US House of Representatives

---

## General Comment

See attached file(s)

---

## Attachments

Rep. Karen Bass

**FOREIGN AFFAIRS COMMITTEE**  
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,  
GLOBAL HUMAN RIGHTS AND  
INTERNATIONAL ORGANIZATIONS

**JUDICIARY COMMITTEE**  
SUBCOMMITTEE ON COURTS, INTELLECTUAL  
PROPERTY AND THE INTERNET  
SUBCOMMITTEE ON CRIME, TERRORISM,  
HOMELAND SECURITY AND INVESTIGATIONS

[WWW.BASS.HOUSE.GOV](http://WWW.BASS.HOUSE.GOV)



**KAREN BASS**  
CONGRESS OF THE UNITED STATES  
37TH DISTRICT, CALIFORNIA

**WASHINGTON OFFICE:**  
2241 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
202-225-7084

**DISTRICT OFFICE:**  
4929 WILSHIRE BLVD. SUITE 650  
LOS ANGELES, CA 90010  
323-965-1422

June 12, 2018

Ms. Kathleen McHugh  
Director, Policy Division  
Administration for Children and Families  
United States Department of Health and Human Services  
330 C Street, SW  
Washington, DC 20024

Re: 2018 Adoption and Foster Care Analysis Reporting System Advance Notice of Proposed Rule Making, RIN 0970-AC72, FR# 2018-05042

Ms. McHugh,

I submit these comments regarding the Advance Notice of Proposed Rulemaking (ANPRM) published in the *Federal Register* on March 15, 2018 (Volume 83, No. 51, page 11449). I write in my capacity as a Member of Congress representing the 37<sup>th</sup> Congressional District of California, as founding member of the bi-partisan Congressional Caucus on Foster Youth, and as the former Speaker of the California Assembly with an unwavering commitment to foster youth. The Congressional Caucus on Foster Youth provides a forum for over 100 Members of Congress to discuss and develop policy recommendations to strengthen the child welfare system and improve the overall well-being of youth and families. Information including data related to child welfare is critical for raising awareness of and coming to agreement on issues ranging from funding needs to reforms in child welfare. In addition to introducing bipartisan legislation that aims to improve the lives of foster youth, the Caucus hosts briefings, and hearings. In May 2018 the Congressional Caucus on Foster Youth hosted the sixth annual Foster Youth Shadow Day



through which over 100 foster youth alumni from 36 states traveled to Washington DC to shadow Members of Congress and share their experiences in the child welfare system.

My comments herein relate to the Adoption and Foster Care Analysis Reporting System (AFCARS) in general and the data elements specific to lesbian, gay, bisexual, and transgender (LGBT) and American Indian and Alaska Native (AI/AN) children included in the 2016 AFCARS Final Rule published on December 14, 2016 and effective on January 13, 2017. As a former state legislator and leader of state legislators, I understand the burdens on states of implementing federal mandates. Considering this knowledge, I'm thoughtful about where federal mandates have the greatest benefit. Given my long commitment to foster youth and track record on state and national child welfare issues, I have full confidence that the burdens associated with fulfilling the requirements of the 2016 AFCARS Final Rule are profoundly outweighed by the benefits of comprehensive national data on child welfare. Consequently, I oppose any streamlining, modification, or elimination of the critical AFCARS data elements for LGBT and AI/AN children and families because making changes raises substantial issues directly related to the experiences of these populations in state child welfare systems. The 2016 AFCARS Final rule already represents the streamlining, modification, and elimination of non-essential data that were proposed in the 2015 AFCARS NPRM and the 2016 AFCARS SNPRM. Further streamlining is unnecessary and risks undermining the comprehensiveness of the 2016 AFCARS Final Rule. Children's Bureau should increase efforts to implement the 2016 AFCARS Final rule so that title IV-E agencies are collecting all data elements by April 2019 and reporting all the updated data elements to AFCARS by October 2019 as required in the 2016 AFCARS Final rule.

Any reduction or modification of data elements in the 2016 AFCARS Final Rule affects governing and administration of child welfare systems as well as other public systems that intersect with child welfare. Assessing the value of ICWA and LGBT data elements relative to the possibility that resources could be diverted by requiring collection and reporting should not be considered in isolation from the entirety of AFCARS data collected, nor in isolation from systems that impact and are impacted by child welfare.

Due to my state and federal work directly with foster youth I hear routinely from my Congressional peers about the value of data for evaluating and creating policies that improve child welfare systems. I hear overwhelmingly from foster youth about the value of data for understanding and communicating their experiences in foster care to policymakers. Foster care is profoundly isolating for young people. Aggregated data and national trends often help them understand and situate their experiences in larger systems and social or policy developments when communicating their stories. Youth are particularly concerned with policies that effect the experiences and well-being of children of color and LGBT youth in child welfare systems. Foster alumni are concerned about race-based discrimination throughout foster care and discrimination in related systems like criminal and juvenile justice. Foster alumni are concerned about systemic, societal, and individual discrimination based on sex, including discrimination against LGBT youth and families in child welfare. They are concerned about the physical and mental health consequences of discrimination based on sex, sexual orientation, gender identity, and gender expression. LGBT foster youth seek safe, affirming and supportive families as protection against systemic and social discrimination. In addition, LGBT foster youth have broad support from their fostered peers.

There are substantial individual health and systemic benefits to be gained from better national data that helps policymakers understand the experiences of LGBT youth and families in child welfare systems. For example, a State of California economic impact assessment of state practices prohibiting gender discrimination in health care, cited the following benefits: (1) reduced violence against affected individuals; (2) reduced depression and suicide attempts among the affected population; and (3) overall declines in substance abuse, smoking and alcohol abuse rates, and improvements in mental health among treated individuals in lesbian, gay, bisexual, or transgender (LGBT) populations who receive appropriate medical treatment. Moreover, in its report on non-discrimination in health care, HHS states that because discrimination contributes to health disparities, the prohibition of sex discrimination in health care can help reduce health disparities (GAO-16-702R: Jun 2, 2016). Child welfare data collected on LGBT youth and families has the potential to help families support and affirm LGBT youth which can promote similar and interrelated positive individual, social and child welfare system benefits found by California in the health care context.

Native youth consistently relate painful isolating experiences and express anxiety about ineffective state implementation of the Indian Child Welfare Act (ICWA). ICWA is a federal child welfare law that applies to Indian children removed from their family by state child welfare agencies, including state-initiated removals and placements funded by title IV-E and IV-B. Native foster youth tell us that ICWA protects and preserves their family, cultural, and community ties to their tribes by requiring states to notify tribes; make active efforts to prevent removal; meet burdens of proof prior to removal or termination of parental rights; to place Indian children in appropriate placements; and protect the interests of tribes. Native foster youth tell us that these essential ties are critical to their well-being while in foster care and afterward. Children's Bureau should require states to collect the entirety of the ICWA-related data elements in the 2016 AFCARS Final rule because decision-makers must have the data to assess the extent to which AI/AN foster children have the resources they need, including essential family, cultural, and tribal ties protected by ICWA.

Children's Bureau has the statutory authority to collect the ICWA-related AFCARS data elements. Analysis of this authority is clearly articulated in the March 2015 announcement of intent to publish a supplemental notice of proposed rulemaking (80 FR 17713):

“Upon further consideration following the publication of the 2015 NPRM, we have determined that there is authority under the statute (section 479(c) of the Act) to collect ICWA-related data in AFCARS. Specifically, the statute permits broader data collection in order to assess the current state of adoption and foster care programs in general, as well as to develop future national policies concerning those programs. However, the statute includes limits on this broad interpretation of section 479 of the Act that we must take into consideration when contemplating collecting data related to ICWA in AFCARS, including: data collected under AFCARS must avoid an unnecessary diversion of resources from child welfare agencies (see section 479(c)(1) of the Act) and must assure the reliability and consistency of the data (see section 479(c)(2) of the Act).”

The process for identifying the legal authority is articulated the 2015 SNPRM (81 FR 20283):

“ACF legal counsel re-examined the issue and determined it is within ACF's existing authority to collect state-level ICWA-related data on American Indian and Alaska Native (AI/AN) children in child welfare systems pursuant to section 479 of the Social Security Act. Such determination was informed by comments received on the February 2015 AFCARS NPRM as well as an extensive reevaluation

of the scope of ACF's statutory and regulatory authority.”

The same statutory foundation, explanation of process, and need for collecting ICWA-related data are clearly and thoroughly articulated in 2016 AFCARS Final Rule (81 FR 90524).

Children's Bureau has been collecting ICWA-related child welfare data as required by title IV-B through state Child and Family Services Plans (CFSPs) and qualitative methods such as case file reviews. Neither of these methods has resulted in reliable, consistent, national comprehensive data on children to whom ICWA applies as evidenced by Children's Bureau's report entitled *“States' Consultation and Collaboration with Tribes and Reported Compliance with the Indian Child Welfare Act: Information from States' and Tribes' 2015-2019 Child and Family Services Plans.”* The report found that 23 states and the District of Columbia did not report any data on their assessment of ICWA compliance. It also found that 14 of the 30 tribes reviewed reported some degree of concern about how the state(s) comply with ICWA or how the state(s) consult and collaborate with the tribe.

These findings are not surprising considering in the report Children's Bureau describes CFSP's this way:

The CFSP “is a product of joint planning between each individual state and Children's Bureau regional office staff and is also to reflect input from a wide variety of stakeholders. Depending on the status of the state programming across the continuum of reporting requirements in the CFSP, some states may not include as much detail as others. Moreover, there is no specific format for the CFSP. As such, the breadth and depth of the content provided for any specific provision in the CFSP can vary from state to state and across reporting periods for various reasons... the content does not necessarily reflect the full scope of state activity in any given area.”

Children's Bureau's description of CFSPs clearly demonstrates that this method of collecting ICWA-related data could not possibly be reliable, consistent, comprehensive or national and clearly establishes that CFSP's are not intended to meet these data standards.

The report explains that the primary way states assess ICWA implementation is through case reviews as part of Court Improvement Program audits, Continuous Quality Improvement Reviews, Best Practice case reviews, and Child and Family Services Reviews. Thus, implementing case file review as a means for collecting national data on ICWA, as suggested by



some states in public comment to AFCARS proposals, is currently happening. The ineffectiveness of this qualitative method explains why a majority of states (27) do not report the ICWA-related data required in CFSPs. Qualitative and largely voluntary methods of collecting ICWA-related data have been tried and proved unsuccessful. It is time to recognize that these methods have failed and replace them with required, systematic and consistent quantitative data collection and reporting to AFCARS.

Including data elements related to ICWA has been contemplated since the beginning of AFCARS. The Advisory Committee on Adoption and Foster Care Information concluded in its October 1987 report (required by sec. 479), among other things, “Special provision needs to be made for Indian children who are affected by requirements in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, especially section 1951 mandating submission of adoption data to the Bureau of Indian Affairs (BIA) of the Department of the Interior. Indian children served by a Tribe would be reported to the BIA which would, in turn, report to ACYF” (58 FR 67914).

It has been 40 years since the Indian Child Welfare Act became the law of the land and over 30 years since sec. 479 was added to Title IV. It is long since time to require states to systematically collect and report ICWA-related data to AFCARS. Many states already collect ICWA-related data in state SACWIS systems. There is nothing new about including ICWA-related data in AFCARS except doing it.

Collecting ICWA-related AFCARS data may provide information that can improve child welfare for all children and families. The 2016 AFCARS Final Rule acknowledges a truism included in public comment to the 2016 AFCARS SNPRM and subscribed to by Indian and non-Indian child welfare advocates and agencies that ICWA is the “gold standard” of child welfare practice.

“Moreover, some states, tribes, national organizations and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.”

Thus, collecting data related to ICWA benefits all children and families with child welfare experiences. This is particularly true for improving implementation of broad federal child welfare requirements that are corollaries to ICWA requirements like notice to extended family

members, family finding processes, increasing the frequency and stability of kinship placements, state efforts to prevent removal and preserve families (including prevention activities funded by Family First Prevention Services Act), and keeping children connected to their home communities and community networks.

Foster youth remind us that they are living complex lives at the intersections of race, sexual orientation, gender and tribal affiliation. They remind us that child welfare systems analysis and policies are not complete if race, sex, sexual orientation, gender, and tribal affiliation are each considered in isolation from one another. Therefore, to be comprehensive as required by sec. 479, AFCARS must include data elements related to race, sex, sexual orientation, gender, and tribal affiliation. These elements must be considered and analyzed in combination and in relation to each other for federal legislation, agency action, and training and technical assistance to be effective.

I value the voices and experiences of foster youth and I share their concerns and priorities. That's why I strongly oppose streamlining, modifying, or eliminating any data elements from the 2016 AFCARS Final Rule. Until the 2016 AFCARS Final Rule there was no data required to be collected consistently and systematically related to children to whom ICWA applies nor data on LGBT children and families. That means that without all the data elements in the 2016 AFCARS Final Rule there is no national data on LGBT youth of color, LGBT families of color, or LGBT tribal youth in state foster care placements funded by title IV-E or IV-B. The absence of data related to the number and unique needs of these populations is astounding when we consider that the groups are over-represented in child welfare and therefore children at the intersections must also be over-represented. Additional information that allows for intersectional analysis would be very useful for strengthening legislation, policy, and supports for these children in foster care. Therefore, I strongly urge Children's Bureau to require states to collect and report all of the data elements in the 2016 AFCARS Final rule related to ICWA and LGBT youth and families.

Congress and administrative agencies also need comprehensive national child welfare data to identify trends and intersections with other federal programs like Medicaid/Indian Health Service, substance abuse treatment, TANF, SNAP, child care, domestic violence prevention and

intervention, housing, youth and family homelessness, and criminal justice. As part of the federal family Children's Bureau should be collecting national data that also helps elucidate how these systems impact child welfare and how child welfare impacts other systems.

A review of the legislative history prior to the addition of sec. 479 in 1986 clearly evidences Congress' frustration with the lack of child welfare data to address critical issues related to the health, safety, and well-being of all children and families in foster care systems. The absence of meaningful data was due to Children's Bureau policies at the time that allowed for voluntarily reported data without consistent definitions, formats, or requirements. In 2018 we find ourselves similarly situated regarding LGBT and ICWA-related data. A review of investigations and testimony of the General Accountability Office (GAO) since 2000 provides additional evidence of the child welfare data-related issues of concern to Congress. The absence of relevant child welfare data and the exasperating necessity of relying on child welfare data that is not comprehensive or national in scope is evident in reports ranging from implementing AFCARS (2003) and fulfilling the requirements of the Indian Child Welfare Act (2005) to Sex Trafficking in Indian Country (2016) and the impact of LGBT non-discrimination policy in health programs and activities (2016). Congress and administrative agencies need comprehensive national child welfare data to allocate resources and provide oversight that addresses the needs of all children and families with child welfare experiences.

As Children's Bureau considers the value of ICWA and LGBT data elements relative to the prospect that resources could be diverted by requiring data collection and reporting, I recommend that:

1. Children's Bureau not make their assessments of the LGBT and ICWA data elements in isolation from the entirety of AFCARS data collected;
2. Children's Bureau consider how LGBT and ICWA data elements, in combination with other AFCARS data elements, create a comprehensive, national data system that informs Congress, Executive agencies, states, tribes, and the public to better meet the needs of all children and families in child welfare systems (including LGBT children of color, LGBT families of color, and LGBT tribal youth);
3. Decision-makers avoid pre-judging the burden of collecting and reporting LGBT data elements because some states and individuals continue to discriminate;

4. Decision-makers avoid pre-judging the ICWA data elements because some states and individuals report that implementing the federal law is burdensome;
5. Children's Bureau centers the lives and well-being of children in their decision-making;
6. Decisions account for the responsibility and obligation of states, tribes, and the federal government to work together, and to work with families and communities, to protect each child;
7. Children's Bureau consider how the data elements work nationally, including how the data helps track national trends and compares the experiences of all children and families across tribes, states and regions; and
8. Children's Bureau consider the ICWA and LGBT data elements in relation to their value to inform systems that impact and are impacted by child welfare.

I make the forgoing recommendations because AFCARS data are intended to enable the Federal government to more effectively direct and manage the national foster care and adoption assistance programs. In addition, the data collection enables Congress, HHS, and the Office of Management and Budget (OMB) to implement, evaluate, develop, and change policies to promote the welfare of all foster care and adopted children.

The burden on states and tribes of collecting and reporting AFCARS data is a valuable consideration and is likely appreciated by states and tribes. However, the burden of collecting and reporting data is not a factor contemplated by Congress when it added section 479 to the Social Security Act. Section 479(c) identifies the Congressionally required factors to consider when regulating the data collection system (emphasis added):

- (c) Any data collection system developed and implemented under this section shall—
  - (1) **avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;**
  - (2) **assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;**
  - (3) **provide comprehensive national information** with respect to—
    - (A) the **demographic characteristics** of adoptive and foster children and their biological and adoptive or foster parents,
    - (B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),
    - (C) the number and characteristics of—

- (i) children placed in or removed from foster care,
  - (ii) children adopted or with respect to whom adoptions have been terminated, and
  - (iii) children placed in foster care outside the State which has placement and care responsibility,
- (D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and **the characteristics of the children with respect to whom such assistance is provided**; and
- (E) the annual number of children in foster care who are identified as sex trafficking victims--
- (i) who were such victims before entering foster care; and
  - (ii) who were such victims while in foster care; and
- (4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.**

The Congressional requirements for regulating AFCARS are clear in the statute. AFCARS is to be regulated in a manner that avoids unnecessary diversion of resources from foster care agencies and collects comprehensive national demographic and status data that is reliable and consistent over time by using uniform definitions and methodologies. To the extent that Children's Bureau assesses burden on states its analysis should include only those burdens that unnecessarily divert resources from child welfare agencies or that cannot have uniform definitions and methodologies such that it affects the reliability or consistency of the data. Children's Bureau ought also to demonstrate that they have identified and implemented appropriate requirements and incentives to ensure that the system functions reliably throughout the United States, including the supportive steps they will take to reduce burden on states and tribes as they implement AFCARS changes. In general, agencies should not take into account factors that are not within the considerations made relevant by statute or valid regulation. This axiom of administrative law is articulated in *Massachusetts v. EPA*, 549 US 497 (2007) in which the Court goes on to say, "To the extent that this constrains agency discretion to pursue priorities of the Administrator or the President, this is the congressional design." (549 US at 533)

Finally, collecting data related to ICWA implementation, LGBT youth, and LGBT families is desirable even if the burdens outweigh the benefits and some agency resources are necessarily diverted. Overrepresentation of these groups in child welfare justifies the need to collect this data. In addition, historical and social factors such as discrimination against LGBT persons and families, and US policies and state practices of breaking up Indian families by unnecessarily

forcing them into child welfare systems, militates strongly in favor of collecting and reporting child welfare data related to the specific systemic experiences of these populations.

I concur with arguments and assertions made by my colleague, Senator Ron Wyden, in his comments to the ACF Notice of Proposed Rule Making for delaying implementation of the 2016 AFCARS Final Rule (2018-05038). I support his principled decision to decline to vote on confirmation of Lynn Johnson, the President's nominee for Assistant Secretary for the Administration for Children and Families, until the 2016 AFCARS Final Rule is implemented. I include the following comments and concerns which are as relevant to the 2018 Advance Notice of Proposed Rule Making as they are to the 2018 NPRM for delay:

1. The revisions to AFCARS are long overdue and the current AFCARS data set is out of date.
2. Revisions to the 2016 AFCARS Final Rule would prevent policymakers, service providers, and advocates from effectively serving children and families involved in the foster care system or evaluating and improving the foster care system.
3. Revisions to the 2016 AFCARS Final Rule would increase the risk of harm to foster children that are not adequately accounted for, effectively returning the updated 2016 AFCARS data regulation to its formerly outdated status with respect to AI/AN and LGBT children and families.
4. Child welfare agencies have had numerous, sufficient, and material opportunities to comment on the critical questions the AFCARS update answers, including the level of burden for collecting and reporting data.
5. In the 2016 Final Rule ACF responded to and thoughtfully addressed all substantial issues raised by commenters, including those commenters who raised concerns about the burden of the rule.
6. With the proposed additional changes ACF is blocking Congressional efforts to bring foster care data collection systems into alignment with what is currently taking place in the field.
7. It is indefensible for the Children's Bureau to take 15 years to implement data element changes that shed light on how to improve policies that affect vulnerable populations like LGBT and AI/AN foster children.

8. Realizing the full potential of Congress' work over the past 15 years to improve the lives of children and families involved with the child welfare systems demands a modernized data system that can appropriately track the implementation of new policies and enable oversight of changes in the child welfare field.
9. As highlighted by the recent enactment of the Family First Prevention Services Act, Congress is not going to suspend its oversight and legislative responsibilities in the child welfare space.
10. As AFCARS and CCWIS are implemented I strongly encourage Children's Bureau to work more diligently to promote intrastate and interstate alignment of data systems in order to reduce the burden on child welfare agencies in collecting and reporting child welfare data. Contemporaneous implementation of CCWIS and AFCARS reduces costs to states, tribes, and taxpayers. Integrating state child welfare information systems with related data systems like Medicaid, TANF, child care, tribal child welfare systems, and courts reduces the time required by social workers for data entry, and reduces costs to states, tribes, and taxpayers.
11. Given the wide variety of changes that have been made in the child welfare world, it is unacceptable to modify the updated 2016 AFCARS data elements particularly when states and tribes are already in the process of updating their data systems. Any new modifications increases the burden on states and tribes, and increase costs.
12. This critical new data will be used to enable the appropriate oversight of the child welfare system to better the lives of vulnerable children in foster care. It is our job to ensure that children in foster care receive quality services, supports, and paths to permanency and it is through data and oversight that policymakers can promote positive changes to the child welfare system in the United States.

In conclusion, I strongly oppose any streamlining, modification, or elimination of the critical AFCARS data elements related to LGBT and AI/AN children and families. The 2016 AFCARS Final rule already represents the streamlining, modification, and elimination of non-essential data that were proposed in the 2015 AFCARS NPRM and the 2016 AFCARS SNPRM. Further streamlining is unnecessary and undermines the comprehensiveness of the 2016 AFCARS Final Rule. Children's Bureau should increase efforts to implement the 2016 AFCARS Final rule so

that title IV-E agencies are collecting all data elements by April 2019 and reporting all of the updated data elements to AFCARS by October 2019 as required in the 2016 AFCARS Final rule.

Sincerely,



Karen Bass  
Congress of the United States  
37<sup>th</sup> District, California



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oy-4t0i
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0107  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Craig Patruno  
**Address:** 07843  
**Email:** cpatruno78@gmail.com

---

## General Comment

I urge HHS to keep asking if children were removed from their home due to family conflict related to child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents. Protecting the most vulnerable citizens is imperative to our ideology as a nation & must be a priority.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93oy-usp7
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0108  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Anonymous Anonymous

---

## General Comment

I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-4vyb
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0109  
Child Welfare League of America

---

## Submitter Information

**Name:** John Sciamanna  
**Address:** 20005  
**Email:** jsciamanna@cwla.org  
**Organization:** Child Welfare League of America

---

## General Comment

See attached file(s)

---

## Attachments

Child Welfare League of America



June 12, 2018

Kathleen McHugh  
Division of Policy  
United States Department of Health and Human Services  
Administration for Children and Families  
330 C Street SW  
Washington, DC 20024

Docket Number 2018-05042 and RIN number 0970-AC72

Dear Ms. McHugh:

On behalf of the Child Welfare League of America, a coalition of private and public entities and individuals dedicated to ensuring the safety, permanency, and well-being of children, youth, and their families, we appreciate the opportunity to provide input on the Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register on March 15, 2018 seeking to change the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) Final Rule.

As noted in our April comments rejecting a proposed delay in implementation, *the CWLA National Blueprint for Excellence in Child Welfare promotes the principle that each entity should collect meaningful data to support its ability to make decisions; improve proactively; and help children, youth, and families to achieve identified outcomes.*

We believe the delay will negatively impact title IV-E agencies from being able to effectively achieve their desired outcomes for children and families. AFCARS are an important part of the accountability commitment expected of child welfare organizations. As a national leader in the field of child welfare for almost 100 years that sets the best practice standards we are concerned about the continued delay of the implementation of the revised AFCARS reporting elements.

The 1993 AFCARS Rule (1993 Rule) is outdated and does not reflect contemporary child welfare practice. The 1993 Rule is also not comprehensive because it does not collect data related to the ICWA, a federal law directly applicable to children in title IV-E funded child welfare contexts. The 1993 Rule is also not comprehensive because it does not include data statutorily required by other federal laws including the Fostering Connections to Success and Increasing Adoptions Act and the Preventing Sex Trafficking and Strengthening Families Act. Until the Final Rule is implemented ACF is not in compliance with the statutory requirements of section 479.

Current AFCARS leaves out data and information that can better inform policy, practice and research. This is critical in an era when Congress and others are calling for more evidence-based practice and policy. CWLA is particularly concerned about the possible removal of data and data elements that will better inform how we serve and care for families and children most effected by the Indian Child Welfare Act (ICWA), placement decisions regarding institutional placements, adoption information including dissolution and disruption data, education and health outcomes as well as vital placement and care issues for children and youth that identify as LGBTQ.

### **History of AFCARS**

The Final Rule is the first update of AFCARS since 1993, when AFCARS was first implemented on December 22, 1993. We feel the delay will push access to needed data and information that has been limited by the continued reliance on this original inadequate set of data elements finalized more than two decades ago. A delay deprives communities and citizens of the benefits of data that reflects child welfare practice today, not child welfare practice as it was in 1993. The Final Rule published on December 14, 2016 was to be effective January 13, 2017. This continues a pattern of delay after earlier efforts to revise and improve information through earlier public comment periods and attempts to update AFCARS in 2003, 2008, 2010, 2015 and now most recently 2016.

There will always be a rational for delaying revisions due to new concerns resulting from future changes to child welfare law and practice when they occur. The decision to invest in technology is always challenging.

We believe the Final Rule represents a compromise between the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters. The Final Rule was a product of refinement and additional streamlining risks undermining the comprehensiveness of the Final Rule (falling short of the requirements of sec.479)

Since the AFCARS were last implemented several items have been added to state plan requirements. This combined with other legislative and policy changes enacted or implemented highlight the need for greater information. We highlight the following in Title IV-B and Title IV-E state plan requirements that include descriptions and mandates:

- “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”
- “a description of the activities that the state has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services;”
- “provide that the state shall collect and report information on children who are adopted from other countries and who enter into state custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of



children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution;”

- “a plan for the ongoing oversight and coordination of health care services for any child in a foster care placement, which shall ensure a coordinated strategy to identify and respond to the health care needs of children in foster care placements, including mental health and dental health needs, and shall include an outline of—
  - a schedule for initial and follow-up health screenings that meet reasonable standards of medical practice;
  - how health needs identified through screenings will be monitored and treated, including emotional trauma associated with a child’s maltreatment and removal from home;
  - how medical information for children in care will be updated and appropriately shared, which may include the development and implementation of an electronic health record;
  - steps to ensure continuity of health care services, which may include the establishment of a medical home for every child in care; the oversight of prescription medicines, including protocols for the appropriate use and monitoring of psychotropic medications;
  - how the state actively consults with and involves physicians or other appropriate medical or non-medical professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for the children;
  - and steps to ensure that the components of the transition plan development process ...that relate to the health care needs of children aging out of foster care, including the requirements to include options for health insurance, information about a health care power of attorney, health care proxy, or other similar document recognized under state law.”
- “policies and procedures for identifying, documenting in agency records, and determining appropriate services with respect to any child or youth over whom the state agency has responsibility for placement, care, or supervision and who the state has reasonable cause to believe is, or is at risk of being, a sex trafficking victim;”
- “provides assurances that each child who has attained the minimum age for compulsory school attendance under state law and with respect to whom there is eligibility for a payment under the state plan is a full-time elementary or secondary school student or has completed secondary school, ...;”

- “provides that reasonable efforts shall be made to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;”

### **The Indian Child Welfare Act**

CWLA has a concern that new data requirements regarding Indian Child Welfare Act (ICWA) will be weakened.

States have already been putting in place the infrastructure needed to comply with the ICWA regulations such as revising processes and forms, adjusting their systems to capture the data needed and be able to monitor the safety, permanency and well-being of the children and families they are involved with, revising court processes, and training staff. The Capacity Building Centers funded through HHS have Indian Child Welfare Act (ICWA) as one of their 4 priority areas of focus for their work with the states, tribes, and courts. The staff at these centers have expended much effort to support these entities in their efforts.

CWLA notes that in a recent web-based presentation, HHS highlighted the burden on the child welfare workforce. As highlighted in that power-point presentation, state performance in Child and Family Services Reviews shows flat performance over the last decade and that *“every state is struggling with recruitment and retention of qualified case work staff. Caseworks are critical to the improvement of child welfare outcomes and are responsible for gathering most of the information that is to be reported to AFCARS.”*

We agree with this sentiment in assessing the importance and burden on the child welfare workforce, but we feel that the proper response is not to further delay a twenty-five-year-old standard but to raise the importance and the investment in child welfare workforce development with multiple strategies that we stand ready to assist in.

In line with this we stand ready to work with ACF in seeking enhanced funding to assist states in updating their AFCARS data and state information systems.

In this matter of collecting data that can help measure the implementation of the Indian Child Welfare Act, we agree with earlier points made by ACF in 2016:

*“Collecting data on Indian children, including ICWA-related data, is within the authority of section 479 because it is in line with the statutory goal of assessing the status of children in foster care. ACF is exercising its authority to ... [impose] a limited new set of ICWA-related data because section 479(a) authorizes “the collection of data with respect to adoption and foster care in the United States” and Indian children are children living within the United States and are those intended to benefit from both ICWA and titles IV-B and IV-E. The ... data relevant to AI/AN children ... supports ACF in assessing the current state of the well-being of Indian children as well as state implementation of title*



*IV-E and IVB. ACF proposes to use the collected data to make data-informed assessments; and to develop future policies concerning tribal-state consultation, ICWA implementation, and training and technical assistance to support states in the implementation of title IV-B and title IV-E programs." (81 FR 20287)"*

Indian Tribes and tribal organizations, including those whose mission is centered on Indian child welfare, were universally supportive of the Final Rule following decades of requests to modify AFCARS to address the lack of actionable data on Indian children for whom state agencies receive federal funds under Title IV-E of the Social Security Act.

As states have put in place the policies, processes and infrastructure needed to implement the ICWA regulations they have involved all relevant stakeholders, in particular the tribes. They have worked collaboratively with the tribes not only in their state but in other states because of the make-up of the children and families they serve. This collaborative work and relationship and coordination building has included data sharing of child welfare information with the tribes and having tribal representation as part of the state compliance committee.

The need to do better by all children and families propel them forward. Having the correct data that can reflect what is working and what more needs to be done to ensure the safety, permanency and wellbeing for them is critical. The Child and Family Services Reviews examine the states performance for ALL children and families and it is common to see the Performance Improvement Plans for states with action items related to ICWA. AFCARS data is part of the national picture of how states are doing. To delay having a comprehensive set of AFCARS data elements means hampering ACFs responsibility of monitoring overall performance but more importantly the improvement of outcomes for ALL children and families served.

We also note that state representatives had offered eighteen recommendations to streamline or eliminate ICWA-related data elements. The Children's Bureau concurred with 13 of the recommendations with a clear explanation outlined in the 2015 Final Rule.

We believe that the ICWA is an important responsibility for HHS and child welfare agencies. Past oversight efforts by Congress and others including the Government Accountability Office (GAO) have noted a lack of information and state data. We fully support ICWA and effectively enforcing this 1978 law. We do support efforts to better coordinate activities between the various Federal agencies and we stand ready in supporting funding to assist in this coordination.

### **Additional Important Data Added**

The Child Welfare League of America supports a number of key new and revised changes to the 2016 AFCARS Final Rule. This includes: longitudinal data that will allow for better tracking and information on children in care; information regarding children who have been adopted; new



data elements on a child's timely health assessment and diagnosed conditions; the ICWA data elements and data that impacts on gender-equity and the treatment of youth who identify as LGBTQ, sibling placements. Regarding this last issue we refer to a recent report supported by the Children's Bureau, a study by RISE conducted by the UCLA Williams Institute:

*“Over 19% of young people in L.A. County’s child welfare system, the largest child welfare system in the U.S., identify as LGBTQ. This from a study ... ([http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_finalaug-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_finalaug-2014.pdf)). This groundbreaking study also revealed LGBTQ children and youth to be significantly more disadvantaged than their non-LGBTQ counterparts in numerous ways. For instance, they are more likely to report being ill-treated while in care. They also have a higher number of placements, which means they bounce from school to school, leading them to drop out at higher rates; they are more likely to live in group homes instead of with loving families; they have a higher number of hospitalizations due to mental health problems, and they are discharged from the system at age 18 or 20 without permanent family or community connections. It is notable that the majority of LGBTQ youth in the sample were youth of color. Nearly 40 percent of the 1100 individual homeless transition age youth we welcome to the Los Angeles LGBT Center’s daytime drop-in center and three residential programs, come from the foster care system or probation.”*

CWLA understands that collection of this information needs to be conducted in an appropriate manner. We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a streamlining and revision of the original proposed rule (2015 NPRM and 2016 SNPRM). Burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, in addressing burden as well as addressing concerns on how to collect this data in an appropriate manner. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

### **Cost Concerns**

We also note that in 2015 the Children's Bureau published an important and significant update to state information systems. This new Comprehensive Child Welfare Information System (CCWIS) removed some of the onerous requirements around a single comprehensive state system and now allows the use of cost-effective and innovative technologies to automate and stay up to date on the collection of high quality case management data. While Congress has not provided enhanced federal matching funds as it did with the original design, we would certainly work with you in seeking such additional support.



ACF expresses concern for the potential added costs to states stating in the Delay NPRM that they “do not want states to incur these costs unnecessarily as we further assess burden under the rule.” We feel the delay and this proposal to revise what is collected will require states to incur more costs, not less, and to divert resources. Both the delay and revisions create uncertainty which is a burden on Title IV-E agencies, states, and tribes as they plan and execute critical updates to their child welfare information systems.

States will spend more time and resources implementing future AFCARS update at the very time we hope we can begin to focus on the new financing structure that is now a part of the Title IV-B and Title IV-E law.

Considering the 25-year history of the evolution of AFCARS, there is no assurance that additional delays will not result because of the next set of priorities, laws and changes in practice. In the interim, the child welfare system, which we believe is underfunded and under resourced, will continue to lack the latest data and information that can document the real needs of these children and families.

The Child Welfare League of America thanks you for the opportunity to submit comments on steps to improve AFCARS. If you have any questions, please do not hesitate to contact John Sciamanna at [jsciamanna@cwla.org](mailto:jsciamanna@cwla.org).

John Sciamanna  
Vice President of Public Policy  
Child Welfare League of America

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-c90f
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> API

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0110  
Child Trends

---

## Submitter Information

**Name:** Elizabeth Jordan  
**Address:** 20814  
**Email:** ejordan@childtrends.org  
**Organization:** Child Trends

---

## General Comment

See uploaded file

---

## Attachments

Child Trends



June 13, 2018

Ms. Kathleen McHugh, Director  
Division of Policy Division  
Children's Bureau, Administration for Children and Families  
United States Department of Health and Human Services  
330 C Street, SW  
Washington, DC 20024

RE: RIN 0970-AC72  
Adoption and Foster Care Analysis and Reporting System (AFCARS)

Dear Ms. McHugh,

Child Trends is a highly respected nonpartisan research organization focused exclusively on improving the lives and prospects of children, youth, and their families. For nearly 40 years, decision makers have relied on our rigorous research, unbiased analyses, and clear communication to improve public policies and interventions that serve children and families. Pursuant to the notice published in the Federal Register on March 15, 2018 (45 CFR 1355), Child Trends submits these comments expressing support for full implementation of the AFCARS Final Rule issued in 2016 (Final Rule).

Over the years, Child Trends has conducted numerous studies involving the analysis of data from state and local child welfare administrative data systems. We have seen these data—and the research informed by these data—inform policymakers, practitioners, and other stakeholders about the lives and prospects of children in foster care. These data are critically important to increasing our understanding of how to develop services and supports that keep children safe and set them on a healthy trajectory.

Given this experience, we believe that the Administration of Children and **Families' AFCARS Final Rule, as** published on December 14, 2016 (81 FR 90524), is necessary to meet the increased need in the field for data that can be leveraged to build the evidence base around children involved in foster care.

Below, we offer our perspectives and recommendations regarding AFCARS. Although gathering the additional data required in the 2016 Final Rule will take some additional work for states, we include examples of the ways in which new data will improve the lives of the children and families involved in the child welfare system, and inform the

regular work of state agencies and the development of strategies to reduce the burden to states.

1. Retain all data elements from the 2016 Final Rule.

As described in our Comments to RIN 0970-AC47, dated April 16, 2018, the new data elements in the 2016 Rule will provide valuable information and provide states and researchers a deeper understanding of how children and youth interact with the child welfare system over time. As such, the child welfare field will be better able to meet the needs of these children and their families by creating better interventions and services. These data are a critical component in improving outcomes, as they allow the field to understand the relevant population and outcomes, and how the makeup of the population varies by state and over time; track implementation of key federal and state initiatives; and conduct analysis on what policy environments lead to the best outcomes for children and youth in foster care. The 2016 Rule will allow the field to understand advances in child welfare policy, the shifting needs of the country (e.g., the effects of the opioid epidemic or of parent deportation), and how foster care involvement over time impacts the unique needs and outcomes of young people.

AFCARS is our nation's sole consistent source of information on children and youth experiencing foster care, and—although clarified over time—the guidelines have not changed since being established in 1993. However, priorities and policies surrounding the child welfare system have shifted considerably since AFCARS was created. Additionally, as the field has changed, our understanding of the risk factors associated with entering foster care have also expanded, along with our understanding of the needs of children once they are in foster care and the long-term trajectories of children who do not achieve permanency. We believe that all elements added by the Final Rule are needed to address the needs of children in foster care. For example:

- **Circumstances around a child's removal.** The 2016 Final Rule will require states to gather more nuanced information on why children have been removed from their homes, including prenatal drug and alcohol exposure, parental deportation, family conflict due to a child's sexual orientation or gender identity, homelessness, and whether the child was a victim of sex trafficking. Understanding the context and conditions surrounding children's removals is important to current policy and practice discussions. For example, understanding the prevalence of prenatal drug and alcohol exposure is critically important to developing and testing strategies to address the opioid epidemic, where prenatal drug exposure is of particular concern.
- Foster family home types. Since AFCARS was originally developed, policies have expanded to increasingly recognize and support the ways in which relatives and nonrelated kin serve as a placement resource for children in foster care. Over the past decade, federal and state legislation has encouraged the placement of children in foster care with relatives and nonrelated kin; and, since 2008, federal law has required child welfare agencies to identify relatives when

children enter foster care. Inclusion of this category will help states understand their progress toward the goal of placing children with relatives and nonrelated kin.

- Pregnant and parenting youth. Much of what we know about pregnant and parenting youth in foster care comes from survey research. Without national data on this topic, we are unable to track trends over time. Studies have found that former and current foster youth are more likely to have their own children placed in foster care than are young adults without system involvement. To provide adequate reproductive health and pregnancy prevention (in addition to parenting services) to foster youth, and to train and recruit foster families willing to care for foster youth with their babies, states must understand the scope of the issue.
  - The Indian Child Welfare Act (ICWA). Currently, Native American children are overrepresented in the foster care population and face some of the worst outcomes. New data required by the Final Rule would allow the field to understand the circumstances under which Native American children enter the foster care system, the rate of utilization of relatives or kin as a placement, and the ways in which these cases flow through state and tribal courts. It will also hold agencies accountable for due diligence in determining a child's eligibility for ICWA and for notification of tribes of the child's involvement with child welfare. The way that race/ethnicity is currently collected in AFCARS does not likely yield an accurate account of the number of Native American children in foster care, as it relies on the discretion of child welfare workers.
  - Information on the sexual orientation of foster youth. Despite the fact that research has demonstrated that LGBTQ youth are at elevated risk for maltreatment and foster care placement, we lack national data on LGBTQ youth in foster care. Furthermore, once these youth enter foster care, they are at elevated risk of experiencing challenging circumstances and further trauma, relative to other youth in foster care. Data would help states ensure that this population receives adequate services and foster families who are well-prepared to care for them, and would help researchers understand the circumstances under which their outcomes improve.
2. State burden will be reduced and data quality increased by providing clear definitions for data elements, requiring documentation of any deviations or related contextual factors, and offering guidance for handling state policy nuances.

We believe that clarifying reporting procedures and including existing and new data elements will maximize the utility of AFCARS and decrease the burden on states. The data in the National Archive are most useful when data elements are defined and collected in a uniform manner across states. States also benefit from having clearly defined elements and collection requirements. When data elements are clearly defined and account for nuanced differences, then state administrators spend less time

navigating cumbersome reporting requirements that do not fit neatly with their state policies. For example, it is important to encourage uniform reporting of youth who are still in foster care at age 18 or older. However, differences in the way that states collect data on extended care—due to differences in services, funding streams, and policies—have resulted in AFCARS inconsistencies. The Final Rule provides a clear definition of the out-of-home care population that should be included in AFCARS, thereby increasing the consistency of data on extended care. Researchers could leverage better-quality data to understand states' extended care utilization, as well as correlates of its use, informing recommendations for better and more consistent implementation of Title IV-B and IV-E programs. The best solution is to ensure that (1) guidelines to states are as clear as possible about the definitions of data elements that should be submitted to AFCARS; and (2) when data collected by states deviate from the AFCARS definition, or when state policies or practices might affect the interpretation or reliability of the data element, such explanations should be provided. This will limit the burden on states by providing clear and concise reporting requirements and technical assistance when those requirements do not align with a state policy or practice.

3. States can leverage existing capacity and infrastructure to collect and manage the added data elements.

In the two decades since AFCARS was originally designed, the capacity of states and localities to collect and manage electronic data has greatly improved. The original specifications for AFCARS were established 25 years ago, at a time when states' information technology capabilities were far more limited than now. Most importantly, the usability of states' administrative data reported into AFCARS has increased due to improved quality, reliability, and completeness.

4. While the 2016 Final Rule compels states to compile and report new data elements, an increase in public burden will be offset by reductions in costs for researchers and states.

From our experience collaborating with states and localities on transmitting data to researchers, we know that the process can be long and arduous for states that are already overburdened and short-staffed. Arranging for data sharing agreements—along with discussions to ensure that we understand the meaning and reliability of various data elements—gives us insight into the effort required for states to share data in meaningful ways with outside entities. A more robust AFCARS file would reduce the need for researchers and states to negotiate multiple data sharing agreements on *ad hoc* bases, provide assistance and oversight on the use of data, answer questions regarding the data, and review the interpretation of data to ensure quality.

5. Utilization of national archive to share AFCARS data promotes data security.

Given states' legitimate concerns about sharing sensitive, confidential data, it is notoriously difficult for researchers to directly access state child welfare administrative data. States' capacity to ensure security once the data has been shared is limited.

Therefore, it is imperative to find avenues to share administrative data that take the burden off states. AFCARS and the National Data Archive on Child Abuse and Neglect provide a venue for sharing state administrative data by screening research requests, providing a secure path to send data to researchers, and monitoring data sharing agreements.

#### Conclusion

Thank you for your time and commitment to the safety and well-being of children, youth, and families. We appreciate this opportunity to express our support for the 2016 Final Rule. We reiterate our belief that implementing the Final Rule will provide important and valuable insights into this vulnerable population that we currently lack. Although we acknowledge a potential increased burden to states, we believe that the importance of the data—combined with the increased technological capacity of states and the reduced burden on researcher requests for administrative data—mitigate this burden.

For any questions regarding these comments, please contact Elizabeth Jordan at Child Trends ([ejordan@childtrends.org](mailto:ejordan@childtrends.org); 240-223-9316).

Sincerely,

/s/

Carol Emig  
President



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-7pyp
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0111  
Power to Decide

---

## Submitter Information

**Name:** Andrea Kane  
**Address:** 20036  
**Email:** akane@powertodecide.org  
**Organization:** Power to Decide

---

## General Comment

Please see attached comments from Power to Decide.  
See attached file(s)

---

## Attachments

Power To Decide



the campaign to prevent unplanned pregnancy

June 13, 2018

Kathleen McHugh  
Director, Policy Division  
United States Department of Health and Human Services  
Administration for Children and Families  
330 C Street SW  
Washington, DC 20024

Subject: Advance Notice of Proposed Rulemaking (RIN 0970-AC72)  
Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Dear Ms. McHugh:

Power to Decide appreciates the opportunity to provide comments on the Advance Notice of Proposed Rulemaking (ANPRM) (RIN 0970-AC72) published on March 15, 2018 seeking input for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule.

Power to Decide, the campaign to prevent unplanned pregnancy is a private, non-partisan, non-profit organization that works to ensure all people—no matter who they are, where they live, or what their economic status might be—have the power to decide if, when, and under what circumstances to get pregnant. We believe that all young people should have the opportunity to pursue the future they want, realize their full possibility, and follow their intentions. Power to Decide provides objective, evidence-based information about sexual health and contraceptive options, and we work to guarantee equitable access to and information about the full range of contraceptive methods.

Given our mission, Power to Decide strongly supports maintaining the data collection elements regarding pregnant and parenting youth as included in the Final Rule.

As an organization dedicated to improving the well-being of children and families and reducing disparities, we have been at the forefront of efforts to address the unique needs of youth in and transitioning out of foster care for over a decade. We have worked in partnership with state and local child welfare agencies, judges, national organizations, researchers, and foundations. Our activities have included: gathering research; developing new materials for foster youth, foster parents, and child welfare staff; convening child welfare and teen pregnancy prevention organizations; helping to build the capacity of juvenile and family courts to address these issues; and adapting an evidence-based teen pregnancy prevention program for youth in foster care and working with APHSA to integrate that into child welfare programs.

In response to the questions in the ANPRM, the data elements regarding pregnant and parenting youth in the 2016 Final Rule are basic, critically important, and not overly burdensome. The release of the Final Rule in December 2016 was the culmination of many years, and no fewer than three public comment periods, including opportunities for agencies and the public to comment on the burdens and benefits of updating the AFCARS regulation. In fact, as noted in the Final Rule, 1) HHS streamlined the elements regarding pregnant and parenting youth from the NPRM and 2) state-by-state data on this topic are required by statute to be included in the annual report to Congress.

Much of the growing attention to addressing teen pregnancy among youth in foster care has been motivated by valuable research about the prevalence of teen pregnancy and childbearing from a handful of states and cities. However, to date, there has not been systematic state-level data or case level information about the prevalence of teen pregnancy and childbearing among youth in foster care. As an evidence-based organization, we have long recognized the need for such data and were therefore excited to see data collection on pregnant and parenting teens included in the bipartisan Preventing Sex Trafficking and Strengthening Families Act and implemented through the final AFCARS rule.

When the elements in the Final Rule are fully implemented, all states will know for the first time the number of youth who are pregnant or parenting, as well as the number of young parents in care whose children are placed with them. This information will provide policymakers, child welfare agencies, and others valuable data to help inform policy and practice, and to better meet the needs of young people in care. It will both help to provide appropriate supports to those youth who are already parents so they and their children can thrive, and to strengthen prevention efforts so fewer youth find themselves in this situation in the first place.

We urge the federal government to work with states to fully and expeditiously implement the data collection requirements called for in the AFCARS final rule, including the requirements regarding pregnant and parenting youth. We believe these data are vital to child welfare agencies being able to better understand the experience of young people in each state and to being able to carry out their responsibilities on behalf of the young people in their care.

Thank you for your consideration. If you have any questions or need additional information, please contact me at 202-478-8554 or [akane@powertodecide.org](mailto:akane@powertodecide.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Kane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Andrea Kane

Vice President for Policy & Strategic  
Partnerships

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-7pju
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0112  
National Crittenton Foundation

---

## Submitter Information

**Name:** Jeannette Pai-Espinosa  
**Address:** 97205  
**Organization:** National Crittenton Foundation

---

## General Comment

See attached

---

## Attachments

National Crittenton Foundation



BELIEVE IN **THE POWER OF POTENTIAL**

921 SW Washington Street, Suite 312 phone (503) 297-2217  
Portland, OR 97205 toll free (866) 449-2217

fax (503) 297-1277  
www.NationalCrittenton.org

June 12, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

Dear Ms. McHugh:

National Crittenton submits the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (Proposed Rule) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome. National Crittenton strongly requests that U.S. Department of Health and Human Services, Administration for Children and Families (ACF), Administration on Children Youth and Families (ACYF), Children's Bureau (Children's Bureau) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (Final Rule). The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

National Crittenton represents a family of twenty-six agencies across the United States operating in 31 states and the District of Columbia. Working in partnership with public systems, our agencies provide innovative, comprehensive, gender- and culturally-responsive, trauma-informed and developmentally appropriate services. These services are provided in a range of settings for girls, young women, and their families – from in-home and school-based early learning centers to residential treatment foster care placements, community-based mental health services, wrap-around family support, and diversion and re-entry juvenile justice programs, among others. Our agencies are on the front lines of meeting the needs and supporting the potential of young people who have spent time in the child welfare, juvenile justice, substance abuse treatment and mental health systems and runaway and homeless shelters. TNCF has long advocated for the use of data to inform policy and practice, and, as we noted in our comments in April, we believe the inclusion of new data elements included in the 2016 update to AFCARS would represent a huge step forward for the child welfare field.

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state

and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

The data elements related to pregnant and parenting young people in foster care, crossover youth, health and mental health, sexual orientation, gender identity and gender expression, American Indian/American Native young people, and race and ethnicity are urgently needed. Our agencies are on the front lines of serving young people, particularly young women and girls, “at the margins” of society who are particularly affected by the compounding and interrelated issues of race, sexual orientation and gender identity, public systems involvement, and adversity. Working in partnership with public child welfare systems, our agencies rely on timely, accurate data to inform our service delivery and ensure our services and systems are meeting the needs of our most vulnerable young people and helping to stop the vicious cycles of poverty, racism, trauma, and system involvement.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the Preventing Sex Trafficking and Strengthening Families Act (P.L. 110-351) and changes in foster care services and oversight in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L.110-351), and the Child and Family Services Improvement and Innovation Act (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the Indian Child Welfare Act (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will also assist states in implementing the recently passed Family First Prevention Services Act (“Family First,” P.L 115-123).

What’s more, the longer these changes are delayed, the harder it will be for states to improve their data collection systems to improve these additional requirements. As time goes on, more child welfare laws will be passed, and states will be even further behind in keeping up with these federal reforms.

We urge the U.S. Department of Health and Human Services, ACYF, ACF, Children’s Bureau to retain all of the data elements in the 2016 AFCARS Final Rule and proceed without delay to work with states to implement them. We appreciate the opportunity to comment on the benefits of these data elements and look forward to working with you to ensure that they are implemented as soon as possible.

Sincerely,



Jeannette Pai-Espinosa  
President  
National Crittenton

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-yh2i
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Unknown

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0113  
University of Maryland School of Social Work

---

## Submitter Information

**Name:** Michelle Zabel  
**Address:** 21201  
**Organization:** University of Maryland School of Social Work

---

## General Comment

See attached

---

## Attachments

University of Maryland School of Social Work



Michelle Zabel, MSS  
Assistant Dean and Director  
525 West Redwood Street  
Baltimore, MD 21201  
410 706 8300  
mzabel@ssw.umaryland.edu

June 12, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

**Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).**

Dear Ms. McHugh:

On behalf of the Institute for Innovation and Implementation, at the University of Maryland, Baltimore School of Social Work, please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 ("Proposed Rule") proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome. Our Institute requests that U.S. Department of Health and Human Services, Administration for Children and Families ("ACF"), Administration on Children Youth and Families ("ACYF"), Children's Bureau ("Children's Bureau") maintain the current data elements in the December 14, 2016 AFCARS Final Rule ("Final Rule"), including those related to sexual orientation, gender identity, and gender expression. The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

Founded in 2005, The Institute for Innovation & Implementation (The Institute) is a part of the University of Maryland's School of Social Work. Our faculty and staff have nationally recognized expertise and leadership in the field of children's services. We are committed to supporting children, youth, young adults, and families to be healthy and successful within their homes and communities. The Institute provides training, technical assistance, facilitation, analysis, consulting, implementation support, and translational research and evaluation for and with federal, state, and local governments; community organizations; and, providers. We utilize peer-reviewed research, experience and expertise from the field, adult learning theory, and implementation science to support workforce development, systems design and financing initiatives, data-driven strategic planning, value-based and research-informed practice, quality improvement, and implementation readiness. We partner with governments, communities, and organizations to develop and implement actionable, effective, and



sustainable designs, solutions, and interventions to support children, youth, young adults, and their families.

A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L.110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* ("Family First," P.L 115-123), as described in examples below.

B. Removal of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression ("SOGIE") Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children and Eliminate Cost Savings

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning ("LGBTQ") foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and,

critically, to enhance the Administration on Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> In April 2011, ACF confirmed and reiterated “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>2</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>3</sup> Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>4</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (“LGBQ”); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>5</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than “straight” are 14,300 to 24,000.<sup>6</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>7</sup>

---

<sup>1</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>2</sup> 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>

<sup>3</sup> *Ibid.*

<sup>4</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>5</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>6</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (4) and (5) above.

<sup>7</sup> Same as 5 above.

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>8</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>9</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>10</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children's Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

We also oppose eliminating data elements relating to the Indian Child Welfare Act ("ICWA"). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child's case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

*The Children's Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14*

All of the poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children's Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>11</sup> That

---

<sup>8</sup> Same as 4 above.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption  
[http://www.adoptioncouncil.org/images/stories/NCA\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCA_ADOPTION_ADVOCATE_NO35.pdf)

same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>12</sup> Thus, identifying an affirming, supportive family for an LGBQ child leading to adoption – which would be impossible to do if the child’s sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than family foster care.<sup>13</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>14</sup> placing an LGBQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

*The Children’s Bureau should retain the data element related to the reason for removal of a child from a family home due to “family conflict related to child’s sexual orientation, gender identity, or gender expression.”*

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be 3-5 times greater for each child not placed in congregate care.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>15</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child

---

<sup>12</sup> *Ibid.*

<sup>13</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>14</sup> Same as 11 above.

<sup>15</sup> Same as 4 above.

welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

C. The Children's Bureau Should Retain the Voluntary Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>16</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>17</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBTQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBTQ resource families.

In its April 2011 guidance, ACF confirmed that "LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes."<sup>18</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>19</sup> Recruitment of LGBTQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

D. The Children's Bureau Should Add Voluntary Gender Identity Questions for Foster Youth Over the Age of 14 and Foster and Adoptive Parents and Guardians Because this Information is Important and it is Efficient to Collect this Information Along with Current Data Elements.

A forthcoming study found that "[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are "out" as LGBTQ, but because service providers,

<sup>16</sup> Gary Gates, *LGBT Parenting in the United States*, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>17</sup> The Williams Institute & The Urban Institute, *Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States*, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>18</sup> Same as 2 above.

<sup>19</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

caretakers, and peers are policing the youth's gender behaviors."<sup>20</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

E. The sexual orientation and gender identity and expression data elements of foster youth can be administered safely, and the Children's Bureau should provide training and resources to states and tribes to do so.

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity ("SOGI") information about children, along with other critical information about the child's circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>21</sup> The guidelines address the need to collect SOGI information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children's Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession's understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>22</sup> The regulations promulgated under the Prison Rape Elimination Act ("PREA") require youth and adult correctional officers to collect SOGI information as part of the initial screening

---

<sup>20</sup> Robinson, Brandon Andrew. Forthcoming. "Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality." *Child Welfare*. Robinson further states that "mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth's behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006)."

<sup>21</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>22</sup> Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

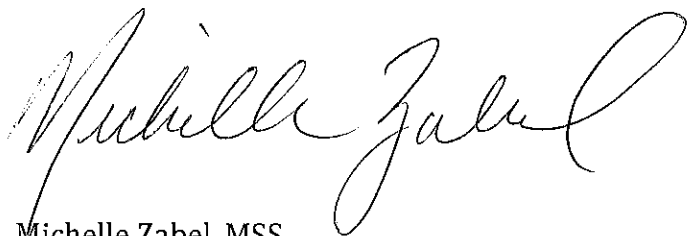
process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>23</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment.

In the Final Rule, the Children's Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that "[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." Additionally, the rule directed agencies to guidance and recommended practices developed by "state and county agencies, advocacy organizations and human rights organizations."

#### F. Conclusion

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Children's Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Zabel". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michelle Zabel, MSS  
Assistant Dean, University of Maryland School of Social Work  
Director, The Institute for Innovation and Implementation

---

<sup>23</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-ncyd
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0114  
Navajo Nation

---

## Submitter Information

**Name:** Russell Begaye  
**Organization:** Navajo Nation

---

## General Comment

See attached

---

## Attachments

Navajo Nation





THE NAVAJO NATION

RUSSELL BEGAYE PRESIDENT  
JONATHAN NEZ VICE PRESIDENT

May 24, 2018

Kathleen McHugh, Director of Policy  
U.S Department of Health and Human Services  
Administration for Children and Families  
330 C Street, S.W.  
Washington, DC 20024  
Via email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

RE: Adoption and Foster Care Analysis and Reporting System

Dear Director McHugh:

This letter is in reference to U.S. Department of Health and Human Services, Administration for Children and Families (ACF), 45 CFR Part 1355, RIN 0970-AC72, Adoption and Foster Care Analysis and Reporting System (AFCARS), Federal Register/Vol. 38, No. 51 (March 15, 2018), 11449-11450 (attached).

**I) Generally**

Section 479 of the Social Security Act mandates that Health and Human Services collect national, uniform, and reliable information on children in state 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.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom the Indian Child Welfare Act (ICWA) applies and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

**II) The Navajo Nation does not support the streamlining or elimination of the 2016 AFCARS-ICWA data elements.**

- The Navajo Nation supported, and continues to support, the AFCARS ICWA Data Elements, referred to as 2016 Adoption and Foster Care Automated Reporting System (AFCARS) data elements related to the Indian Child Welfare Act of 1978.
- The Navajo Nation opposes the Administration for Children and Families' (ACF) "streamlining" or elimination of ICWA elements pursuant to the Advance Notice of

Proposed Rulemaking.

- The Navajo Nation does not support ACF's proposal to delay the implementation for 2 years, or the "Compliance date" as proposed under Notice of Proposed Rulemaking; delay of compliance and effective dates, Federal Register/Vol. 38, No. 51 (March 15, 2018), 11450-11451 (see also attached).

Reasoning:

- The Navajo Nation is one of the largest AI/AN tribes, according to the U.S. Census. It is also surrounded by three states (Arizona, New Mexico and Utah).
- Navajo families move off the reservation to seek jobs, education, and other opportunities to cities, towns and other parts of the United States. At times, while off the reservation these families find themselves in circumstances where their children are removed from their care and placed into a state's child welfare systems.
- Although the Navajo Nation Division of Social Services receives proper notice from the states regarding Navajo children in state custody and begins to coordinate with those states. We still believe there are children in the state custody who have not been properly identified as Navajo and thus the Indian Child Welfare Act may not be followed in those cases. Therefore, the Navajo Nation is not able to coordinate or provide recommendations for a case concerning a Navajo child. In addition, this impacts the children and families because of the disconnect from their family and their tribe.
- As of the end of April 2018, the Navajo Nation had 590 ICWA cases that involved 1,173 children in those cases. Case coordination happened with 28 states across the country. This is the Navajo Nation's ICWA data. The concern with some states is that the state child welfare agency does not ask the parents whether they are members of an Indian tribe, whether the parents have their tribal enrollment numbers, and whether the family are domiciled on the Navajo Nation or not, among other relevant questions.
- Navajo children placed in out of home care have unique needs that can be best met and addressed by the Navajo Nation and extended family members, e.g., language and knowledge of cultural oral stories tied to the child's clan; identifying clan relationships and connections; or knowing and identifying community of origin to reconnect to among, etc.
- When the 2016 AFCARS-ICWA data elements are implemented it will help the states, federal and tribal governments to work together on these cases. If these elements are "streamlined" or eliminated, as proposed, the Navajo Nation is concerned that the data to be collected on Navajo children through the states will not be comprehensive and continue to be fragmented. Therefore, as a system, we will not be able to advance the well-being of Navajo children and families. This is what we have today---fragmented data on Indian children that is not comprehensive or specific to Navajo.
- Having specific data elements will allow for ACF and states to identify targeted training needs on the ICWA for their staff. In addition, this will allow for the states to partner with respective tribes in their states on developing training needs that may help state staff on how best to coordinate efforts on ICWA cases.
- Having specific data elements will not only assist ACF in forming future national policies on best practices with tribes on ICWA cases, but it will also benefit tribes in forming their own policies. Furthermore, ACF will benefit overall, as ACF may use the data elements to benefit overall policy development for TANF, Head Start, Childcare, and other DHHS programs.

- In redoing the AFCARS-ICWA data elements the Children's Bureau believes the public did not thoroughly review for burdensome pursuant to Executive Order 13777.
- The Navajo Nation requests that the ACF consider that the burden that has been unfairly placed on AI/AN Tribes and families for generations.
- The federal government has a trust responsibility to Tribes and it is time it removes its traditions of implementing burdensome policies that are detrimental to the tribes and Indian people.
- Moreover, the ACF is saying that they do not have authority over the Indian Child Welfare Act as the U.S. Department of Interior (DOI) has that regulatory authority. This argument is not correct and misplaced. The DOI – through the Bureau of Indian Affairs – does provide funding to tribes for ICWA, not the states. Tribes use this money to fund their tribal social services which supports their cases. The funds are not used by the states. The ACF is not being asked to change that or take over when it implements the 2016 AFCARS – ICWA data elements. ACF is requiring States to collect data concerning Indian children who are in their care. This is a misguided argument. Rather the data should complement one another.

### **III) Lack of Tribal Consultation**

Like many of the other tribes, the Navajo Nation has requested updates on the implementation of the 2016 AFCARS – ICWA data elements in 2017, at the Secretary's Tribal Advisory Committee (STAC) meetings. Finally, after several requests, ACF scheduled the Tribal Consultation on May 15 and May 16, 2018 via teleconference, for 1.5 hours each day.

The Navajo Nation has serious concerns and questions whether this meets the true intent of tribal consultation as this will be conducted by telephone for a limited time period. Most recently, at the May 9-10, 2018 STAC meeting, the Navajo Nation requested for an in-person tribal consultation meeting. However, we have not received this and the Navajo Nation continues to make this request.

### **Conclusion**

If there are any questions, Terrelene G. Massey, Esq., Executive Director of the Navajo Division of Social Services may be contacted at 928.871.6851. Thank you.

Sincerely,



Russell Begaye, *President*  
THE NAVAJO NATION

EPA has created for this rulemaking. The docket for this petition is available at <http://www.regulations.gov>.

As specified in FFDCA 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/ch/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.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-hns6
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0115  
Family Equality Council-Lambda Legal-NCLR-ACLU

---

## Submitter Information

**Organization:** Family Equality Council-Lambda Legal-NCLR-ACLU

---

## General Comment

See attached

---

## Attachments

Family Equality Council-Lambda Legal-NCLR-ACLU



June 13, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).

Dear Ms. McHugh:

On behalf of Family Equality Council, Lambda Legal, the National Center for Lesbian Rights (“NCLR”), and the American Civil Liberties Union (“ACLU”), please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (“Proposed Rule”) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and requesting comments regarding whether new data elements are overly burdensome. **Family Equality Council, Lambda Legal, NCLR and the ACLU request that U.S. Department of Health and Human Services, Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”), Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to sexual orientation, gender identity, and gender expression.** The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

Family Equality Council connects, supports, and represents the three million parents who are lesbian, gay, bisexual, transgender and queer (LGBTQ) in this country and their six million children. We are a community of parents and children, grandparents and grandchildren that reaches across this country. For nearly 40 years we have raised our voices toward fairness for all families. Family Equality Council also supports LGBTQ youth seeking family formation including foster youth.

Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexual, transgender people, and everyone living with HIV through litigation, education, and public policy work. Additionally, Lambda Legal’s Youth in Out-of-Home Care Project specifically advocates for the rights of lesbian, gay, bisexual, transgender, and queer or questioning (“LGBTQ”) young people in foster care, juvenile justice settings, and systems of care for youth experiencing homelessness.

NCLR is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the LGBT community,

provides free legal assistance to LGBT people and their legal advocates, and conducts community education on LGBT issues. NCLR has been advancing the civil and human rights of LGBT people and their families across the United States through litigation, legislation, policy, and public education since it was founded in 1977. NCLR's Youth Project, established in 1993, engages in litigation, public policy advocacy and system reform efforts to promote the health and well-being of LGBTQ youth in their families, schools and public systems of care.

For nearly 100 years, the ACLU has been our nation's guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee to everyone in this country. With more than 2 million members, activists, and supporters, the ACLU is a nationwide organization that fights tirelessly in all 50 states, Puerto Rico, and Washington, D.C. for the principle that every individual's rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, disability, national origin, or record of arrest or conviction.

A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L.110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* ("Family First," P.L 115-123), as described in examples below.

B. Removal of Data Elements Related to Sexual Orientation and Gender Identity and Expression ("SOGIE") of Children Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children and Eliminate Cost Savings

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families’ efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> In April 2011, ACF confirmed and reiterated “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>2</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>3</sup> Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>4</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (“LGBQ”); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>5</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than “straight” are 14,300 to 24,000.<sup>6</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>7</sup>

---

<sup>1</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>2</sup> 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>

<sup>3</sup> *Ibid.*

<sup>4</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>5</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>6</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (4) and (5) above.

<sup>7</sup> Same as 5 above.

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>8</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>9</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>10</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children's Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

We also oppose eliminating data elements relating to the Indian Child Welfare Act ("ICWA"). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child's case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

*The Children's Bureau should retain the voluntary sexual orientation question for youth over the age of 14*

All of the poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children's Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>11</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>12</sup> Thus, identifying an affirming, supportive family for an LGBQ child leading to adoption – which would be impossible to do if the child's sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than

---

<sup>8</sup> Same as 4 above.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCFA\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCFA_ADOPTION_ADVOCATE_NO35.pdf)

<sup>12</sup> *Ibid.*

family foster care.<sup>13</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>14</sup> placing an LGBTQ child with an affirming, supportive foster family rather than having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

*The Children's Bureau should retain the data element related to the reason for removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity, or gender expression."*

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be 3-5 times greater for each child not placed in congregate care.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>15</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

C. The Children's Bureau Should Retain the Voluntary Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as

---

<sup>13</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>14</sup> Same as 11 above.

<sup>15</sup> Same as 4 above.

foster parents than their different-sex counterparts.<sup>16</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>17</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

In its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>18</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>19</sup> Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

D. The Children’s Bureau Should Add Voluntary Gender Identity Questions for Youth Over the Age of 14 and Foster and Adoptive Parents and Guardians Because this Information is Important and it is Efficient to Collect this Information Along with Current Data Elements.

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>20</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability.

Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

<sup>16</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>17</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007).

<https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>18</sup> Same as 2 above.

<sup>19</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

<sup>20</sup> Robinson, Brandon Andrew. Forthcoming. “*Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.*” Child Welfare. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

- E. The sexual orientation and gender identity and expression data elements of foster youth can be administered effectively, and the Children’s Bureau should provide training and resources to states and tribes to do so.

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity (“SOGI”) information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>21</sup> The guidelines address the need to collect SOGI information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children’s Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>22</sup> The regulations promulgated under the Prison Rape Elimination Act (“PREA”) require youth and adult correctional officers to collect SOGI information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>23</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment. Questions about sexual orientation and gender identity can be administered appropriately to youth; the Census Bureau’s cognitive testing of such questions for the Department of Justice’s National Crime Victim Survey to be administered to 16- and 17-year olds found that “[t]here were no significant differences between the responses to the questions and probes given by adults and teens, and no findings that the questions were too sensitive to obtain responses.”<sup>24</sup>

In the Final Rule, the Children’s Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.” Additionally, the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”

---

<sup>21</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, Family Builders by Adoption (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>22</sup> Angela Irvine, “We’ve Had Three of Them”: *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 Colum J. of Gender & L. 675 (2012).

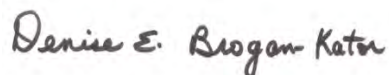
<sup>23</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

<sup>24</sup> Martinez, Mandi et al. *Cognitive Pretesting Of The National Crime Victimization Survey Supplemental Victimization Survey*. Center For Survey Measurement, Research And Methodology Directorate, U.S. Census Bureau, Washington, DC (2017).

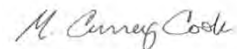
F. Conclusion

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Children's Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,



Denise Brogan-Kator  
Chief Policy Officer  
Family Equality Council



M. Currey Cook  
Counsel and Youth in Out-of-Home Care Project Director  
Lambda Legal



Shannan Wilber, Esq.  
Youth Policy Director  
National Center for Lesbian Rights



Faiz Shakir  
National Political Director  
American Civil Liberties Union



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 12, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-jhzg
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0116  
Equality NC and NC Child

---

## Submitter Information

**Organization:** Equality North Carolina and North Carolina Child

---

## General Comment

See attached

---

## Attachments

Equality NC and NC Child



June 12, 2018

Kathleen McHugh  
U.S. Department of Health & Human Services  
Administration for Children & Families  
Director, Policy Division  
330 C St. S.W.  
Washington, DC 20024

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

**RE: Comments on Proposed Rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) Data Elements, RIN 0970-AC72**

Dear Ms. McHugh,

We write today to comment in response to the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (“Proposed Rule”) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (“AFCARS”) data elements and requesting comments regarding whether new data elements are overly burdensome. Equality North Carolina works to secure equality and justice for lesbian, gay, bisexual, transgender and queer (“LGBTQ”) North Carolinians. We view advocacy for affirming placements for LGBTQ youth in out of home settings as a critical part of our mission, as well as advocacy and support for LGBTQ people who wish to become foster or adoptive parents and guardians. NC Child, a nonprofit group based in Raleigh, builds a strong North Carolina by advancing public policies to ensure all children – regardless of race, ethnicity, or place of birth – have the opportunity to achieve their full potential.

We request that U.S. Department of Health and Human Services (“HHS”), Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”) and the Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to sexual orientation, gender identity, and gender expression (“SOGIE”). The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

**Securing equal rights and justice for lesbian, gay, bisexual, transgender, and queer North Carolinians**

P.O. Box 28768 • Raleigh, N.C. 27611-8768 • tel (919) 829-0343 • fax (919) 827-4573 • [enc@equalitync.org](mailto:enc@equalitync.org) • [www.equalitync.org](http://www.equalitync.org)

**1. The data elements in the Final Rule are not overly burdensome and have already been streamlined through numerous comment periods.**

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule<sup>1</sup> represents a "streamlining" of the original proposed rule (2015 NPRM<sup>2</sup> and 2016 SNPRM<sup>3</sup>), and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in reduced costs and improved outcomes for some of the most marginalized children in the child welfare system.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L.110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* ("Family First," P.L. 115-123), as described in examples below.

**2. Removal of data elements related to foster youth sexual orientation and gender identity and expression (SOGIE) would negatively affect the safety, permanency and well-being of LGBTQ youth and would eliminate cost savings.**

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender and queer or questioning foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and address disparities. Data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection

---

<sup>1</sup> Found at:

<https://www.federalregister.gov/documents/2016/12/14/2016-29366/adoption-and-foster-care-analysis-and-reporting-system>

<sup>2</sup> Found at:

<https://www.federalregister.gov/documents/2015/02/09/2015-02354/adoption-and-foster-care-analysis-and-reporting-system>

<sup>3</sup> Found at:

<https://www.federalregister.gov/documents/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>

of data regarding characteristics of all children in care.<sup>4</sup> In April 2011, ACF confirmed and reiterated “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>5</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>6</sup> Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>7</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (“LGBQ”); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>8</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than “straight” are 14,300 to 24,000.<sup>9</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>10</sup>

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>11</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>12</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>13</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children’s Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

---

<sup>4</sup> Found at: [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>5</sup> 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>

<sup>6</sup> *Ibid.*

<sup>7</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pij\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pij_rise_lafys_report.pdf)

<sup>8</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016, <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>9</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (7) and (8) above.

<sup>10</sup> See supra note 8.

<sup>11</sup> See supra note 7.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

We also oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

**2a. The Children’s Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14.**

All of the poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children’s Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>14</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>15</sup> Thus, identifying an affirming, supportive family for an LGBQ child leading to adoption – which would be impossible to do if the child’s sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments three to five times more than family foster care.<sup>16</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>17</sup> placing an LGBQ child with an affirming, supportive foster family rather having them remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

---

<sup>14</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCF\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCF_ADOPTION_ADVOCATE_NO35.pdf)

<sup>15</sup> *Ibid.*

<sup>16</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017.

<http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>17</sup> See supra note 14.

**2b. The Children’s Bureau should retain the data element related to the reason for removal of a child from a family home due to “family conflict related to child’s sexual orientation, gender identity or gender expression”.**

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be three to five times greater for each child not placed in congregate care.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>18</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

**3. The Children’s Bureau should retain the voluntary sexual orientation question for adoptive and foster parents and guardians.**

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>19</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>20</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

In its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>21</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>22</sup> Recruitment of LGBQ families could provide a source of affirming, supportive

---

<sup>18</sup> See supra note 7.

<sup>19</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>20</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>21</sup> See supra note 5.

<sup>22</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience. At Equality NC, we have a staff member who is an LGBTQ adoptive parent as well as a board member who is an LGBTQ foster parent, and we believe there are many more qualified potential parents who could provide homes.

**4. The Children’s Bureau should add voluntary gender identity questions for foster youth over the age of 14 and foster and adoptive parents and guardians because this information is important, and because it is efficient to collect this information along with current data elements.**

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are ‘out’ as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>23</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding. Finally, Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

**5. The sexual orientation and gender identity and expression data elements of foster youth can be administered safely, and the Children’s Bureau should provide training and resources to states and tribes to do so.**

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity (“SOGI”) information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>24</sup> The guidelines address the need to collect SOGI information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children’s Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing

---

<sup>23</sup> Robinson, Brandon Andrew. Forthcoming. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>24</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

the profession's understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>25</sup> The regulations promulgated under the Prison Rape Elimination Act ("PREA") require youth and adult correctional officers to collect SOGI information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>26</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment.

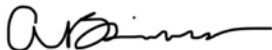
In the Final Rule, the Children's Bureau summarized its well-supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that "[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." Additionally, the rule directed agencies to guidance and recommended practices developed by "state and county agencies, advocacy organizations and human rights organizations."

### Conclusion

Thank you for the opportunity to comment on the benefits of these data elements outlined in the Final Rule. For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, and the Children's Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression.

If you have any questions about our comments and recommendations, please contact Ames Simmons at [ames@equalitync.org](mailto:ames@equalitync.org).

Sincerely,



Ames Simmons, JD  
Director of Transgender Policy  
Equality North Carolina

NC Child

---

<sup>25</sup> Angela Irvine, *"We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 COLUM. J. OF GENDER & L. 675 (2012).

<sup>26</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> May 22, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-datp
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Paper

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0117  
Morongo Band of Mission Indians

---

## Submitter Information

**Name:** Robert Martin  
**Organization:** Morongo Band of Mission Indians

---

## General Comment

See attached

---

## Attachments

Morongo Band of Mission Indians

**MORONGO  
BAND OF  
MISSION  
INDIANS**



A SOVEREIGN NATION

May 22, 2018

Attn: Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Policy Division  
330 C Street SW  
Washington, DC 20024

Via electronic correspondence at: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Re: Morongo Band of Mission Indians Comments on RIN: 0970-AC72 **Adoption and Foster Care Analysis and Reporting System**; Advance Notice of Proposed Rulemaking (3/15/2018)

Dear Sir or Madam,

The Morongo Band of Mission Indians submits these comments on the Advanced Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) for Title IV-B and Title IV-E as they relate to the Indian Child Welfare Act of 1978 (ICWA). Data points specific to ICWA were incorporated into AFCARS as detailed in the Final Rule published on December 14, 2016.

**General Comments:**

***The data collection requirements of the Final Rule are consistent with ACF's statutory mission.***

Section 479 of the Social Security Act mandates Health and Human Services collect national, uniform, and reliable information on children in state 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.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

***The administration provided all interested parties with ample notice and opportunities to comment on the final rule.***

Tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS. The initial rules were changed due to comments by

these entities and others after reviewing the Administration of Children and Families' February 9, 2015 proposed rule. On April 2, 2015 the Agency issued a Supplemental Notice of Proposed Rulemaking (SNPRM) changing certain data elements. Yet another SNPRM was issued on April 7, 2016. Specifically, the Agency sought comments on the inclusion of the ICWA data points in both the April 2015 Intent to Publish a SNPRM, as well as the April 2016 SNPRM. Ultimately, the Final Rule was published on December 14, 2016 (Final Rule), and included the ICWA data elements.

The Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action. Given the multiple opportunities to comment throughout this time period, any additional collection activity is unnecessary. In addition, tribes, tribal organizations, and advocates received notice of all of these opportunities, and with ample time to comment on this vital and important rule change.

States also had ample opportunity to participate. As the Final Rule explains in detail, ACF engaged in robust consultation with states and responded to their concerns, for example, by streamlining many data elements. 81 Fed. Reg. 90524, 90565-66. States had at least six different opportunities to raise their concerns, which the ACF considered and addressed fully. 81 Fed. Reg. at 90566.

***States are already in the process of implementing these changes.***

Since these regulations have been effective for approximately fifteen months, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes, is already well under way with its implementation efforts, having relied on the final rule. At this stage, any modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

***These regulations are important to us, our families, and state child welfare systems.***

The regulations themselves—in response to the comments from stakeholders across the country—describe the importance of these changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations, and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.

Generally, tribes, organizations representing tribal interests, national child welfare advocacy organizations, and private citizens fully support the overall goal and purpose of including ICWA-related data in AFCARS, and the data elements as proposed in the 2016 SNPRM. These commenters believe that collecting ICWA-related data in AFCARS will:

1. provide data on core ICWA requirements such as “active efforts” and placement preferences, as well as assess how the child welfare system is working for Indian children as defined by ICWA, families and communities;
2. facilitate access to culturally-appropriate services to extended families and other tribal members who can serve as resources and high-quality placements for tribal children;

3. help address and reduce the disproportionality of AI/AN children in foster care; and
4. provide avenues for collaboration between states and tribes that are more meaningful, and outcome driven, including improved policy development, technical assistance, training, and resource allocation as a result of having reliable data available.

Overall, tribal commenters and national child welfare advocacy organizations believe that collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families will be kept together when possible, and will help prevent AI/AN children from entering the foster care system. Many of the tribal commenters that supported the 2016 SNPRM also recommended extensive training for title IV-E agencies and court personnel in order to ensure accurate and reliable data.

Other federal reports have demonstrated the need for quality national data to assess states' efforts in implementing ICWA. See Government Accountability Office, *Indian Child Welfare Act: Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States*, GAO-05-290 (Apr. 4, 2005) <http://www.gao.gov/products/GAO-05-290>.

Nothing has changed since ACF made clear in its final rule that data collection is necessary to protect Indian children and families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions. And there have been no changes in circumstances that would alter the burdens or benefits of the final rule's data collection requirements.

***Tribes have relied on the final rule.***

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the final rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the data elements listed in the final rule. To this end, some tribes have worked to develop and update agreements to reflect the data elements in the final rule and the 2016 BIA ICWA Regulations, since a goal of both is to increase uniformity.

***The ANPRM is arbitrary and capricious where it seeks only information on burdens.***

This ANPRM arbitrarily focuses on collecting information about the burdens without considering the benefits. As required by law, the final rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule to achieve a balanced final rule.

The agency "determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data." 81 Fed. Reg. at 90528. The agency explained how its weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the final rule at 81 Fed Reg. 90528:

In response to state and tribal comments suggesting congruence with the BIA's final rule, we revised data elements in this final rule as appropriate to reflect the BIA's regulations including removing requirements that state title IV-E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV-E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance to increase

state title IV-E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

There have been no material changes in circumstances justifying the agency's new approach. The executive order is not a sufficient basis for the agency to act, as the executive order itself is arbitrary and unlawful where it provides an insufficient basis for reasonable decision-making relaying solely on an examination the burden of regulations without the required balancing of benefits. Additionally, the executive orders to fail to provide justification to deviate from the statutory requirement for regulations.

**The foregoing are responses to the Questions for Comment provided in the ANPRM:**

*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.*

No response.

*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.*

The ANPRM requests IV-E states and tribes to provide the number of children in foster care who are considered Indian children as defined in ICWA. However, it is specifically due to the lack of a national data reporting requirement, that any number provided in response to this question would be significantly inaccurate. This speaks to the critical importance of the ICWA-related data points – without a data reporting requirement, many states simply do not appropriately track Indian children in their child welfare system, let alone the individual ICWA-related data points.

*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.*

As discussed above, there has been ample opportunity for comment and this additional ANPRM is itself both unlawful as crafted and is a waste of finite resources. Tribes and states properly relied on the final rule in working toward implementation for nearly a year and a half. Any modification to the existing data points frustrate those efforts, would require states to begin again collaborating with their tribal partners and ultimately further delay implementation. This comes at the expense of the health, safety and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the final rule would cost resources that are system-wide.

*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.*

In the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements frustrating a stated purpose of the 2016 BIA ICWA Regulations, to establish uniformity of application throughout the nation. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.

*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.*

Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points are critical.

Further, as discussed above, ICWA is the "gold standard" of child welfare and ensuring compliance with this federal law informs how the existing child welfare system may improve in whole.

**For the foregoing reasons, we strongly support each of the ICWA-related data points and believe, as your agency did in publishing the Final Rule in 2016, the benefits of this data collection outweighs any burden.**

In closing, the Indian Child Welfare Act is widely considered the "gold standard" of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection significantly impacts tribal children, families, and county agencies trying to comply. In the interest of protecting our children and families, we respectfully submit these comments.

Sincerely,



Robert Martin  
Chairman  
Morongo Band of Mission Indians

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p0-207d
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0118  
Youth Law Center

---

## Submitter Information

**Name:** Maria Ramiu  
**Address:** 94104  
**Organization:** Youth Law Center

---

## General Comment

See attached

---

## Attachments

Youth Law Center



200 Pine Street, Suite 300  
San Francisco, CA 94104  
Phone: 415.543.3379  
Fax: 415.956-9022  
www.ylc.org

June 13, 2018

Executive Director  
JENNIFER RODRIGUEZ

Senior Director  
Strategic Initiatives  
CAROLE SHAUFFER

Operations Director  
GRETCHEN TEST

Senior Staff Attorney  
MARIA F. RAMIU

Staff Attorneys  
VIRGINIA CORRIGAN

Equal Justice Works Fellow  
STACY YOUNG

Policy Advocate  
LUCY SALCIDO CARTER

Administrator  
MEHRZAD KHAJENOORI

Executive Assistant  
SELINA WEISS

Just Beginning  
TERRY HARRAK

Quality Parenting Initiative  
JAIME AVERETT  
DAVID BROWN  
CATHERINE A. HUERTA  
PHYLLIS STEVENS  
CELINA GRANATO

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Kathleen McHugh

U.S. Department of Health and Human Services

Administration for Children and Families

Director, Policy Division

330 C Street SW

Washington, D.C. 20024

**RE: RIN 0970-AC72 - Request for Public Comments on the Adoption and Foster Care Analysis and Reporting System (AFCARS), December 14, 2016 AFCARS Final Rule (“Final Rule”) (45 CFR 1355 (Mar. 15, 2018))**

Dear Ms. McHugh:

The Youth Law Center, a national organization that advocates to transform foster and juvenile justice systems across the country so that children can thrive, writes to support the adoption of the Final Rule regarding AFCARS data elements, including those related to youth of Indian heritage, education, sexual orientation, gender identity, and gender expression. The data elements in the final rules have been thoroughly reviewed and revised over several public notice and comment periods during which the issue of the burden of data elements was specifically addressed. Therefore, the Youth Law Center urges the U.S. Department of Health and Human Services, Administration on Children Youth and Families (“ACYF”), to maintain the current data elements in the Final Rule.

A. The Streamlined Data Elements in the Final Rule Are Basic, Not Overly Burdensome

We believe that the data elements in the Final Rule are necessary, not burdensome, and should be retained. The Final Rule reflects the public comments received by ACYF and are not overly burdensome. The [data elements in the Final Rule](#) represent a streamlined version of those originally proposed in 2015 and revised in 2016. Furthermore, states, tribes, and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements over many years. The burdens identified by commenters have been adequately addressed in the Final Rule.



Comment Letter - RIN 0970-AC72

June 13, 2018

Page | 2

The data elements in the Final Rule reflect many of the significant changes in child welfare policy and practice since the last AFCARS update in 1993 and will facilitate the implementation of the data collection required by several federal child welfare related acts over the last decade including: the *Preventing Sex Trafficking and Strengthening Families Act of 2014* (P.L. 113-183); the *Child and Family Services Improvement and Innovation Act 2011* (P.L. 112-34); and the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L.110-351) (Fostering Connections). Additionally, the Final Rule will assist with implementation and oversight of both long established federal law like the *Indian Child Welfare Act of 1978* (P.L. 95-608) (ICWA), improving outcomes for tribal youth, and recently passed laws like the *Family First Prevention Services Act of 2018* (P.L 115-123) (Family First), reducing institutional care and supporting care in families, by requiring the collection of basic data at the core of child welfare practice essential to providing effective services to children and families. States and tribes will also continue to benefit from federal funding and support for improving their information technology through the current development of the new Comprehensive Child Welfare Information System (CCWIS), offsetting many of the concerns about the burden of requiring the collection of new data elements.

The Final Rule was carefully considered and will help to ensure child welfare agencies are gathering data on critical child and family-related outcomes necessary to track safety, permanency, and well-being. The long overdue new requirements will provide accurate and consistent data across states on key outcomes, bring child welfare data collection in line with statutory changes enacted since 1993, and shift data collection toward a more longitudinal approach which will help evaluate children and families' needs more effectively. All states will continue to update their data systems to meet the increasing demands of serving children and families and to stay current with the latest technology. Any claims of cost burdens by states are overstated, as all states will expend these costs to update their systems regardless of the specific requirements in the Final Rule. These AFCARS updates provide a finite number of data elements that are universal across states, necessary to identify trends, and essential to continue to improve child welfare systems and effectively meet the needs of children and families.

A. ICWA Data Collection Requirements Reflect Basic Information Needed for Effective Child Welfare Practice and Oversight

The Final Rule requires collection of basic ICWA related data that agencies should already have been collecting. ICWA was first enacted in 1978, yet AFCARS will require for the first time information about children to whom the act applies. States and tribal entities will only be

Comment Letter - RIN 0970-AC72

June 13, 2018

Page | 3

required to report most of the ICWA-related data elements if ICWA applies in a child's case, greatly reducing any burden associated with being required to collect and report these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts the ability to effectively meet the needs of this population in a given jurisdiction, but also impedes the ability to effectively monitor ICWA compliance and to identify trends to improve child welfare services to American Indian and Alaska Native youth and families nationally.

B. Educational Data Cannot Be Streamlined Further Without Negatively Impacting Child Wellbeing and Compliance Monitoring

Maintaining the AFCARS data on school enrollment, educational level, educational achievement, and special education is essential to monitoring states' compliance with Fostering Connections and, most importantly, to ensuring the well-being of children in foster care. The limited education data in AFCARS is necessary to inform and improve state practice and policy and enable states to measure and track the educational progress of children in care. Although educational information was not part of AFCARS prior to the Final Rule, several of these data elements are already being collected by states pursuant to the requirements of Fostering Connections and should not create an unnecessary burden for child welfare professionals. Where these data elements are not already being collected, data sharing between child welfare and education entities can minimize the burden of collecting this data. The educational data elements included in the Final Rule are unambiguous and straightforward – qualitative review or case study is not required for accurate reporting. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. The data elements on school enrollment, educational level, educational achievement, and special education included in the Final Rule should be retained.

C. Data Elements Related to Sexual Orientation, Gender Identity and Expression (“SOGIE”) Are Necessary to Improve Child Welfare Practice, Outcomes for Foster Youth, Compliance Monitoring, and Resources Through Cost Savings

The Youth Law Center supports maintaining the data elements in the Final Rule related to sexual orientation, gender identity, and gender expression in order to improve foster youth outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) youth in the foster care system. The Final Rule

Comment Letter - RIN 0970-AC72

June 13, 2018

Page | 4

requires the collection of data on removals related to family conflict involving SOGIE issues, and includes voluntary questions on sexual orientation for foster youth over the age of 14, foster parents, adoptive parents, and guardians. Voluntary questions on gender identity and expression should be added for foster youth over the age of 14 to cover the full spectrum of youth impacted by the removal question related to SOGIE and on gender identity for foster and adoptive parents to improve placement resources.

Safety, permanency, and well-being are the main objectives for every child, including LGBTQ children, in the custody of a child welfare system, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> Many studies have documented that LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers.<sup>2</sup> Youth in foster care that identify as LGBTQ or gender-nonconforming account for as much as 22% of the foster care population, more than the estimated 7% to 11% of the general youth population.<sup>3</sup> Foster youth that identify as LGBTQ are more likely to have lived in group care, experienced placement instability, been hospitalized for mental health reasons, crossed over into the juvenile justice system, experienced poor mental or behavioral health outcomes, or been homeless after exiting foster care.<sup>4</sup> Including voluntary questions for foster and adoptive parents and guardians opens up opportunities to tap new communities for affirming placements for LGBTQ foster youth and permanent families for all children and youth in foster care. LGBTQ foster youth will be inadequately served until child welfare systems have more information about their lives and outcomes, to better respond to and more effectively address their individual needs. Tremendous cost savings could be achieved through improved data collection related to SOGIE and the implementation of effective interventions to prevent removals, reduce instability, improve permanency in family home settings, and minimize costly stays in group care, hospitals and juvenile justice facilities.

---

<sup>1</sup> 42 U.S.C. 679.

<sup>2</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf); Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>; 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>

<sup>3</sup> Center for the Study of Social Policies, *Out of the Shadows*, *supra*.

<sup>4</sup> *Ibid*.

Comment Letter - RIN 0970-AC72

June 13, 2018

Page | 5

D. Data Collection Through Voluntary Questions on Sexual Orientation and Gender Identity Provide Useful and Reliable National Level Data Needed to Assess, Monitor, and Improve Child Welfare Services, Programs, and Outcomes

Child welfare and other public social service systems, increasingly focused on outcomes and accountability, have recognized the importance of collecting sexual orientation and gender identity (“SOGI”) information about children not only for individual case and service planning, but to measure performance, trends, and outcomes on a national level to improve services and provide accountability for competently serving children in the system. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>5</sup> The guidelines address the need to collect SOGI information for a variety of reasons, including developing case plans and tracking outcomes in individual cases, and as part of the larger framework for federal oversight and system reform efforts to effectively serve children of all sexual orientations, gender identities, and gender expressions.

Many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey, and researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention and the differences in offense and detention patterns.<sup>6</sup> The regulations promulgated under the Prison Rape Elimination Act (“PREA”) require the collection of SOGI information in both youth and adult detention and correctional facilities as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>7</sup> PREA national level data is reported at least annually and provides information that can be used to create policies and interventions to reduce victimization of vulnerable populations. Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment. National level data is used to inform federal policy and develop interventions and strategies to improve services and practice.

---

<sup>5</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwsemsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>6</sup> Angela Irvine, “We’ve Had Three of Them”: *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 COLUM. J. OF GENDER & L. 675 (2012).

<sup>7</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

Comment Letter - RIN 0970-AC72

June 13, 2018

Page | 6

E. Conclusion

For the reasons outlined above, we urge HHS to retain all of the data elements in the Final Rule, including the data elements related to ICWA, education, sexual orientation, and gender identity and expression. We also urge HHS to add voluntary questions on gender identity and gender expression for foster youth age 14 and older, and for adoptive and foster parents. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,



Maria Ramiu

Senior Staff Attorney, Youth Law Center

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p1-5iwf
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0119  
North Dakota

---

## Submitter Information

**Name:** Lauren Sauer  
**Address:** 58503  
**Email:** lsauer@nd.gov  
**Organization:** North Dakota

---

## General Comment

See attached file(s)

---

## Attachments

North Dakota



(701) 328-2316  
Toll Free 1-800-245-3736  
Fax (701) 328-3538  
ND Relay TTY 1-800-366-6888

Doug Burgum, Governor  
Christopher Jones, Executive Director

June 12, 2018

Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Children's Bureau Policy Division  
330 C Street SW  
Washington, DC 20024

RE: AFCARS Open Comment Response Period ~ Billing Code: 4184-25-P  
RIN 0970-AC72

Thank you for the opportunity to respond to the request for AFCARS public comment. North Dakota is a state-supervised/county-administered child welfare system including four Title IV-E Tribal agreements, 53 county agencies, eight regional offices as well as statewide Division of Juvenile Services working collaboratively to meet the needs of foster children.

Since 2009, North Dakota has utilized an internal data management system: FRAME. FRAME was developed and is managed by the North Dakota Department of Human Services (NDDHS) Information and Technology Services (ITS) to meet federal compliance with reporting requirements based upon all case management activity from child protection, in home prevention services, and foster care. Over time, North Dakota has worked to adapt FRAME to ensure compliance with Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements while preparing for AFCARS 2.0 implementation. The Administration for Children and Families (ACF) has provided technical assistance to North Dakota in efforts to dissect the FRAME system functioning in relation to SACWIS.

Current North Dakota Administration (Governor and Extended Cabinet) is very innovative with a technology driven mindset that has allowed for further exploration into the desired change for child welfare data management. North Dakota has been data poor, having difficulty extracting data from FRAME. With new Administration, North Dakota has been allowed opportunities to explore a data management system upgrade. This internal Department decision to move forward with planning and implementation of a new data system, such as CCWIS, has been granted. Children & Family Services (CFS) is working with the NDDHS Executive Office, Information Technology Services and Fiscal Administration to prepare for legislative approval during the 2019 ND legislative session (January – April 2019). All financial budget decisions require legislative oversight and approval. The advocacy from CFS has been heard and action is in motion for a new data management system. This excitement of new developments that will enhance our state ability to enter and extract child welfare data more effectively and efficiently in turn offers

Kathleen McHugh  
June 12, 2018  
Page 2

great challenges. The timeframe and funding to support overall statewide implementation of a new system on top of new federal reporting requirements is complicated.

The comment period was specific to learning about challenges or burden presented to states and tribes to fully execute the new requirements of AFCARS. The recent proposal allows for a delay of implementation of all AFCARS data requirements from 2019 to 2021. The delay in implementation of the federal reporting requirements has both positive and negative outcomes on the state and tribes. Below, North Dakota highlights general statements specific to the new AFCARS regulations and the impact the additional data elements has on our state child welfare system.

### **North Dakota Comments:**

1. **North Dakota was one of three states selected to receive a five year ICWA State Partnership grant:** North Dakota is pleased to be part of the nationwide movement to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families. It is understood the new data elements identified in AFCARS will advance the reporting collection criteria for ICWA eligible youth. North Dakota greatly values the need to meet compliance by accessing additional data specific to ICWA. The AFCARS data elements will require states to do more in the area of ICWA data collection, ultimately doing better for clients and overall delivery of services. Currently, ND has access to the ND Juvenile Court database. There are ICWA related data elements reviewed and tracked in state, however the overall lack of ICWA specific identification in the ND FRAME data management system and required federal AFCARS makes it challenging to adequately and effectively track outcomes and target prevention strategies for this defined population of clients.
  - a. **Benefits** of tracking ICWA data in AFCARS for this grant include:
    - Access to new data elements to assist in statewide planning, as well as achievement of ICWA related goals and tracking.
    - Opportunity to have more consistent, reliable, and streamlined data available for program improvement strategies.
  - b. **Challenges** of tracking ICWA data in AFCARS for this grant include:
    - The volume of ICWA related data elements complicates the momentum of gained knowledge as ND recognizes the need for significant data enhancements to an already established FRAME data system or the delay as we await the purchase and implementation of a new system with the required data enhancements.
    - The volume of data elements minimizes the success of data gains by the overshadowed weight of data collection needs that must be collected and entered to meet compliance.
    - Some of the data elements will be complicated to obtain.



Kathleen McHugh  
June 12, 2018  
Page 3

- Delays in implementation may not provide benefit to the current state ICWA Partnership grant.

**2. Prioritizing the data elements:** Given the volume of new data elements required in proposed rulemaking, the overall impression is the need for additional capacity to complete the data collection and entry of the new elements. It is greatly appreciated that PL 113-183 Preventing Sex Trafficking data requirements have been added to the detail of AFCARS; however the priority of the volume of data fields is requested as states have been asked to increase the data collection from an estimated 90 unduplicated data fields (66 foster care data elements and 37 adoption elements) to over 250 unduplicated data elements in order to meet compliance.

- a. North Dakota agrees that if a data system had all of the required elements ready for data entry; it would be easier to comply with the increased data request. Workers would have accessible data fields that are located more efficiently and effectively allowing for easier navigation of an online electronic record. The current FRAME system would not allow for ease and would require significant amount of time to upgrade the current system to accommodate the volume of data elements.
- b. Requested to prioritize critical data elements in lieu of requiring additional helpful data. In the event there was a priority for AFCARS elements, ND would contend that the priority elements are demographics, case planning specifics, etc. However, it is requested that the additional data elements that are descriptive, yet not overly essential be removed from the final report data elements:
  - #56 through #62 - excess school related information
  - #185, #197, #244, #256 – excess descriptive sexual orientation of providers
- c. The desire to fully engage in ICWA is highly recognized. North Dakota would be adding over 30 data elements specific to ICWA requirements. The addition of the data elements is possible, but complicated as a percent of the data elements are less accessible. It is requested to prioritize the data elements #8 through #24, #97-100, #103 to #105, #160 and #171
  - Remove = #25-28,

**3. North Dakota is pursuing the final approval for implementation of a new data management system:** North Dakota continues to complete the process of internal approval for the implementation of a new statewide data management system (Ex: CCWIS). As stated in our introduction, North Dakota is held to a legislative budget build that must be approved by the state legislative process. As NDDHS advocates for legislative support for a new data management system, ND requests an extension and delayed implementation of AFCARS until October 2021.

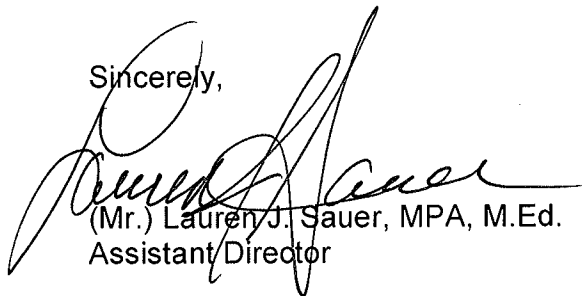
Kathleen McHugh  
June 12, 2018  
Page 4

- a. A delayed implementation is requested as it is understood the process of data management system transition is time intensive, costly, and creates temporary data deficits. At this time, FRAME is under development every day with upgrades and modifications being made to comply with federal reporting requirements. Financially, continual system upgrades is a burden. A delayed implementation would not require upgraded data fields in an antiquated system, rather it is projected that an upgrade to a new data management system that is better suited to meet the federal requirements will be more efficient and effective.
- b. North Dakota is aware of the ACF funding available to support the implementation of a new computer system for data collection and regulations. North Dakota asks that ACF support the requested transition to a new data management system (ex:CCWIS) in lieu of FRAME.

This letter allowed our state the ability to comment on the AFCARS data requirements, and is asking ACF for an extension or delay in implementation of full compliance with AFCARS until October 2021 as NDDHS advocates for legislative support of a new data management system.

Please provide North Dakota with a response regarding the delayed implementation by contacting Lauren J. Sauer, Assistant Director of Children & Family Services.

Sincerely,



(Mr.) Lauren J. Sauer, MPA, M.Ed.  
Assistant Director

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p1-3kdi
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0120  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Monica Coyne

---

## General Comment

Please do not discriminate against LGBTQ persons. I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression. There is no good reason to remove this question or the data.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p2-xk9f
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0121  
Choctaw Nation of Oklahoma

---

## Submitter Information

**Name:** Gary Batton  
**Address:** 74702  
**Organization:** Choctaw Nation of Oklahoma

---

## General Comment

See Attached

---

## Attachments

Choctaw Nation of Oklahoma



## Choctaw Nation of Oklahoma

P.O. Box 1210  
Durant, OK 74702  
(580) 924-8280, ext. 4162  
Faith ♦ Family ♦ Culture

Gary Batton  
Chief

Jack Austin Jr  
Asst. Chief

Attn: Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Policy Division  
330 C Street SW  
Washington, DC 20024

*Submitted via electronic correspondence at: [CBcomments@acf.hhs.gov](mailto:CBcomments@acf.hhs.gov)*

Re: RIN: 0970-AC72 **Adoption and Foster Care Analysis and Reporting System;**  
Advance Notice of Proposed Rulemaking (3/15/2018)

Halito Ms. McHugh:

Thank you for the opportunity to provide comments on the Supplemental Notice of Proposed Rulemaking (“SNPRM”), published in the Federal Register on April 7, 2016 on behalf of the Choctaw Nation. We strongly support the inclusion of this data in the AFCARS, because it will provide specific information related to the requirements of the Indian Child Welfare Act (“ICWA”). One of our leading missions at the Choctaw Nation is to promote the physical and emotional wellness of Indian children and their families in our tribal community. These new data elemental provide the ability to better track how the child welfare system is working for our children and families and be in a better position to assist in efforts to improve outcomes for our children and families.

It has been almost 25 years since the establishment of the AFCARS data collection system and 40 years since the enactment of ICWA. AI/AN children are still waiting to have basic data collected that describes their conditions, how relevant federal law under Title IV-B, Title IV-E, and ICWA is being implemented with respect to AI/AN children, and the identification of critical data that can inform local and national interventions to eliminate well-documented and long term foster care disproportionality and service disparities that AI/AN children face. Each year that data is not collected is another year AI/AN children will not see significant improvements to their well-being and policymakers and other government officials will not have the data they need to make smart, effective changes that can address these very serious, long-term problems; this is an untenable situation. We also note that nothing has changed since the publication of the 2016 Final Rule that would change the need for this critical data for AI/AN children. Instead, Congress has made it clear with the passage of the Family First Prevention Services Act (Division E of the Bipartisan Budget Agreement Act of H.R. 1892) that they intend for Title IV-E to be expanded to focus on additional services and efforts, not just a narrow band of placement activities.

## General Comments

**The 2016 Final Rule is within ACF's Statutory Authority and Mission.** Section 479 of the Social Security Act mandates the Department of Health and Human Services (DHHS) collect national, uniform, and reliable information on children in state foster care and adoptive care. The statutory language is expansive and suggests a broad collection of data for children under state care who are in foster care or adoption that includes their demographics, characteristics, and status while in care. Section 1102 of the act instructs the Secretary of DHHS to develop regulations necessary to carry out the functions for which DHHS is responsible under the act.

In addition, Section 422 of the Social Security Act requires DHHS to collect descriptions from states of a state's efforts to consult with tribes on the specific measures taken by a state to comply with ICWA. This provision has been in federal law since 1994 and DHHS has responded by asking states to provide this information, along with additional information related to ICWA implementation in state Annual Progress and Services Reports. DHHS also has a long history of collecting information, although limited, on ICWA implementation through their Child and Family Services Review process with states. These reports and reviews are authorized under the broad discretionary authority provided to DHHS under Titles IV-B and IV-E of the Social Security Act to collect data from states and review their progress against different federal child welfare requirements.

The Final Rule, which ACF developed under the statute, ensures the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children to whom ICWA applies, and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under the Social Security Act. In addition, there is no statutory requirement that all data elements must be specifically tied to Title IV-E or Title IV-B requirements only.

**ACF provided ample notice and opportunities to comment on the 2016 Final Rule.** On April 2, 2015, ACF issued a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing changes to AFCARS data elements. A year later on April 7, 2016, ACF published another SNPRM proposing the addition of new AFCARS data elements related specifically to data concerning American Indian and Alaska Native (AI/AN) children and families. The proposed data was related to federal law requirements specific to ICWA and placements of AI/AN children. The Final Rule was published eight months later on December 14, 2016, and included the ICWA data elements. The 2016 Final Rule was the product of a thorough and well-reasoned process that included opportunities for states, tribes, and other interested parties to comment. Issues related to the benefits for AI/AN children and families and burdens upon states to collect and report the data were thoroughly addressed in the Final Rule. While there was almost unanimous support provided to including the new data elements for AI/ANs, there was also very little concern expressed by states submitting comments specific to the addition of new data elements for AI/AN children and families. The few state comments that were received that expressed concern with the ICWA data elements were generally vague and expressed general concern regarding the burden of collecting new data of any type. Furthermore, as evidenced in the 2016 Final Rule discussion, ACF engaged in several discussions with states (6) regarding their perspectives on the proposed changes and as a result streamlined many of the data elements proposed in the SNPRM. The very thorough and

well-thought out regulatory process used in developing the 2016 Final Rule evidences that no additional collection of information is necessary.

**The data in the 2016 Final Rule is vital to the federal government, Congress, states, and tribes to effectively address the needs of AI/AN children and families.** AI/AN children have been overrepresented in state foster care systems for over two decades, going back to the initial implementation of the AFCARS system. Prior to the 2016 Final Rule AFCARS only asked questions related to whether a child in state care and custody was self-identified as AI/AN. This self-identification does not provide necessary information to understand whether a child has a political relationship with a federally recognized tribe as a citizen of that tribe and whether other federal law requirements under ICWA are being implemented, especially those related to the placement of the child in substitute care and whether the child's tribe was engaged in supporting the child and family. As a result, AFCARS data has provided little help in understanding how to address chronic and persistent issues, such as foster care disproportionality, that are barriers to the well-being of AI/AN children and families—issues that not only affect the well-being of children, but also cost states and tribes considerable amounts of their finite resources.

Another practical implication for not implementing the data elements for AI/AN children in the Final Rule is it sends a message to states and tribes that the federal government does not consider data collection on this population a priority issue, which also disincentivizes state and tribal efforts to address these issues at the federal and local level. As an example of how insufficient data collection can frustrate efforts to improve outcomes for AI/AN children, in the 2005 General Accountability Office (GAO) report on ICWA implementation (GAO-05-290) GAO indicated that they were hindered in their task to fully research and understand the questions submitted by a group of bi-partisan members of Congress because of insufficient data available from both state and federal data collection systems. At the local level, while states and tribes are increasingly partnering to improve ICWA implementation and improve outcomes for AI/AN children, data collection is a consistent concern and hampers efforts by states and tribes to demonstrate the need for additional policies and resources with state legislators. Since the publication of the Final Rule in December of 2016 a number of states have already begun work with tribes in their state on data system improvements and begun discussions of how the data would be supported and shared among state and tribal governments. Unfortunately, this Advanced Notice of Proposed Rule Making (ANPRM) has caused these efforts to be called into question and further delay the ability to seek real, meaningful answers to issues that frustrate AI/AN children's well-being on a daily basis. The regulations themselves, in response to the comments from tribes and states, describe the importance of the 2016 Final Rule changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations, and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems. In light of these comments and the recent passage of the Family First Prevention Services Act by Congress in February of 2018 (Division E of the Bipartisan Budget Agreement Act, H.R. 1892) where Congress is clearly expanding the purposes of the Title IV-E program to include not only

placement activities, but also prevention services to families, we see even more relevance and need for the data elements for AI/AN children and families included in the 2016 Final Rule.

Some of the expected benefits from implementing the full set of data elements for AI/AN children contained in the 2016 Final Rule include, but are not limited to, the following:

1. provide data on core ICWA requirements such as “active efforts” to prevent removals of AI/AN children and success in securing appropriate placements, especially kinship care placements, that have been demonstrated to improve AI/AN children’s connection to their family, culture, and tribal supports they need to succeed;
2. facilitate access to culturally appropriate services to AI/AN children and families to avoid out-of-home placement, keep children safe, and avoid unnecessary trauma to AI/AN children;
3. identify effective strategies to securing extended family and other tribal families who can serve as resources to AI/AN children and help address the shortage of AI/AN family placements for AI/AN children;
4. identify when tribes are being engaged to help support AI/AN children and families and trends related to how that engagement impacts outcomes for this population; and
5. provide avenues for collaboration between states and tribes that are more meaningful, and outcome driven, including improved policy development, technical assistance, training, and resource allocation as a result of having reliable data available.

**The ANPRM is arbitrary and capricious where it seeks only information on burdens.** This ANPRM arbitrarily focuses on collecting information about the burdens without considering the benefits. As required by law, the Final Rule conducted a careful analysis of the benefits and burdens, and appropriately amended the SNPRM to achieve a balanced Final Rule. As a Title IV-E Grantee we have a unique opportunity to comment on the implementation of the data elements. We feel the additional elements are beneficial to our practice.

The Agency “determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data.” 81 Fed. Reg. at 90528. The Agency explained how weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the Final Rule at 81 Fed Reg. 90528:

In response to state and tribal comments suggesting congruence with the BIA’s final rule, we revised data elements in this final rule as appropriate to reflect the BIA’s regulations including removing requirements that state title IV-E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV-E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance to increase state title IV-E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

There have been no significant changes justifying ACF’s proposal to reexamine the 2016 Final Rule. ACF seems to rely upon the President’s Executive Order (13777) for all federal agencies to identify regulations that are perceived as burdensome or unnecessary, but this is not a sufficient basis for ACF to act, as the Executive Order itself is arbitrary and unlawful where it provides an insufficient basis for reasonable decision-making relying solely on an examination of the burden



of regulations without the required balancing of benefits. Additionally, the Executive Order fails to provide justification to deviate from the statutory requirement for regulations.

**Responses to the Questions for Comment provided in the ANPRM:**

*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.*

We believe that the new data elements provided in the 2016 Final Rule that address health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, adoption, guardianship, and housing are important for AI/AN children and youth as well. Burdens to collecting this data for tribes and states are relatively small considering the benefits to improving outcomes for AI/AN children and families, especially given many of the data elements are correlated to some of the most vulnerable populations in child welfare systems and identification of risks associated to their well-being.

*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 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.*

The 2016 Final Rule requests title IV-E states provide the number of children in foster care who are considered Indian children as defined in ICWA. This is data that is currently not collected or reported in any national child welfare data system and is the key to understanding other important issues that are unique to AI/AN children and federal law requirements under ICWA. The current data in AFCARS only identifies AI/AN children through self-identification, which provides inaccurate and unreliable data. Relevant data measures in ICWA related to placement, engagement with the child's tribe, and efforts to avoid placement are not collected leaving federal agency, states, Congress, and tribes with little information to address pernicious issues impacting this population like foster care disproportionality. The 2016 Final Rule only requires states to collect the data elements in the 2016 Final Rule for AI/AN children that are ICWA eligible. Regardless of whether AFCARS data is collected all states are required by law to examine whether a child is ICWA eligible, so this effort is already required outside of AFCARS requirements. The 2016 Final Rule data specific to AI/AN children is not required to be collected for other non-Indian children so while there will be additional data collection for AI/AN children that are ICWA eligible, given the small number of AI/AN children in the vast majority of states this will not require a significant burden.

*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.*

All of the data elements for AI/AN children in the 2016 Final Rule are appropriate for a national data system like AFCARS. The activities related to the data are required by federal law, such as ICWA, and should be documented in any child welfare case file. The vast majority of the data would come from state agency activities with a few data elements coming in the form of state court orders, which should also be included in any well documented case file. To assume that some data may not be retrievable if it comes from judicial determinations is essentially saying that case files do not need to contain court orders, which would be out of alignment with nationally recognized standards in child welfare case management. In addition, not having this information in a case file poses risk that court orders are not being properly implemented and places children in jeopardy of not receiving the benefits of court oversight in child welfare.

Capturing AI/AN data through case file reviews or other qualitative methods would not provide the data that Congress, states, and tribes need on an ongoing basis to make necessary changes in policy, practice, and resource allocation to address the serious problems that have been impacting AI/AN children for over two decades. Existing qualitative methods, like case file reviews under the Child and Family Services Reviews, have demonstrated the limitations of this data for informing Congress on how best to address critical concerns for AI/AN children. Case file reviews in many states include only a handful of cases involving AI/AN children and the data retrieved does not lend itself to adequately informing local efforts to address serious concerns related to outcomes for this population, much less issues of national concern. AFCARS is much better suited to collecting the type of data required for AI/AN children and efforts to shift data collection to other less comprehensive data systems with less regular data collection and reporting will have a negligible effect on improving data for this population.

*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.*

In the absence of a national data reporting requirement, it is guaranteed the current variability in state data collection and reporting will continue as evidenced by only a few states collecting any data specific to AI/AN children, and the current AFCARS data questions that use self-identification as a determinant of whether a child is AI/AN, rather than the appropriate questions related to their citizenship in a tribal government. Even with appropriate questions related to whether an AI/AN child or their family are eligible for ICWA protections, linkages to other AFCARS data cannot be assumed to be sufficiently correlated for informing policymakers and child welfare agencies without the other data elements for AI/AN children in the 2016 Final Rule also being implemented. ACF as much as any stakeholder should have a strong interest in improving the availability of accurate and reliable data for this population, which they have dedicated significant amounts of their resources to in the form of technical assistance and training.

*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.*

Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points is critical. The Title IV-B plan requirement for states that requires that states consult with tribal governments on their plans to implement ICWA has so far relied primarily on anecdotal information that is not collected or tracked uniformly by ACF leading to uneven responses to concerns about poor outcomes for AI/AN children in different states. The data elements contained in the 2016 Final Rule are linked in terms of being able to provide a complete picture of how AI/AN children are doing, and by eliminating or streamlining some of these data elements ACF would be compromising the integrity of the data to confidently inform policymakers and other stakeholders as to the important data trends and explanations for these trends.

In addition, as was stated earlier in our general comments, ICWA has been viewed as the “gold standard” in child welfare practice by leading national child welfare organizations and now with the passage of the Family First Prevention Services Act we can see there is increased support and interest in capturing more information on how states and tribes can improve outcomes for children and families beyond just improving the placement experience. The 2016 Final Rule data elements specific to AI/AN children are aligned with these acknowledgements and will be significantly helpful to all stakeholders involved in improving services and outcomes for AI/AN children.

**Conclusion:**

The experience of having little to no data collected for AI/AN children through AFCARS over the last two decades has resulted in not meaningful improvements in the safety and well-being for AI/AN children and could be argued as having contributed to the worsening conditions for this population. We know of no other federal child welfare law that does not have some form of basic data collection and certainly not one that is 40 years old as ICWA is. The AFCARS data elements for AI/AN children in the 2016 Final Rule have incredible potential to improve outcomes for this population, but only if the data elements are not heavily modified or eliminated. While there are burdens for states to collect this data, for the past 40 years it has primarily AI/AN children, their families, and tribal communities that have born the burden while little to no reliable data has been collected and the crisis of foster care disproportionality has worsened. The time has come to move forward with this critically important data collection for AI/AN children and families and end the delays for not collecting the data that is necessary to support and promote healing for this population.

Sincerely,



Gary Batton, Chief  
Choctaw Nation of Oklahoma

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p2-manl
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0122  
Klamath Tribes of Oregon

---

## Submitter Information

**Name:** Don Gentry  
**Address:** 97624  
**Organization:** Klamath Tribes of Oregon

---

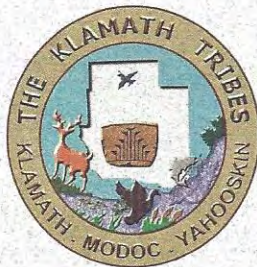
## General Comment

See Attached

---

## Attachments

Klamath Tribes of Oregon



## The Klamath Tribes Tribal Council

June 12, 2018

Attn: Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Policy Division  
330 C Street SW  
Washington, DC 20024

Submitted via electronic correspondence at: [CBcomments@acf.hhs.gov](mailto:CBcomments@acf.hhs.gov)

Re: RIN: 0970-AC72 **Adoption and Foster Care Analysis and Reporting System**; Advance Notice of Proposed Rulemaking (3/15/2018)

Dear Ms. McHugh:

The Klamath Tribes submits these comments regarding the Advance Notice of Proposed Rulemaking published in the *Federal Register* on March 15, 2018 (Volume 83, No. 51, page 11449). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

Klamath Tribal children are overrepresented within the child welfare system in the State of Oregon. The Klamath Tribes, in coordination with our State Child Welfare partners, are developing strategies for addressing this overrepresentation based on data gathered through AFCARS. Although we expect the State of Oregon to continue to collect this specific ICWA data currently mandated through AFCARS, the elimination (streamlining) of the AFCARS data will eliminate the comparison of Oregon to other States. Furthermore, this streamlining will threaten the ongoing data analysis currently being conducted via the AFCARS data. Although the State of Oregon is today committed to continuing to collect this data the elimination of this requirement may create the opportunity for future collection to be streamlined (eliminated).

### **Responses to the Questions for Comment provided in the ANPRM:**

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.*

501 Chiloquin Blvd. – P.O. Box 436 – Chiloquin, Oregon 97624  
(541) 783-2219 – Fax (541) 783-3706



HHS001263

We believe that the new data elements provided in the 2016 Final Rule that address health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, adoption, guardianship, and housing are important for AI/AN children and youth as well. Burdens to collecting this data for tribes and states are relatively small considering the benefits to improving outcomes for AI/AN children and families, especially given many of the data elements are correlated to some of the most vulnerable populations in child welfare systems and identification of risks associated to their well-being.

*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 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.*

The 2016 Final Rule requests title IV-E states provide the number of children in foster care who are considered Indian children as defined in ICWA. This is data that is currently not collected or reported in any national child welfare data system and is the key to understanding other important issues that are unique to AI/AN children and federal law requirements under ICWA. The current data in AFCARS only identifies AI/AN children through self-identification, which provides inaccurate and unreliable data. Relevant data measures in ICWA related to placement, engagement with the child's tribe, and efforts to avoid placement are not collected leaving federal agency, states, Congress, and tribes with little information to address pernicious issues impacting this population like foster care disproportionality. The 2016 Final Rule only requires states to collect the data elements in the 2016 Final Rule for AI/AN children that are ICWA eligible. Regardless of whether AFCARS data is collected all states are required by law to examine whether a child is ICWA eligible, so this effort is already required outside of AFCARS requirements. The 2016 Final Rule data specific to AI/AN children is not required to be collected for other non-Indian children so while there will be additional data collection for AI/AN children that are ICWA eligible, given the small number of AI/AN children in the vast majority of states this will not require a significant burden.

*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.*

All of the data elements for AI/AN children in the 2016 Final Rule are appropriate for a national data system like AFCARS. The activities related to the data are required by federal law, such as ICWA, and should be documented in any child welfare case file. The vast majority of the data would come from state agency activities with a few data elements coming in the form of state court orders, which should also be included in any well documented case file. To assume that some data may not be retrievable if it comes from judicial determinations is essentially saying that case files do not need to contain court orders, which would be out of alignment with nationally recognized standards in child welfare case management. In addition, not having this information in a case file poses risk that court orders are not being properly implemented and places children in jeopardy of not receiving the benefits of court oversight in child welfare.

Capturing AI/AN data through case file reviews or other qualitative methods would not provide the data that Congress, states, and tribes need on an ongoing basis to make necessary changes in policy, practice, and resource allocation to address the serious problems that have been impacting AI/AN children for over two decades. Existing qualitative methods, like case file reviews under the Child and Family Services Reviews, have demonstrated the limitations of this data for informing Congress on how best to address critical concerns for AI/AN children. Case file reviews in many states include only a handful of cases involving AI/AN children and the data retrieved does not lend itself to adequately informing local efforts to address serious concerns related to outcomes for this population, much less issues of national concern. AFCARS is much better suited to collecting the type of data required for AI/AN children and efforts to shift data

collection to other less comprehensive data systems with less regular data collection and reporting will have a negligible effect on improving data for this population.

*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.*

In the absence of a national data reporting requirement, it is guaranteed the current variability in state data collection and reporting will continue as evidenced by only a few states collecting any data specific to AI/AN children, and the current AFCARS data questions that use self-identification as a determinant of whether a child is AI/AN, rather than the appropriate questions related to their citizenship in a tribal government. Even with appropriate questions related to whether an AI/AN child or their family are eligible for ICWA protections, linkages to other AFCARS data cannot be assumed to be sufficiently correlated for informing policymakers and child welfare agencies without the other data elements for AI/AN children in the 2016 Final Rule also being implemented. ACF as much as any stakeholder should have a strong interest in improving the availability of accurate and reliable data for this population, which they have dedicated significant amounts of their resources to in the form of technical assistance and training.

*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.*

Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points is critical. The Title IV-B plan requirement for states that requires that states consult with tribal governments on their plans to implement ICWA has so far relied primarily on anecdotal information that is not collected or tracked uniformly by ACF leading to uneven responses to concerns about poor outcomes for AI/AN children in different states. The data elements contained in the 2016 Final Rule are linked in terms of being able to provide a complete picture of how AI/AN children are doing, and by eliminating or streamlining some of these data elements ACF would be compromising the integrity of the data to confidently inform policymakers and other stakeholders as to the important data trends and explanations for these trends.

In addition, as was stated earlier in our general comments, ICWA has been viewed as the “gold standard” in child welfare practice by leading national child welfare organizations and now with the passage of the Family First Prevention Services Act we can see there is increased support and interest in capturing more information on how states and tribes can improve outcomes for children and families beyond just improving the placement experience. The 2016 Final Rule data elements specific to AI/AN children are aligned with these acknowledgements and will be significantly helpful to all stakeholders involved in improving services and outcomes for AI/AN children.

### **Conclusion**

The experience of having little to no data collected for AI/AN children through AFCARS over the last two decades has resulted in not meaningful improvements in the safety and well-being for AI/AN children and could be argued as having contributed to the worsening conditions for this population. We know of no other federal child welfare law that does not have some form of basic data collection and certainly not one that is 40 years old as ICWA is. The AFCARS data elements for AI/AN children in the 2016 Final Rule have incredible potential to improve outcomes for this population, but only if the data elements are not heavily modified or eliminated. While there are burdens for states to collect this data, for the past 40 years it has primarily AI/AN children, their families, and tribal communities that have born the burden while little to no reliable data has been collected and the crisis of foster care disproportionality has worsened.

The time has come to move forward with this critically important data collection for AI/AN children and families and end the delays for not collecting the data that is necessary to support and promote healing for this population.

Sincerely,

A handwritten signature in blue ink, appearing to read "Don Gentry", with a stylized flourish at the end.

Don Gentry, Chairman  
The Klamath Tribes



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p2-zn1x
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0123  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Sarah-Hope Parmeter  
**Address:** 95076  
**Email:** shparmet@ucsc.edu  
**Organization:** University of California, Santa Cruz

---

## General Comment

It's absolutely essential that we ask youth in the social services system whether they are LGBTQ+. The bigotry youth in these categories face plays a huge role in their lives and must be addressed if we are to serve them well.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p3-hrxx
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0124  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Kristin Sheridan

---

## General Comment

LGBTQ youth face special hurdles in life which foster care and other agencies need to be aware of and able to respond to. Also, collecting this data allows policy makers information on which to base decisions about need. Thus it is important to ask about the impact of sexual orientation on the need for foster care.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p3-w15v
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0125  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Nat Paul

---

## General Comment

See Attached

---

## Attachments

private citizen

I am writing to comment on the Notice of Proposed Rule-making at 83 Fed. Reg. 11449 proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) [RIN 0970-AC72]. I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to “family conflict related to child's sexual orientation, gender identity, or gender expression.” Studies show that approximately 19% of foster youth identify as LGBTQ, and they experience worse safety, well-being and permanency outcomes than non-LGBTQ youth. For states and tribes to improve these outcomes and identify best practices for doing so, data collection on the state and national level is urgently needed. Same-sex couples foster at six times the rate of their opposite-sex counterparts, and can provide loving, supportive homes for America’s 400,000+ foster youth.

I also urge HHS to retain the data elements related to the Indian Child Welfare Act, as American Indian and Native Alaskan foster youth are another vulnerable population over-represented in foster care with worse safety, well-being, and permanency outcomes than non-Native youth.

Further, I ask HHS to add voluntary gender identity questions for foster youth over the age of 14 and foster and adoptive parents and guardians to AFCARS. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined, comprehensive services.

Point in time studies for homeless LGBTQ+ youth in cities across the nation show 40% of homeless youth identify as LGBTQ+ and DC showed 53% being LGBTQ+ with 26% leaving an abusive family. These youth that are seen as disposable simply for being who they are need to be accounted for in appropriate data collection because of their disproportionate vulnerabilities while making up an assumed 15% of the populace and making up 40+% of the homeless youth numbers too many of these children are falling through the cracks of systemic oversight.

Nat Paul

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p3-azvh
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0126  
New Jersey

---

## Submitter Information

**Name:** Nicole Ruiz  
**Address:** 08625  
**Email:** Nicole.Ruiz@dcf.nj.gov  
**Organization:** New Jersey

---

## General Comment

Please see attached comment.

---

## Attachments

New Jersey



**State of New Jersey**

DEPARTMENT OF CHILDREN AND FAMILIES  
50 EAST STATE STREET  
P.O. BOX 729  
TRENTON, NEW JERSEY 08625-0729

PHILIP MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

CHRISTINE NORBUT BEYER, MSW  
*Commissioner Designate*

June 13, 2018

Ms. Kathleen McHugh, Director  
Children's Bureau, Division of Policy  
Administration for Children and Families  
United States Department of Health and Human Services  
330 C Street SW  
Washington, DC 20024

Dear Ms. McHugh,

New Jersey appreciates the opportunity to review and provide comments on the Advance Notice of Proposed Rulemaking that was published in the Federal Register on March 15, 2018.

New Jersey continues to be strongly committed to using data for analyzing safety, permanency, and well-being outcomes for the children and families we serve. Consistent with New Jersey's comments provided in 2015, however, our assessment is that certain amendments under the Final Rule present a high burden on caseworkers and supervisors; and that taken as a whole, these amendments require significant changes to the current SACWIS/CCWIS system, are complex for a state agency to collect and report on accurately, and that the financial cost of implementing this rule would be significant.

Additionally, New Jersey like other states, is balancing multiple priorities currently identified by the Children's Bureau. New Jersey is completing the final stages of the AFCARS Improvement Plan; understanding the impact and implementation of shifting resources under the Family First Act; and developing, implementing and reporting on an Improvement Plan resulting from the Child and Family Services Review. An appropriate timeframe for implementation of any new rules should contemplate jurisdiction's needs to manage multiple major federal priorities.

**CHILD WELFARE CASE PRACTICE**

New Jersey expresses continued concern about the impact of the Final Rule on the day-to-day work of the child welfare agency and its staff. The gathering of the data will largely fall on the shoulders of our front-line caseworks and supervisors. New Jersey is mindful that this work will require additional time and effort of the caseworker to gather, synthesize and document this new information. The number of new data elements a caseworker would need to document would significantly increase. We urge consideration of the cost of collecting additional data in this way, compared to the need for this sort of

[www.nj.gov/DCF](http://www.nj.gov/DCF)

data. We all share an interest in protecting the caseworker's primary responsibility of providing quality child welfare case practice to vulnerable children and families, and hope that we can distinguish between data gathering that is necessary to appropriately manage child welfare practice, and data gathering in service of research. Our strong recommendation is that data gathering necessary to promote research should be accomplished in a way that does not impose the research task of assembling datasets on frontline child welfare practitioners.

In addition to the burden on front-line caseworker staff, several new data elements will require DCF to amend policy and develop and implement Statewide professional development plans. New Jersey would partner with internal and external stakeholders to review literature, identify best practices, and conduct focus groups with staff. These best practices for professional development impose a significant cost to ensure quality case practice is implemented across all 46 local offices in New Jersey.

New Jersey has identified several new data elements that seem overly burdensome, many of which have limited value in measuring outcomes for children in out of home placement, and will pose a significant burden to the State's child welfare operation:

- School Enrollment and Educational Level  
Currently, New Jersey policy requires staff to obtain collateral information from the child's school with regard to the overall functioning of the child in his/her school system. The caseworker is also required to document educational stability for each child in placement. However, New Jersey does not require its staff to input granular data about a child's placement proximity to the school, the district or zoning rules around the school, and educational services or programs. Expectations that staff will record educational data at this level of specificity is unrealistic and will likely compromise the quality and usefulness of the data.
- Prior Adoptions  
While caseworkers routinely document a child's prior adoption or guardianship in the case record, the specific details including the dates and the type/jurisdiction may not be available at the time of placement, particularly for adoptions that are finalized outside of New Jersey. It would be time consuming for caseworkers to obtain legal records from other jurisdictions leading to inaccurate and/or untimely documentation.
- Sexual Orientation  
New Jersey recognizes the importance of developing a system of care to address the various needs of youth. This work includes building competency, appropriate policies, training and services to support healthy development related to sexual orientation, gender identity and expression. While there is value in gathering data on the sexual orientation of youth and foster parents for the purpose of better aligning services, it is critical that the data collection process not be undertaken in a manner that risks privacy violations or discriminatory outcomes. This work is complex and requires a significant commitment from the agency to implement responsibly. To effectively report on sexual orientation, New Jersey anticipates a 5-year implementation timeline. This would allow the state to engage a wide array of

stakeholders, review literature, identify best practices, develop policy in alignment with the core conditions of New Jersey's Case Practice Model, ensure integration of healthy development into relevant trainings, provide support to caseworkers through coaching and mentoring, and ultimately report accurate demographic data on sexual orientation.

### **INFORMATION TECHNOLOGY (IT) and REPORTING**

New Jersey is currently in an AFCARS Improvement Plan (AIP) and as a result, we are currently making comprehensive modifications and enhancements to our SACWIS/CCWIS system. The State system is complex; the time, effort and costs to make these changes is significant. In addition to the AIP, New Jersey has identified other IT priorities that have resulted from the Child and Family Services Review (CFSR) including modifications to the Structured Decision Making (SDM) Safety and Risk Assessments.

The additional data elements under the Final Rule will require New Jersey to undertake a lengthy and costly process to redesign our SACWIS/CCWIS system while simultaneously making the modifications described above. Out of the 272 data elements, 153 will be new to New Jersey. The 65 ICWA data elements alone will require an estimated 640 hours of analysis. Of the existing 54 data elements, 5 require system modifications. Additionally, there are 11 new guardianship elements, not included in the 272 count. Table 1 below provides an overview of New Jersey's estimated level of effort for all modifications and new data elements. Each data element is classified into low or medium level of effort depending on the complexity of the changes required. In total, New Jersey expects these changes to take three years to complete in the state's SACWIS/CCWIS system.

In addition, if any changes are required to the existing file format, a complete re-write may be necessary. This all results in an intensified need for additional IT staff resources during system design and development, additional contingency planning, data retention issues, and data transmission process issues.

**Table 1: Pre-Design Level of Effort**

<b>Number of Data Points</b>	<b>Analysis/Design/Testing Per Data Point</b>	<b>Development/Testing Total</b>	<b>Summary</b>
150	Low (Less than a week)	Extremely High (More than a year)	This includes the current data points we collect.
59	Medium (Less than a month)		This includes the guardianship not currently collected.
74	Medium (Less than a month)		This includes the ICWA elements.
Total Time	2 years	1 year	



Given the burden of work outlined above, additional data and system analysts are needed to implement the new requirements in a timely manner. For each new data element, a team of data and system analysts engage front-end system users to identify impacted business processes. The analyst team then leads user acceptance testing by reviewing code, creating test cases, entering data, analyzing results, and performing quality assurance. The data analysts then work with New Jersey's performance management system to provide updates on system changes that impact statewide performance measures.

File Submission

New Jersey objects to the new 30-day file transaction timeframe as a barrier to ensuring the quality of all required data elements. We believe this standard increases the likelihood of inaccurate and invalid data. New Jersey recommends a continued 45-day period for submission, especially given the increase in the number of new data elements and the potential for accompanying penalties.

In summary, although New Jersey supports the intent of focused longitudinal data reporting, we believe that some of the amendments place a burden on the organization thereby compromising the quality of services provided by caseworkers. Additionally, the new data elements compromise data quality through impractical timeframes, penalty provisions, and unnecessary details. The required modifications present an unreasonable cost burden to the State and grossly underestimate the complexity of implementing the changes in the timeframes allotted.

Sincerely,



Katherine L. Stoehr, MPA  
Deputy Commissioner of Operations  
New Jersey Department of Children and Families

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p3-p666
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0127  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Sue Paul

---

## General Comment

As a foster parent, I am opposed to HHS discarding the question on whether children have left home because of family conflict related to child's sexual orientation, gender identity, or gender expression. I encourage the HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians. I also encourage HHS to retain the data that has been collected so far regarding these questions.

LGBTQ youth often encounter a number of challenges and disparities as compared to non-LGBTQ children. Many report experiences of discrimination, marginalization, and an overall lack of acceptance. The permanency and placement options have historically been limited for many LGBTQ youth. Knowledge and information can help ease some of these issues, creating a more inclusive system of care.

in a study of LGBTQ youth in state custody, almost half reported that they were removed from their home, ran away from home, or were thrown out of their home for reasons directly related to their sexual orientation or gender identity. (<https://www.ncbi.nlm.nih.gov/pubmed/19117902>)

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p3-1o1m
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0128  
Vermont

---

## Submitter Information

**Name:** Margo Bryce  
**Address:** 05671  
**Organization:** Vermont Department for Children and Families

---

## General Comment

State of Vermont DCF

---

## Attachments

Vermont



**State of Vermont**  
**Department for Children and Families**  
**Family Services Division**  
 280 State Drive  
 HC 1 North  
 Waterbury, VT 05671-1030  
 www.dcf.vermont.gov

*Agency of Human Services*

June 13, 2018

Kathleen McHugh  
 Department of Health and Human Services  
 Administration for Children and Families  
 Children's Bureau Division of Policy  
 330 C Street SW  
 Washington, D.C. 20024

RE: Adoption and Foster Care Analysis and Reporting System (AFCARS) Advance Notice of Proposed Rulemaking (ANPRM) Docket number 2018-05042 (RIN number 0970-AC72)

Dear Ms. McHugh,

Thank you for the opportunity to provide additional comments related to the cost and burden estimates for implementation of the AFCARS rule. Vermont understands the federal reliance upon AFCARS data to improve child and family outcomes and Vermont generally, supports improvements by states to provide additional pertinent data through AFCARS reporting. As requested, this response attempts to provide burden and cost estimates to Vermont relating to the AFCARS final rule. In addition to estimating costs relating to data collection and data systems' modifications, we are also including information relating to anticipated delays to implementation of a Comprehensive Child Welfare Information System (CCWIS) by needing to comply with the AFCARS final rule.

**Data Collection:**

The new AFCARS requirements will require additional time on the part of child welfare staff to collect and report information. Using the ACF estimate of 3 hours per case at \$23.88 per hour to the existing and estimated new out-of-home care cases, Vermont estimates that the cost associated to data collection will be **\$311,634** over the first four years of implementation.

FFY	Existing Average Number of Children/Youth in Out-of-Home Care	Average Number of Children/Youth entering Out-of-Home Care	Number of Hours (cases x 3 hours)	Estimated Costs (hours x 23.88)
2020	1,350	750	6,300	\$ 150,444
2021		750	2,250	\$ 53,730
2022		750	2,250	\$ 53,730
2023		750	2,250	\$ 53,730



**Data Systems and Extractions Modifications:**

The new AFCARS requirements will require additional time on the part of child welfare information technology, project management, business analyst and program management staff to make the necessary revisions to our current data systems as well as our extraction file. In Vermont, there are protocols that must be followed when undertaking any substantial changes relating to our data systems. Substantial changes require the assignment of a project manager, business analyst and business lead in addition to the actual developer staff implementing changes. For Vermont, the addition of 153 data elements will require developer time to update existing fields, create new fields on existing screens as well as the development of new data collection screens. The addition of these data elements will require an estimated level of effort of 1,560 hours for a developer. Please note that this represents 9 months at 40 hours per week, however, current staffing levels will not allow for a single developer to be assigned full time for this project. Rather, this work will need to take place over the span of 18 months. All other staff time is estimated at 5 hours per week over 18 months. This represents a total cost of **\$112,063** over the two years leading up to AFCARS implementation.

Staff Role	Number of Hours	ACF Hourly Rate	Estimated Costs
Project Manager	390	\$44.12	\$ 17,207
Business Analyst	390	\$44.12	\$ 17,207
Business Lead	390	\$33.38	\$ 13,018
Developer	1,560	\$41.43	\$ 64,631

**Comprehensive Child Welfare Information System (CCWIS):**

As mentioned previously, the AFCARS final rule will require additional time on the part of child welfare information technology, project management, business analyst and program management staff to make the necessary significant revisions to our current data systems as well as our extraction file. Any staff time diverted to the implementation of the AFCARS rule will cause significant delay in our ability to move forward with planning and implementation of CCWIS. Delays in our CCWIS project will cause additional costs for Vermont related to staff time. Our existing data systems do not fully exchange information with each other which means that our staff spend additional time entering the same information in both systems. Additionally, staff experience significant redundancy in their work by needing to manually complete referrals, produce case plans, court documents and other case planning documents which are not currently part of our information system. Vermont is currently in the planning phase of our CCWIS project. Included in our planning around CCWIS is looking to our Agency of Education, Medicaid office and our Courts to establish data exchanges that will provide child welfare staff with important information involving the children and families we serve and be included in AFCARS. Given current workloads for our case worker staff, we are concerned about the additional time that will be necessary to collect information relating to education, medical and court. We believe the best path forward is to develop data exchanges as mentioned and our best way to incorporate these data exchanges is through our CCWIS project.

The total estimated burden to our state for implementation of the AFCARS final rule is **\$423,697**. This amount does not include costs relating to data collection of ICWA data elements, staff training, and the costs we will experience by delaying the work on our CCWIS project. Vermont urges that there be consideration for states who intend to move forward with CCWIS and allow for additional time to comply so as not to duplicate efforts and delay the goals of a CCWIS system – to significantly reduce redundancy, improve data exchanges, meet data quality standards and improve overall effectiveness.

Thank you again for the opportunity to provide comments relating to this ANPRM. Should there be an opportunity to do so, Vermont is also to participate in future discussions related to the implementation of the AFCARS rule.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karen Shea', with a long horizontal flourish extending to the right.

Karen Shea  
Deputy Commissioner

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-mi9k
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0129  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Allyson Harkey

---

## General Comment

We must continue to protect ALL children, including those who are LGBTQ+. HHS should keep the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression. We need to continue tracking abuses against LGBTQ+ people.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-4gjo
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0130  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Brenda Meikle

---

## General Comment

I urge HHS to keep asking if children were removed from their home due to family conflict related to child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents.



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-lw1q
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0131  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Mary Fahy

---

## General Comment

Please protect LGBTQ children and families by retaining the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-4zq1
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0132  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Adrienne Young  
**Address:** 73086  
**Email:** gentlemindmom@gmail.com

---

## General Comment

I am writing to comment on the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (Proposed Rule) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) (RIN 0970-AC72).

I urge HHS to retain the voluntary sexual orientation questions for foster youth and foster and adoptive parents and guardians, as well as the data element on the reason for removal of a child from a home due to family conflict related to child's sexual orientation, gender identity, or gender expression.

Studies show that approximately 19% of foster youth identify as LGBTQ, and they experience worse safety, well-being, and permanency outcomes than non-LGBTQ youth. For states and tribes to improve these outcomes and identify best practices for doing so, data collection on the state and national level is urgently needed.

Same-sex couples foster at six times the rate of their opposite-sex counterparts, and can provide loving, supportive homes for America's 400,000+ foster youth.

I also urge HHS to retain the data elements related to the Indian Child Welfare Act, as American Indian and Native Alaskan foster youth are another vulnerable population overrepresented in foster care with worse safety, well-being, and permanency outcomes than non-Native youth.

: I urge HHS to keep asking if children were removed from their home due to family conflict related to child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-tzve
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0133  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Susan Cordes

---

## General Comment

I urge HHS to keep asking if children were removed from their home due to family conflict related to a child's sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth and Foster or adoptive parents. We need to keep the question about family conflict in the HHS document so we can fully support and understand the context by which a child left home and be able to arrange for appropriate accommodations and care for them.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-gdrg
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0134  
Eastern Washington University School of Social Work

---

## Submitter Information

**Name:** Thomas Crofoot  
**Address:** 99004  
**Organization:** Eastern Washington University School of Social Work

---

## General Comment

See attached

---

## Attachments

Eastern Washington University School of Social Work



Thomas L. Crofoot  
MSW, Ph.D.  
Professor  
Eastern Washington  
University  
Social Work  
Senior Hall 208  
(SNR 208)  
Cheney, WA 99004-  
9975

June 13, 2018

Attn: Kathleen McHugh  
United States Department of Health and Human Services  
Administration for Children and Families  
Policy Division  
330 C Street SW  
Washington, DC 20024

Submitted via electronic correspondence at: [CBcomments@acf.hhs.gov](mailto:CBcomments@acf.hhs.gov)

**Re: RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System; Advance Notice of Proposed Rulemaking (3/15/2018)**

Dear Ms. McHugh:

I am submitting these comments regarding the Advance Notice of Proposed Rulemaking published in the Federal Register on March 15, 2018 (Volume 83, No. 51, page 11449). My comments pertain to data elements specific to American Indian and Alaska Native (AI/AN) children contained within the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) Final Rule published on December 14, 2016. The data elements we are commenting on address a number of relevant federal law requirements pertaining to the Indian Child Welfare Act (ICWA).

On May 8, 2016 I wrote in support of the current rules responding to the Supplemental Notice of Public Rulemaking (SNPRM)—Proposed AFCARS data elements related to the Indian Child Welfare Act of 1978. The comments I made in that letter continue to be valid now. This data is vital, and the importance of the data outweighs minor additions to data collecting processes. AI/AN children and families and the child welfare system as a whole are made vulnerable by failures in data collection.

Policy makers including legislators and child welfare administrators make decisions based on the data, and they assume that accurate and consistent data is being collected. Child welfare experts and social work researchers do not have a good understanding of the incomplete nature of data collected from states on AI/AN children. I have spent considerable time and effort explaining problems with the data to my colleagues.

*voice:*  
(509) 359-4586

The Children's Bureau report: *States' Consultation and Collaboration with Tribes and Reported Compliance with the Indian Child Welfare Act: Information from States' and Tribes' 2015–2019*

*Child and Family Services Plans* confirms what I wrote in my 2016 letter- states are inconsistent in data collection and many states collect minimal to no data.

**I oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.**

Having summarized my position here, I will follow with comments you will receive from tribes and AI/AN organizations.

It has been almost 25 years since the establishment of the AFCARS data collection system and 40 years since the enactment of ICWA. AI/AN children are still waiting to have basic data collected that describes their conditions, how relevant federal law under Title IV-B, Title IV-E, and ICWA is being implemented with respect to AI/AN children, and the identification of critical data that can inform local and national interventions to eliminate well-documented and long-term foster care disproportionality and service disparities that AI/AN children face. Each year that data is not collected is another year AI/AN children will not see significant improvements to their well-being and policymakers and other government officials will not have the data they need to make smart, effective changes that can address these very serious, long-term problems; this is an untenable situation. I also note that nothing has changed since the publication of the 2016 Final Rule that would change the need for this critical data for AI/AN children. Instead, Congress has made it clear with the passage of the Family First Prevention Services Act (Division E of the Bipartisan Budget Agreement Act of H.R. 1892) that they intend for Title IV-E to be expanded to focus on additional services and efforts, not just a narrow band of placement activities.

**General Comments**

The 2016 Final Rule is within ACF's Statutory Authority and Mission. Section 479 of the Social Security Act mandates the Department of Health and Human Services (DHHS) collect national, uniform, and reliable information on children in state foster care and adoptive care. The statutory language is expansive and suggests a broad collection of data for children under state care who are in foster care or adoption that includes their demographics, characteristics, and status while in care. Section 1102 of the act instructs the Secretary of DHHS to develop regulations necessary to carry out the functions for which DHHS is responsible under the act.

In addition, Section 422 of the Social Security Act requires DHHS to collect descriptions from states of a state's efforts to consult with tribes on the specific measures taken by a state to comply with ICWA.

---

This provision has been in federal law since 1994 and DHHS has responded by asking states to provide this information, along with additional information related to ICWA implementation in state Annual Progress and Services Reports. DHHS also has a long history of collecting information, although limited, on ICWA implementation through their Child and Family Services Review process with states. These reports and reviews are authorized under the broad discretionary authority provided to DHHS under Titles IV-B and IV-E of the Social Security Act to collect data from states and review their progress against different federal child welfare requirements.

The Final Rule, which ACF developed under the statute, ensures the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children to whom ICWA applies, and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under the Social Security Act. In addition, there is no statutory requirement that all data elements must be specifically tied to Title IV-E or Title IV-B requirements only.

ACF provided ample notice and opportunities to comment on the 2016 Final Rule. On April 2, 2015, ACF issued a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing changes to AFCARS data elements. A year later on April 7, 2016, ACF published another SNPRM proposing the addition of new AFCARS data elements related specifically to data concerning American Indian and Alaska Native (AI/AN) children and families. The proposed data was related to federal law requirements specific to ICWA and placements of AI/AN children. The Final Rule was published eight months later on December 14, 2016 and included the ICWA data elements.

The 2016 Final Rule was the product of a thorough and well-reasoned process that included opportunities for states, tribes, and other interested parties to comment. Issues related to the benefits for AI/AN children and families and burdens upon states to collect and report the data were thoroughly addressed in the Final Rule. While there was almost unanimous support provided to including the new data elements for AI/ANs, there was also very little concern expressed by states submitting comments specific to the addition of new data elements for AI/AN children and families. The few state comments that were received that expressed concern with the ICWA data elements were generally vague and expressed general concern regarding the burden of collecting new data of any type. Furthermore, as evidenced in the 2016 Final Rule discussion, ACF engaged in several discussions with states (6) regarding their perspectives on the proposed changes and as a result streamlined many of the data elements proposed in the SNPRM. The very thorough and well-thought out regulatory process used in developing the 2016 Final Rule evidences that no additional collection of information is necessary.

The data in the 2016 Final Rule is vital to the federal government, Congress, states, and tribes to effectively address the needs of AI/AN children and families. AI/AN children have been overrepresented in state foster care systems for over two decades, going back to the initial implementation of the AFCARS system. Prior to the 2016 Final Rule AFCARS only asked questions related to whether a child in state care and custody was self-identified as AI/AN. This self-identification does not provide necessary information to understand whether a child has a political relationship with a federally recognized tribe as a citizen of that tribe and whether other federal law requirements under ICWA are being implemented, especially those related to the placement of the child in substitute care and whether the child's tribe was engaged in supporting the child and family. As a result, AFCARS data has provided little help in understanding how to address chronic and persistent issues, such as foster care disproportionality, that are barriers to the well-being of AI/AN children and families—issues that not only affect the well-being of children, but also cost states and tribes considerable amounts of their finite resources. Another practical implication for not implementing the data elements for AI/AN children in the Final Rule is it sends a message to states and tribes that the federal government does not consider data collection on this population a priority issue, which also disincentivize state and tribal efforts to address these issues at the federal and local level.

As an example of how insufficient data collection can frustrate efforts to improve outcomes for AI/AN children, in the 2005 General Accountability Office (GAO) report on ICWA implementation (GAO-05-290) GAO indicated that they were hindered in their task to fully research and understand the questions submitted by a group of bi-partisan members of Congress because of insufficient data available from both state and federal data collection systems. At the local level, while states and tribes are increasingly partnering to improve ICWA implementation and improve outcomes for AI/AN children, data collection is a consistent concern and hampers efforts by states and tribes to demonstrate the need for additional policies and resources with state legislators. Since the publication of the Final Rule in December of 2016 a number of states have already begun work with tribes in their state on data system improvements and begun discussions of how the data would be supported and shared among state and tribal governments. Unfortunately, this Advanced Notice of Proposed Rule Making (ANPRM) has caused these efforts to be called into question and further delay the ability to seek real, meaningful answers to issues that frustrate AI/AN children's well-being on a daily basis.

The regulations themselves, in response to the comments from tribes and states, describe the importance of the 2016 Final Rule changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:



Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations, and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.

In light of these comments and the recent passage of the Family First Prevention Services Act by Congress in February of 2018 (Division E of the Bipartisan Budget Agreement Act, H.R. 1892) where Congress is clearly expanding the purposes of the Title IV-E program to include not only placement activities, but also prevention services to families, we see even more relevance and need for the data elements for AI/AN children and families included in the 2016 Final Rule.

Some of the expected benefits from implementing the full set of data elements for AI/AN children contained in the 2016 Final Rule include, but are not limited to, the following:

1. Provide data on core ICWA requirements such as “active efforts” to prevent removals of AI/AN children and success in securing appropriate placements, especially kinship care placements, that have been demonstrated to improve AI/AN children’s connection to their family, culture, and tribal supports they need to succeed;
2. Facilitate access to culturally appropriate services to AI/AN children and families to avoid out-of-home placement, keep children safe, and avoid unnecessary trauma to AI/AN children;
3. Identify effective strategies to securing extended family and other tribal families who can serve as resources to AI/AN children and help address the shortage of AI/AN family placements for AI/AN children;
4. Identify when tribes are being engaged to help support AI/AN children and families and trends related to how that engagement impacts outcomes for this population; and
5. Provide avenues for collaboration between states and tribes that are more meaningful, and outcome driven, including improved policy development, technical assistance, training, and resource allocation as a result of having reliable data available.

The ANPRM is arbitrary and capricious where it seeks only information on burdens. This ANPRM arbitrarily focuses on collecting information about the burdens without considering the benefits. As required by law, the Final Rule conducted a careful analysis of the benefits and burdens, and appropriately amended the SNPRM to achieve a balanced Final Rule.

The Agency “determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data.” 81 Fed. Reg. at 90528. The Agency explained how weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the Final Rule at 81 Fed Reg. 90528:

In response to state and tribal comments suggesting congruence with the BIA’s final rule, we revised data elements in this final rule as appropriate to reflect the BIA’s regulations including removing requirements that state title IV-E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV-E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance to increase state title IV-E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

There have been no significant changes justifying ACF’s proposal to reexamine the 2016 Final Rule. ACF seems to rely upon the President’s Executive Order (13777) for all federal agencies to identify regulations that are perceived as burdensome or unnecessary, but this is not a sufficient basis for ACF to act, as the Executive Order itself is arbitrary and unlawful where it provides an insufficient basis for reasonable decision-making relaying solely on an examination of the burden of regulations without the required balancing of benefits. Additionally, the Executive Order fails to provide justification to deviate from the statutory requirement for regulations.

Responses to the Questions for Comment provided in the ANPRM:

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.

I believe that the new data elements provided in the 2016 Final Rule that address health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, adoption, guardianship, and housing are important for AI/AN children and youth as well. Burdens to collecting this data for tribes and states are relatively small considering the benefits to improving outcomes for AI/AN children and families, especially given many of the data elements are correlated to some of the most vulnerable populations in child welfare systems and identification of risks associated to their well-being.

2. Previously, I received comments regarding burden and the system changes needed to report the ICWA-related data elements of the 2016 SNPRM. I would like to receive more detailed comments on the specific limitations 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.

The 2016 Final Rule requests title IV-E states provide the number of children in foster care who are considered Indian children as defined in ICWA. This is data that is currently not collected or reported in any national child welfare data system and is the key to understanding other important issues that are unique to AI/AN children and federal law requirements under ICWA. The current data in AFCARS only identifies AI/AN children through self-identification, which provides inaccurate and unreliable data. Relevant data measures in ICWA related to placement, engagement with the child's tribe, and efforts to avoid placement are not collected leaving federal agency, states, Congress, and tribes with little information to address pernicious issues impacting this population like foster care disproportionality. The 2016 Final Rule only requires states to collect the data elements in the 2016 Final Rule for AI/AN children that are ICWA eligible. Regardless of whether AFCARS data is collected all states are required by law to examine whether a child is ICWA eligible, so this effort is already required outside of AFCARS requirements. The 2016 Final Rule data specific to AI/AN children is not required to be collected for other non-Indian children so while there will be additional data collection for AI/AN children that are ICWA eligible, given the small number of AI/AN children in the vast majority of states this will not require a significant burden.

3. Previously, I 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.

All of the data elements for AI/AN children in the 2016 Final Rule are appropriate for a national data system like AFCARS. The activities related to the data are required by federal law, such as ICWA, and should be documented in any child welfare case file. The vast majority of the data would come from state agency activities with a few data elements coming in the form of state court orders, which should also be included in any well documented case file. To assume that some data may not be retrievable if it comes from judicial determinations is essentially saying that case files do not need to contain court orders, which would be out of alignment with nationally recognized standards in child welfare case management.

---

In addition, not having this information in a case file poses risk that court orders are not being properly implemented and places children in jeopardy of not receiving the benefits of court oversight in child welfare.

Capturing AI/AN data through case file reviews or other qualitative methods would not provide the data that Congress, states, and tribes need on an ongoing basis to make necessary changes in policy, practice, and resource allocation to address the serious problems that have been impacting AI/AN children for over two decades. Existing qualitative methods, like case file reviews under the Child and Family Services Reviews, have demonstrated the limitations of this data for informing Congress on how best to address critical concerns for AI/AN children. Case file reviews in many states include only a handful of cases involving AI/AN children and the data retrieved does not lend itself to adequately informing local efforts to address serious concerns related to outcomes for this population, much less issues of national concern. AFCARS is much better suited to collecting the type of data required for AI/AN children and efforts to shift data collection to other less comprehensive data systems with less regular data collection and reporting will have a negligible effect on improving data for this population.

4. Previously I 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.

In the absence of a national data reporting requirement, it is guaranteed the current variability in state data collection and reporting will continue as evidenced by only a few states collecting any data specific to AI/AN children, and the current AFCARS data questions that use self-identification as a determinant of whether a child is AI/AN, rather than the appropriate questions related to their citizenship in a tribal government. Even with appropriate questions related to whether an AI/AN child or their family are eligible for ICWA protections, linkages to other AFCARS data cannot be assumed to be sufficiently correlated for informing policymakers and child welfare agencies without the other data elements for AI/AN children in the 2016 Final Rule also being implemented. ACF as much as any stakeholder should have a strong interest in improving the availability of accurate and reliable data for this population, which they have dedicated significant amounts of their resources to in the form of technical assistance and training.

6. Previously I 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.

Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points is critical. The Title IV-B plan requirement for states that requires that states consult with tribal governments on their plans to implement ICWA has so far relied primarily on anecdotal information that is not collected or tracked uniformly by ACF leading to uneven responses to concerns about poor outcomes for AI/AN children in different states. The data elements contained in the 2016 Final Rule are linked in terms of being able to provide a complete picture of how AI/AN children are doing, and by eliminating or streamlining some of these data elements ACF would be compromising the integrity of the data to confidently inform policymakers and other stakeholders as to the important data trends and explanations for these trends.

In addition, as was stated earlier in my general comments, ICWA has been viewed as the “gold standard” in child welfare practice by leading national child welfare organizations and now with the passage of the Family First Prevention Services Act I can see there is increased support and interest in capturing more information on how states and tribes can improve outcomes for children and families beyond just improving the placement experience. The 2016 Final Rule data elements specific to AI/AN children are aligned with these acknowledgements and will be significantly helpful to all stakeholders involved in improving services and outcomes for AI/AN children.

### **Conclusion**

The experience of having little to no data collected for AI/AN children through AFCARS over the last two decades has resulted in not meaningful improvements in the safety and well-being for AI/AN children and could be argued as having contributed to the worsening conditions for this population. We know of no other federal child welfare law that does not have some form of basic data collection and certainly not one that is 40 years old as ICWA is. The AFCARS data elements for AI/AN children in the 2016 Final Rule have incredible potential to improve outcomes for this population, but only if the data elements are not heavily modified or eliminated.

While there are burdens for states to collect this data, for the past 40 years it has primarily AI/AN children, their families, and tribal communities that have born the burden while little to no reliable data has been collected and the crisis of foster care disproportionality has worsened. The time has come to move forward with this critically important data collection for AI/AN children and families and end the delays for not collecting the data that is necessary to support and promote healing for this population.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Thomas L. Crofoot", written over a light grey rectangular background.

Thomas L. Crofoot

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-85vk
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0135  
True Colors Fund

---

## Submitter Information

**Organization:** True Colors Fund

---

## General Comment

See attached

---

## Attachments

True Colors Fund

June 13, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

**Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).**

Dear Ms. McHugh:

On behalf of the True Colors Fund please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (“Proposed Rule”) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements. The True Colors Fund requests that U.S. Department of Health and Human Services, Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”), Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to sexual orientation, gender identity, and gender expression. The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

Many youth who exit the foster care system end up experiencing homelessness. The True Colors Fund is a national organization that works to end homelessness among lesbian, gay, bisexual, transgender, queer and questioning (LGBTQ) youth, creating a world where all young people can be their true selves. LGBTQ youth have a 120% increased risk of experiencing homelessness compared to youth who identify as heterosexual and cisgender. African American youth—especially young men aged 18 to 25—who identify as LGBTQ reported the highest rates of homelessness. Nearly one in four Black young men, ages 18 to 25, identifying as LGBTQ reported homelessness in the last 12 months.<sup>1</sup>

Through a wide array of advocacy, training & education, and youth collaboration programs, the True Colors Fund works to ensure that no young person is homeless due to their sexual orientation or gender identity.

---

<sup>1</sup> Morton, M.H., Dworsky, A., & Samuels, G.M. (2017). Missed opportunities: Youth homelessness in America. National estimates. Chicago, IL: Chapin Hall at the University of Chicago.



A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* ("Family First," P.L. 115-123), as described in examples below.

B. Removal of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression ("SOGIE") Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children and Eliminate Cost Savings

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning ("LGBTQ") foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>2</sup> In April 2011, ACF confirmed and reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation,

<sup>2</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

gender identity or gender expression.”<sup>3</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>4</sup> Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>5</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (“LGBQ”); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>6</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than “straight” are 14,300 to 24,000.<sup>7</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>8</sup>

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>9</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>10</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>11</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children’s Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

We also oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native

<sup>3</sup> 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>

<sup>4</sup> *Ibid.*

<sup>5</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pij\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pij_rise_lafys_report.pdf)

<sup>6</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>7</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (4) and (5) above.

<sup>8</sup> Same as 5 above.

<sup>9</sup> Same as 4 above.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

*The Children's Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14*

All of the poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBTQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children's Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>12</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>13</sup> Thus, identifying an affirming, supportive family for an LGBTQ child leading to adoption – which would be impossible to do if the child's sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBTQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than family foster care.<sup>14</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>15</sup> placing an LGBTQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

*The Children's Bureau should retain the data element related to the reason for removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity, or gender expression."*

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of

<sup>12</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCA\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCA_ADOPTION_ADVOCATE_NO35.pdf)

<sup>13</sup> *Ibid.*

<sup>14</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>15</sup> Same as 11 above.

family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be 3-5 times greater for each child not placed in congregate care.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>16</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

C. The Children's Bureau Should Retain the Voluntary Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>17</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>18</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

In its April 2011 guidance, ACF confirmed that "LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes."<sup>19</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>20</sup> Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

D. The Children's Bureau Should Add Voluntary Gender Identity Questions for Foster Youth Over the Age of 14 and Foster and Adoptive Parents and Guardians Because this Information is Important and it is Efficient to Collect this Information Along with Current Data Elements.

<sup>16</sup> Same as 4 above.

<sup>17</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>18</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>19</sup> Same as 2 above.

<sup>20</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>21</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

- E. The sexual orientation and gender identity and expression data elements of foster youth can be administered safely, and the Children’s Bureau should provide training and resources to states and tribes to do so.

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity (“SOGI”) information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>22</sup> The guidelines address the need to collect SOGI information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children’s Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>23</sup> The regulations promulgated under the Prison Rape Elimination Act (“PREA”) require youth and adult correctional officers to collect SOGI information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual

---

<sup>21</sup> Robinson, Brandon Andrew. Forthcoming. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>22</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>23</sup> Angela Irvine, “We’ve Had Three of Them”: Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

assault while incarcerated.<sup>24</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment.

In the Final Rule, the Children’s Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.” Additionally, the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”

#### F. Conclusion

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Children’s Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

True Colors Fund

---

<sup>24</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-fv2j
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0136  
Cherokee Nation

---

## Submitter Information

**Name:** Nikki Baker Limore  
**Address:** 74465  
**Organization:** Cherokee Nation

---

## General Comment

See attached

---

## Attachments

Cherokee Nation



GWYŁ D3P  
**CHEROKEE NATION**<sup>®</sup>  
P.O. Box 948 • Tahlequah, OK 74465-0948 • 918-453-5000 • [cherokee.org](http://cherokee.org)

**Office of the Chief**

Bill John Baker  
*Principal Chief*  
ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ  
ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ

S. Joe Crittenden  
*Deputy Principal Chief*  
ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ  
ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ ᎠᎹ

June 12, 2018

By E-MAIL: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

Ms. Kathleen McHugh  
Director, Policy Division  
Department of Health and Human Services  
Administration for Children and Families  
330 C Street S.W.  
Washington, D.C. 20024

Re: RIN 0970-AC72; Advanced Notice of Proposed Rulemaking,  
Adoption and Foster Care Analysis Reporting System.

On behalf of the Cherokee Nation (“Nation”), we appreciate this opportunity to comment on the Advanced Notice of Proposed Rulemaking (“ANPRM”) regarding the Adoption and Foster Care Automated Reporting System (“AFCARS”) data elements related to the Indian Child Welfare Act of 1978 (“ICWA”).<sup>1</sup> As Executive Director of the Nation’s Indian Child Welfare Department (ICW) we intervene in every case across the U.S. when a Cherokee child is placed in State or Tribal custody. With 5 office locations in Oklahoma who house 150 staff members, ICW currently serves 1,766 children per month throughout the U.S. In Oklahoma, one-third of children in care are Native American, with the largest percentage belonging to the Cherokee Nation, the largest federally recognized tribe in the U.S. with over 375,000 citizens. The Final AFCARS Rule (“Final Rule”) was published in the Federal Register on December 14, 2016,<sup>2</sup> and requires collection of state-level data on American Indian and Alaska Native children in state child welfare systems. The Final Rule is a significant and positive step forward in ensuring that the federal government fulfills its trust responsibility to Indian tribes and recognizing the agency’s role with respect to ICWA compliance.

The Nation is deeply concerned that for a second time since the Final Rule was promulgated, the Administration for Children and Families (“ACF”) is seeking comments on the inclusion of the ICWA Data Elements in AFCARS. Given how the Federal Register notices related

<sup>1</sup> See Adoption and Foster Care Analysis and Reporting System, 83 Fed. Reg. 11449 (Mar. 15, 2018) (to be codified at 45 CFR pt. 1355).

<sup>2</sup> Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90524 (Dec. 14, 2016) (to be codified at 45 C.F.R. pt. 1355).



Cherokee Nation  
 RIN 0970-AC72  
 AFCARS Written Comments  
 Page 2 of 8

to the Final Rule have been drafted there appears to be a focused effort to obtain public comments that would justify eliminating the ICWA Data Elements as overly burdensome and/or outside of ACF's authority. For example, the Federal Register Notice issued by ACF seeking to delay implementation of the Final Rule—which was issued the same day as the ANPRM—states that

[t]he 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 [Final Rule] are also not tied to statutory reporting requirements in title IV-E or IV-B. Rather, they were finalized to be consistent with the Department of the Interior's Final Rule on ICWA . . . .<sup>3</sup>

The current effort by ACF to undermine the Final Rule is not supported by the record in the Final Rule and completely ignores the efforts that ACF undertook to not only examine its legal authority but also seek public comment and consult with Indian tribes before issuing the Final Rule.

Congress enacted ICWA in response to “an alarmingly high percentage of Indian families [that] are broken up by the removal, often unwarranted of their children . . . an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.”<sup>4</sup> Unfortunately, since ICWA's enactment over 35 years ago, Indian children are still disproportionately represented in state foster care and adoptive proceedings across the country. Although comprehensive data is still lacking, a 2007 Pew survey found the presence of Indian children in foster care is 1.6 times greater than the expected rate. More significantly, states with large Native American populations, like Oklahoma, have even higher disproportional representation of Indian children in foster care.<sup>5</sup> In order to fully appreciate this disproportionality we must have better data relating to Indian children in state systems. Requiring states to report on specific ICWA data elements can also have a positive impact on ensuring ICWA compliance and consistency across state agencies.

As discussed below, the Nation requests that ACF move forward with implementation of the Final Rule without changes to ICWA data collection.

## **I. ACF has the authority to include ICWA data elements in AFCARS.**

Section 479 of the Social Security Act (“SSA”) and foundational Indian law principles clearly support ACF's authority to collect ICWA related data as part of AFCARS. The Final Rule reflects a recognition that the absence of data relating to ICWA may adversely impact the proper implementation of ICWA by state agencies and courts. In re-examining this matter, ACF has

<sup>3</sup> Adoption and Foster Care Analysis and Reporting System, 83 Fed. Reg. 11450, 11451 (Mar. 15, 2018) (to be codified at 45 C.F.R. pt. 1355).

<sup>4</sup> 25 U.S.C. § 1901(4).

<sup>5</sup> “Time for Reform, A Matter of Justice for American Indian and Alaska Native Children,” at 5 NICWA (accessed May 31, 2018), [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster\\_care\\_reform/nicwareportdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/nicwareportdf.pdf).

Cherokee Nation  
RIN 0970-AC72  
AFCARS Written Comments  
Page 3 of 8

exercised its authority in a considered manner based on established legal principles.<sup>6</sup> The inclusion of ICWA data in AFCARS is also timely given that the Department of the Interior published regulations implementing ICWA in 2016.<sup>7</sup> It is also worth noting that during the webinar held on April 25, 2018, ACF representatives stated that ACF has broad authority to collect any data on children under the IV-E program.<sup>8</sup>

Pursuant to Section 479 of SSA, the Secretary of the Department of Health and Human Services (“Secretary”) is required to promulgate final regulations to collect data from states related to adoptive and foster care children in order for states to receive federal funding for title IV-E eligible programs.<sup>9</sup> The resulting AFCARS regulations requires states to report on a multitude of data elements relating to a child’s foster and adoptive care placements by state agencies,<sup>10</sup> but until 2016 were silent with respect to the collection of ICWA specific information. Although some states voluntarily collect information related to race (i.e., whether a child involved in a custody proceeding is an Indian child) this classification deviates from existing Federal law relating to Indians and results in inconsistent, inaccurate, and incomplete reporting across states on the number of Indian children in state custody and little to no reporting on whether states have complied with the statutory mandates of ICWA for Indian children.

Nothing in Section 279 of the SSA precludes the agency from including ICWA specific data elements in AFCARS. Rather, Congress directed and gave the Secretary specific authority to determine how to reliably and consistently collect “comprehensive national information with respect to . . . the demographics of adoptive and foster children and their biological and adoptive or foster parents,” including the number, status and characteristics of such children placed in or removed from foster care or adoptive placements in and out of state, and who are victims of sex trafficking.<sup>11</sup> And, in implementing Congress’ directive it is appropriate and within the Secretary’s discretion to determine what statutory terms like “demographics” and “characteristics” mean “with respect to adoptive and foster children and their biological and adoptive or foster parents.”

---

<sup>6</sup> The Administrative Procedures Act (“APA”) explicitly contemplates changes over time in Federal agency rules, by stating that “‘rulemaking’” means agency process for formulating, amending, or repealing a rule.” 5 U.S.C. § 551(5). And in accordance with the APA, only a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy. *See e.g., Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“ . . . we fully recognize that ‘[regulatory] agencies do not establish rules of conduct to last forever’ . . . and that an agency must be given ample latitude to ‘adapt their rules and policies to the demands of changing circumstances. *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968).”’). *See also, FCC v. Fox TV Stations*, 556 U.S. 502 (2009) (involving a change to a 25-year old FCC policy, the Court noted that the APA requires no heightened review—beyond the usual “arbitrary and capricious” review—for an agency’s change in policy.).

<sup>7</sup> Indian Child Welfare Proceedings, 81 Fed. Reg. 38778 (Jun. 14, 2016) (to be codified at 25 C.F.R. pt. 23).

<sup>8</sup> Three limitations or constraints to the collection of data were provided verbally by ACF presenters—that the data collection (1) cannot divert resources unnecessarily, (2) needs to be reliable and (3) needs to be capable of being reported consistently. As discussed throughout this submission, the ICWA Data elements do not unnecessarily divert resources because it will help the federal government, tribes and states monitor ICWA compliance to improve services to ensure compliance with Congressional mandate to protect Indian children. In addition, the data elements are broken down into discrete questions, rather than broad categories, to ensure that the reporting is reliable and consistent.

<sup>9</sup> 42 U.S.C. § 679(c).

<sup>10</sup> 45 C.F.R. § 1355.40 and appendices.

<sup>11</sup> 42 U.S.C. § 679(c)(3).

Cherokee Nation  
RIN 0970-AC72  
AFCARS Written Comments  
Page 4 of 8

In determining the meaning of these terms, the Secretary must take into account the special relationship between the United States and Indian tribes and ICWA, an existing Federal law, that requires states to follow specific processes and procedures for Indian children in foster care or who will be put in adoptive placements. The United States Supreme Court has long recognized that “Indian tribes are ‘distinct, independent political communities’”<sup>12</sup> in which it is “undisputed” that a trust relationship exists between the United States and Indian tribes.<sup>13</sup> Congress has “plenary power” to deal with Indians tribes and that includes the plenary authority to legislate with regard to individual Indians.<sup>14</sup> And, “[o]n numerous occasions [the Supreme] Court specifically has upheld legislation that singles out Indians for particular and special treatment.”<sup>15</sup> For example, in *Morton v. Mancari*, the Supreme Court held that a statute providing a hiring preference and a policy providing a promotion preference at the Bureau of Indian Affairs to members of federally recognized Indian tribes did not violate either the Equal Employment Opportunity Act of 1972 or the Due Process Clause of the Fifth Amendment, because such a preference was not racial, but rather it turned on the special legal and political status of Indians<sup>16</sup> and was both “reasonable and rationally designed to further Indian self-government.”<sup>17</sup>

Since *Mancari*, the Supreme Court has consistently rejected challenges to statutes that singled out Indians for special treatment.<sup>18</sup> In *United States v. Antelope*, the Court established that *Mancari* stands more broadly for “the conclusion that federal regulation of Indian affairs is not based on impermissible racial classifications,” but is instead “rooted in the unique status of Indians as a separate people with their own political institutions.”<sup>19</sup> Applicable here, in 1978 Congress enacted ICWA to protect Indian children in foster and adoptive care. As noted above, ICWA requires specific processes and procedures that must be followed for “Indian child[ren]”<sup>20</sup> involved

---

<sup>12</sup> *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (quoting *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832)).

<sup>13</sup> See *United States v. Long* 324 F.3d 475, 479-80 (7th Cir. 2003) (“[c]ourts have attributed Congress’s plenary powers over Indian relations to the Indian Commerce Clause . . . and to Congress’s protectorate or trust relationship with the Indian tribes”) (citing *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 192 (1989), and *United States v. Kagama*, 118 U.S. 375, 383-84 (1886)); *United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2324-2325 (2011) (“We do not question ‘the undisputed existence of a general trust relationship between the United States and the Indian people’” (citation omitted)).

<sup>14</sup> *Ramah Navajo School Bd., Inc. v. Bureau of Revenue of N.M.*, 458 U.S. 832, 837 (1982); see also *United States v. Lara*, 541 U.S. 193, 200 (2004) (“The central function of the Indian Commerce Clause, we have said, is to provide Congress with plenary power to legislate in the field of Indian affairs” (internal quotation and citation omitted)).

<sup>15</sup> *Mancari*, 417 U.S. at 554-55 (collecting cases).

<sup>16</sup> See generally *Morton v. Mancari*, 417 U.S. 535 (1974).

<sup>17</sup> *Id.* at 555.

<sup>18</sup> See, e.g., *Fisher v. Dist. Ct. of Sixteenth Jud. Dist. of Mont.*, 424 U.S. 382, 390-91 (1976) (holding that exclusive tribal court jurisdiction over adoption proceedings involving Indians is not racial discrimination); *Moe v. Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 579-80 (1976) (holding that tax immunity for reservation Indians is not racial discrimination); *United States v. Antelope*, 430 U.S. 641, 646 (1977) (holding that statute bringing crimes committed by Indians on Indian reservations under Federal jurisdiction did not violate due process or equal protection).

<sup>19</sup> *Antelope*, 430 U.S. at 646 (internal quotation and citation omitted).

<sup>20</sup> 25 U.S.C. § 1903(4), “Indian child” means any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Cherokee Nation  
RIN 0970-AC72  
AFCARS Written Comments  
Page 5 of 8

in a state “child custody proceeding.”<sup>21</sup> These include for example, special placement preferences for foster care or adoption, provisions that require notification to parents and Indian tribes, heightened standards for ensuring reunification and termination of parental rights. ICWA’s protections for Indian children and families are now widely considered the “gold standard” among national child welfare organizations. *See* Brief of Casey Family Programs, *et al.* as *Amici Curiae* Supporting Respondent, *Adoptive Couple v. Baby Girl*, 133 S. Ct. 2552 (2013), 2013 WL 1279468 at \*1 (filed Mar. 28, 2013) (“[I]n the Indian Child Welfare Act, Congress adopted the gold standard for child welfare policies and practices that should be afforded to all children . . . [I]t would work serious harm to child welfare programs nationwide . . . to curtail the Act’s protections and standards.”).

In order for the Secretary to collect “comprehensive information” with respect to the “demographic characteristics” of adoptive and foster children and “their biological and adoptive or foster parents,” there must be specific data elements that incorporate the unique mandates of ICWA as applied to Indian children. And, as discussed above, Federal law supports and permits the Secretary to create and include specific data elements in AFCARS that relate to Indian children and implementation of ICWA. Retaining ICWA data elements in AFCARS also brings the agency’s oversight and integration of ICWA full circle. In 1994 Congress amended Section 422 of the SSA to require all title IV-B state plans 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 [ICWA].”<sup>22</sup> Most state agencies that receive title IV-E funding for children receiving foster care and adoptive care also receive title IV-B funding. Title IV-B funding assists states in developing programs aim to support reunification efforts to keep families together. As a child moves through the state system, states are often accessing state programs that receive title IV-B and or title IV-E funding. Thus, title IV-B and title IV-E can be and often are interconnected.<sup>23</sup> The Final Rule will help streamline and strengthen states’ ability to comply with ICWA and their title IV-B approved plans.

---

<sup>21</sup> *See id.* at 1903(1) “child custody proceeding” shall mean and include—(i) “foster care placement” which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated; (ii) “termination of parental rights” which shall mean any action resulting in the termination of the parent-child relationship; (iii) “preadoptive placement” which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and (iv) “adoptive placement” which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

<sup>22</sup> 42 U.S.C. § 622(b)(9).

<sup>23</sup> Incorporating ICWA data elements into AFCARS maintains consistency in Congress’ statutory schemes governing children in foster and adoptive care and avoids absurd results. Given the lack of legislative history relating to the 1994 amendment of title IV-B, it is reasonable for the Secretary to infer that Congress desired states to adhere to ICWA when implementing title IV-B. Moreover, it does not follow that Congress would intend states to follow ICWA only for purposes of reunification efforts under title-IV-B and ignore ICWA when receiving funding for foster or adoptive placements programs until title IV-E. ICWA is intended to provide statutory protections not only for reunifications of Indian families, but also when Indian children are placed in foster or adoptive care placements. To give one aspect of ICWA more emphasis than another aspect would be absurd. *See United States v. American Trucking Assns., Inc.*, 310 U.S. 534, 542–543 (1940) (holding that interpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available.).

Cherokee Nation  
RIN 0970-AC72  
AFCARS Written Comments  
Page 6 of 8

## **II. There is no need to question the accuracy of the estimated burden for the collection of information in the Final Rule.**

The Final Rule's inclusion of ICWA data elements into AFCARS is not only a positive achievement but also necessary to allow ACF to properly carry out its statutory responsibilities and trust obligations. The Final Rule acknowledges that in order for the Secretary to collect "comprehensive information" with respect to the "demographic characteristics" of adoptive and foster children and "their biological and adoptive or foster parents," specific data elements that incorporate the unique mandates of ICWA, as applied to Indian children, must be included. Moreover, the Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action.

As with any new rule or requirement, there will always be a heavier burden initially when a rule requires the collection of information that has not been previously required, but this burden will be reduced significantly once states and tribes are able to modify their case collection systems to report the new data. In the 2015 NPRM and 2016 SNPRM various interested parties submitted comments regarding the accuracy of burden estimates associated with AFCARS data collection. In response, the Final Rule created and explained a new estimate for the burdens associated with changing data systems and collecting and reporting data. The new burden estimates are sufficient and reasonable. For ACF to solicit information relating solely to the potential burden of the regulations without also soliciting information and comments on its potential benefits is also arbitrary, capricious, an abuse of discretion, and not in accordance with the AFCARS authorizing statute.

In any event, a number of states have enacted state companions to ICWA and already collect much of the information being sought by the Final Rule even if their electronic case file systems may need to be updated so that the information can be electronically pulled for AFCARS purposes. *See, e.g.*, Minn. Stat. §§260.751-260.835 (2015); Neb. Rev. Stat. §§43-1501-43-1517 (2015); Iowa Code Ann. §§232B.1-232B.14 (2003). Other states have enacted laws that clearly reflect the voluntary adoption of ICWA as official state policy. *See, e.g.*, Ind. Code Ann. § 31-28-6-1 (2012) (stating "[t]he public child placing agency in the sending state shall oversee compliance with the provisions of the Indian Child Welfare Act"); La. Child. Code Ann. art. 1629 (2010) (same); Ohio Rev. Code Ann. § 5103.20 (2006) (same). As such, for many states the overall burden of collecting the ICWA data elements will not be high. For those states that do not have state based ICWA policies, the data elements will assist not only in ensuring consistent and uniform reporting, but in complying with the mandates of ICWA.

## **III. The ICWA data elements are necessary for consistency and to allow the agency to properly carry out its functions.**

The ICWA data elements are critical to ensuring that states are consistently and uniformly implementing the statutory mandates of ICWA. ACF received comments for both the 2015 NPRM and the 2016 SNPRM regarding the specific data elements to ensure quality data collection in keeping with the AFCARS authorizing statute. As discussed above and documented in prior comments, the data to be collected ensures that ACF is implementing its statutory obligations

Cherokee Nation  
RIN 0970-AC72  
AFCARS Written Comments  
Page 7 of 8

consistent with ICWA and the trust responsibility. The Final Rule will produce necessary information, previously missing from AFCARS, which will guide, clarify, and improve outcomes for Indian children and families in state child welfare systems.

Any reporting on Indian children and ICWA compliance is currently voluntary. Until the Final Rule is implemented, there are not any standards for reporting on ICWA compliance. In a 2005 Report, the General Accountability Office found that to improve the usefulness of data and information collected regarding ICWA in Child and Family Review Services reports submitted by states, ACF should require states to provide more reporting on ICWA.<sup>24</sup> The Final Rule, which reflects the Department of the Interior's national standards for ICWA compliance, will aid in ensuring consistent ICWA reporting by all 50 states. Thus, the ICWA data elements will comport with AFCARS goal of providing "[n]ational standards . . . for each statewide data indicator. [And b]y measuring state performance against national standards on statewide data indicators, the Children's Bureau can assist states in continuously monitoring their performance on child outcomes and better understand the entirety of their child welfare systems."<sup>25</sup>

#### **IV. ACF can minimize the burden of the collection of information by providing technical assistance.**

Rather than change the Final Rule, ACF should aggressively promote and provide technical assistance to state agencies that need assistance in implementing the Final Rule. ACF could also conduct an evaluation of state case management systems to determine if there are technological improvements or alternative mechanisms that would allow for a streamlined approach to data sharing between states and ACF. Lastly, ACF could provide limited grant funding to aid state agencies in updating their case management systems to allow for ICWA data collection.

#### **V. Conclusion.**

When ICWA was passed in 1978, it restored hope that tribes would have a greater role in the protection of their children, their greatest resource for the future. The Final Rule will close the gap on much needed data relating to national implementation and compliance with ICWA. Requiring comprehensive information across states on Indian children will lead to better practices and ultimately greater compliance with ICWA. With this data federal, state and tribal governments can better understand how many Indian children, and at what stage in their case, are receiving ICWA protections. By understanding how and when ICWA is utilized, appropriate steps can be taken to reduce disproportionality and to achieve greater permanence for Indian children, their families and tribes. As such, the Cherokee Nation opposes any changes to the Final Rule that would modify or eliminate the ICWA data elements.

Thank you for consideration of these written comments.

---

<sup>24</sup> Indian Child Welfare Act, *Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States*, GAO 05-290 at 5 (2005) (accessed May 31, 2018) <https://www.gao.gov/new.items/d05290.pdf>

<sup>25</sup> Child and Families Services Reviews, *Procedures Manual* at 5 (Nov. 2005), (accessed May 31, 2018 TIME) [https://www.acf.hhs.gov/sites/default/files/cb/round3\\_procedures\\_manual.pdf](https://www.acf.hhs.gov/sites/default/files/cb/round3_procedures_manual.pdf)

Cherokee Nation  
RIN 0970-AC72  
AFCARS Written Comments  
Page 8 of 8

governments can better understand how many Indian children, and at what stage in their case, are receiving ICWA protections. By understanding how and when ICWA is utilized, appropriate steps can be taken to reduce disproportionality and to achieve greater permanence for Indian children, their families and tribes. As such, the Cherokee Nation opposes any changes to the Final Rule that would modify or eliminate the ICWA data elements.

Thank you for consideration of these written comments.

Sincerely,

A handwritten signature in black ink that reads "Nikki Baker Limore". The signature is written in a cursive style with a large, prominent initial "N".

Nikki Baker Limore, J.D.  
Cherokee Nation  
Executive Director, Indian Child Welfare  
P.O. Box 948  
Tahlequah, Oklahoma 74465  
(918) 458-6900

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-ovki
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0137  
Voice for Adoption (VFA)

---

## Submitter Information

**Name:** Schylar Baber  
**Address:** 20005  
**Organization:** Voice for Adoption (VFA)

---

## General Comment

See attached

---

## Attachments

Voice for Adoption (VFA)



# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

June 12, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, DC 20024

RE: Proposed rulemaking for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and removing any undue burden related to reporting AFCARS, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).

Dear Ms. McHugh,

Voice for Adoption writes to the Administration of Children and Families (ACF) in order to present comments regarding the notice that the Federal Register published on March 15, 2018 (83 Fed Reg. 11450). Within the December 14, 2016 Adoption and Foster care Analysis and Reporting System (AFCARS) Final Rule ("Final Rule") lies Section 479 of the Social Security Act mandating the Department of Health and Human Services (DHHS) to collect national, uniform, and reliable information on children in state foster care and adoptive care. The statutory language is expansive and suggests a broad collection of data for children under state care who are in foster care or adoption that includes their demographics, characteristics, and status while in care. Voice for Adoption requests that the current data elements in the AFCARS Final Rule be maintained as it pertains to vulnerable children in the foster care system.

Previously, Voice for Adoption submitted comments regarding the decision to delay the implementation of the 2016 AFCARS Final Rule and the negative effects the decision would entail for those within foster care. In relation to that decision, we feel as though any streamlining, modifying or eliminating of data elements within AFCARS pertaining to federal child welfare would too produce adverse effects when addressing the needs of vulnerable children. Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act (P.L. 110-351)* and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351)*, and the *Child and Family Services Improvement and Innovation Act (P.L. 112-34)*. Critically, the Final Rule will also provide data to ensure implementation

# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

and oversight of the *Indian Child Welfare Act (P.L. 95-608)*, improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act ("Family First," P.L. 115-123)*

Furthermore, organizations and the public were provided multiple opportunities to address the burdens and benefits related to updating the 25-year-old AFCARS regulation including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Of those the benefits clearly outweigh the potential burdens when focusing on child welfare.

## **Adoption and Foster Care**

Voice for Adoption advocates for those within the foster care system seeking adoption thus AFCARS' data point collection system would be a tremendous asset in providing effective advocacy for these vulnerable children. The data point collection would provide essential insight to the child's experience in care by developing a deeper understanding on information regarding failed adoptions, children whom linger within the foster care system and those who have been rehomed.

In addition, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. The data element relating to educational stability should be retained as it is consistent with and supported by both federal child welfare and education law. School Enrollment: We support the inclusion of basic information to track a child's enrollment in school. This change also aligns AFCARS with the requirements of the *Fostering Connections Act*. The issue of variations in the definitions of "elementary," "secondary," "post-secondary education or training," "college," "not school-aged," and "not enrolled," across states and jurisdictions is minimal, as the data element is based on the statutory requirement in section 471(a)(30) of the Social Security Act.

As it pertains to foster care youth the following elements of the 2016 AFCARS Final Rule should be maintained;

Educational Level: Requiring states to report on the highest educational level achieved as of the last day of the reporting period will allow for better tracking of educational trends, such as retention rates and college attendance.

# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

**Educational Stability:** The data element relating to educational stability should be retained as it is consistent with and supported by both federal child welfare and education law. Fostering Connections mandates educational stability. Child welfare agencies must take steps to place children close to the schools they have been attending and to plan for and collaborate with education agencies to ensure that children remain in the same school when their living situation changes unless a school change is in the child's best interest. Since the adoption of Fostering Connections in 2008, most state and county agencies have changed policy and practice to encourage school stability, which has been further supported by the Every Student Succeeds Act (ESSA). However, without data it is difficult to measure progress and trends. Collecting this data will allow longitudinal information about children to be tracked and maintained over time. This will be critical to determining the overall school stability of children during their entire stay in care.

**Special Education:** We strongly support the need for this data element. Studies indicate that anywhere from 35% to 47% of children and youth in out-of-home care receive special education services at some point in their schooling (compared to the national average of under 13% of school aged children). However, we currently have no reliable national data on the exact number of students in care who qualify for services under the IDEA. Retention of this data element would fill this gap. This data is important to both child welfare and education agencies and it would focus state and local agencies' attention on effectively delivering services to these children. Furthermore, there will be little variability across states and jurisdictions, as the definitions for Individual Education Programs and Individual Family Service Plans are outlined within the Individuals with Disabilities Education Act (IDEA). The limited education elements are tailored to address current areas of weakness in data collection and reporting and must be retained to ensure the safety, permanency, and especially the well-being of all children in foster care.

More so, all of the information collected on foster care youth and adoption will provide a road-map for future policies and practices. This will lead to more effective advocacy for those who have been impacted by the foster care system.

## **LGBTQ**

Moreover, information collected through AFCARS regarding lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth provides remarkable acumen. It is crucial for data on these individuals' sexual identity to be collected not only to track their experiences and how they may differ from other children but also to set a precedent regarding youths' ability to identify themselves.

# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

In addition, research indicates that reducing the severity of family rejection based on sexual orientation gender identification and expression (SOGIE) results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes. In April 2011, ACF confirmed and reiterated “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>1</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness. Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

With LGBTQ youth being disproportionately overrepresented in foster care and suffering worse safety, permanency, and well-being outcomes than their non-LGBTQ peers data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities. Data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families’ efforts to prevent removal and allow to children to remain safely at home with their families.

Continually, in its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>2</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents<sup>3</sup>. Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs that are associated with the placement instability and overrepresentation in congregate care that these youth experience. Due to this, data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support

---

<sup>1</sup> 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>

<sup>2</sup> same as 1

<sup>3</sup> ECDF Act Facts, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

## **American Indians and Alaska Natives**

Likewise, information regarding American Indian and Alaska Native (AI/AN) within custody of state child welfare authorities is insufficient. It has been almost 25 years since the establishment of the AFCARS data collection system and 40 years since the enactment of ICWA. AI/AN children are still waiting to have basic data collected that describes their conditions, how relevant federal law under Title IV-B, Title IV-E, and ICWA is being implemented with respect to AI/AN children, and the identification of critical data that can inform local and national interventions to eliminate well-documented and long term foster care disproportionality and service disparities that AI/AN children face. The Final Rule, which ACF developed under the statute, ensures the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children to whom ICWA applies, and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under the Social Security Act.

Due to the the terminology previously used to evaluate these children, data collection has been unable to provide an accurate evaluation of AI/AN children within the foster care system. Through data regarding AI/AN children an increase in support to states and surge of effectiveness when allocating federal resources could be achieved to better serve this overrepresented population within foster care. Ultimately, the data accumulated regarding AI/AN children would ensure active efforts of implementing ICWA at state and local levels.

We have seen at the local level, while states and tribes are increasingly partnering to improve ICWA implementation and improve outcomes for AI/AN children, data collection is a consistent concern and hampers efforts by states and tribes to demonstrate the need for additional policies and resources with state legislators. Since the publication of the Final Rule in December of 2016 a number of states have already begun work with tribes in their state on data system improvements and begun discussions of how the data would be supported and shared among state and tribal governments. Unfortunately, this Advanced Notice of Proposed Rule Making (ANPRM) has caused these efforts to be called into question and further delay the ability to seek real, meaningful answers to issues that frustrate AI/AN children's well-being on a daily basis.

Conjointly, an implication for not implementing the data elements for AI/AN children in the Final Rule is it sends a message to states and tribes that the federal government does not consider data collection on this population a priority issue, which also

# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

disincentivize state and tribal efforts to address these issues at the federal and local level. Increasingly important is how both data sets would direct appropriate and effective policies to serve their populations and educate governments on areas needing improvements and reform.

The regulations themselves, in response to the comments from tribes and states, describe the importance of the 2016 Final Rule changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

*Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations, and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.*

In light of these comments and the recent passage of the *Family First Prevention Services Act* by Congress in February of 2018 (Division E of the Bipartisan Budget Agreement Act, H.R. 1892) where Congress is clearly expanding the purposes of the Title IV-E program to include not only placement activities, but also prevention services to families, we see even more relevance and need for the data elements for AI/AN children and families included in the 2016 Final Rule.

While concerns of targeting and discrimination arose when encourage the allowance of children identifying their sexual orientation and/or citizenship in relation to American Indians and Alaska Natives are disassembled through the greater benefits. Additionally, The Final Rule stated that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.” Due to these regulations the safety of those who choose to identify their sexual orientation and/or citizenship would be protected.

Through the Final Rule many states already began implementation of AFCARS. Changing the system would in turn cause more of a burden rather than a relief, as those in compliance in AFCARS would once more have to adjust programs with accepting a monetary loss while diverting resources.

To address those whom have not yet implemented AFCARS a means of offsetting the difference in resources between organizations includes data sharing between child welfare and education. Even more so, all states have, and will continue to, update their data systems to meet the increasing demands of serving children and families and to stay current with the latest technology and data exchange advances. Any claims of cost burdens by states are overstated, as all states will expend these costs to update their

# Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

systems regardless. AFCARS allows these updates to have a finite number of data elements that are universal across states, necessary to identify trends and to continue to improve our child welfare system responses.

We believe that streamlining, modifying, or eliminating any portion of the data point collection system in place through 2016 AFCARS Final Rule would do a great disservice to vulnerable youth within the foster care system. We strongly encourage you to maintain the new data points requirements as outlined in the 2016 Final Rule in order to ensure the well-being of all children. Thank you for this opportunity to elaborate on the benefits of the data collection elements as outlined in the Final Rule.

Sincerely,



Schylar Baber

Executive Director

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-2pv4
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0138  
The Mockingbird Society

---

## Submitter Information

**Name:** Annie Blackledge  
**Address:** 98144  
**Organization:** The Mockingbird Society

---

## General Comment

See attached

---

## Attachments

The Mockingbird Society





June 12<sup>th</sup>, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).

Dear Ms. McHugh:

On behalf of The Mockingbird Society, please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 ("Proposed Rule") proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and request comments regarding whether new data elements are overly burdensome. The Mockingbird Society requests that U.S. Department of Health and Human Services, Administration for Children and Families ("ACF"), Administration on Children Youth and Families ("ACYF"), Children's Bureau ("Children's Bureau") maintain the current data elements in the December 14, 2016 AFCARS Final Rule ("Final Rule"), including those related to sexual orientation, gender identity, and gender expression. The data elements in the Final Rule previously went through a thorough notice and comment period, during which comments on the burden of data elements were addressed and the data elements adjusted as described in the Final Rule.

The Mockingbird Society is an advocacy organization working to improve foster care and end youth homelessness in Washington state. We work with youth and families who have been impacted by foster care and homelessness to elevate their voices as advocates to transform these systems.

A. The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially

invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care services and oversight in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L.110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* (“Family First,” P.L 115-123), as described in examples below.

B. Removal of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression (“SOGIE”) Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children and Eliminate Cost Savings

HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) foster children. LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families’ efforts to prevent removal and allow to children to remain safely at home with their families.

The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> In April 2011, ACF confirmed and reiterated “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>2</sup> ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>3</sup> Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

<sup>1</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>2</sup>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>

<sup>3</sup> *Ibid.*

Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>4</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBTQ, and whether their experiences in foster care were different from those of their peers. The study found that 19 percent of youth ages 12-21 in foster care self-identify as LGBTQ, which is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care. 13.6 percent of participants identified as lesbian, gay, bisexual or questioning (“LGBQ”); eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender. Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study which estimates that 22.8% of youth in out of home care identify as LGBQ.<sup>5</sup> Using the estimates from the studies cited above, the number of foster youth in the United States over the age of 14 who identify as having a sexual orientation other than “straight” are 14,300 to 24,000.<sup>6</sup> 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.<sup>7</sup>

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study confirmed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>8</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.<sup>9</sup> They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.<sup>10</sup> States and tribes will continue to be stymied in their ability to improve outcomes and reduce costs for LGBTQ foster youth until sexual orientation and gender identity data is available. Collecting this data nationally will allow the Children’s Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBTQ foster youth and to replicate them to address disparities.

We also oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”). States and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

*The Children’s Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14*

All of the poor outcomes documented for LGBTQ foster youth, including a greater number

---

<sup>4</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>5</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>

<sup>6</sup> AFCARS data shows that 105,182 foster youth in 2016 were 14 or older; these estimates utilize the 13.6 % and 22.8% numbers for LGBQ foster youth from the studies cited under (4) and (5) above.

<sup>7</sup> Same as 5 above.

<sup>8</sup> Same as 4 above.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBTQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. We therefore urge the Children's Bureau to retain the voluntary question in the Final Rule related to sexual orientation of foster youth over the age of 14 because the many benefits resulting from information related to the new data elements outweigh any labor and cost associated with implementation.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs for children in foster care in FY10 was \$25,782.<sup>11</sup> That same year, adoption subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies \$10,302 in costs.<sup>12</sup> Thus, identifying an affirming, supportive family for an LGBTQ child leading to adoption – which would be impossible to do if the child's sexual orientation was unknown – would lead to an annual cost savings of \$15,480 per child. Further, congregate care (in which LGBTQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than family foster care.<sup>13</sup> Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,<sup>14</sup> placing an LGBTQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

It should be noted that all costs are not easily quantified, such as the well-being of youth receiving affirming care, or the long-term health benefits of a youth exiting sooner to a permanent family, and the cost savings to states and tribes estimated above are simply those within the foster care system itself. For example, studies indicate that LGBTQ youth exit foster care to homelessness and are commercially sexually exploited and victimized at higher rates than their non-LGBTQ peers in care. Costs associated with these negative outcomes are significant although challenging to quantify.

*The Children's Bureau should retain the data element related to the reason for removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity, or gender expression."*

Data regarding the degree to which family conflict impacts removal can drive needed funding for family acceptance work leading to family preservation, a priority of the current ACF administration. Helping a child remain with their family of origin through targeted supportive services related to this source of family conflict will provide enormous cost savings for states and tribes. Utilizing the FY10 foster care maintenance payments costs described above, cost savings would amount to \$19,107 per child per year for each child not placed in a foster home; the annual savings would be 3-5 times greater for each child not placed in congregate care.

<sup>11</sup> Zill, E. *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, Adoption Advocate (35), May 2011, National Council for Adoption [http://www.adoptioncouncil.org/images/stories/NCFA\\_ADOPTION\\_ADVOCATE\\_NO35.pdf](http://www.adoptioncouncil.org/images/stories/NCFA_ADOPTION_ADVOCATE_NO35.pdf)

<sup>12</sup> *Ibid.*

<sup>13</sup> National Conference of State Legislatures, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>

<sup>14</sup> Same as 11 above.

Given that an estimated 19% of foster youth identify as LGBTQ<sup>15</sup>, this data element will be crucial to successfully implementing Family First prevention funding aimed at keeping children with their families of origin rather than entering foster care. Removing this data point would harm the ability of states and tribes to further efforts to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular. In addition, research indicates that reducing the severity of family rejection based on SOGIE results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

C. The Children’s Bureau Should Retain the Voluntary Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>16</sup> National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>17</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGBQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBQ resource families.

In its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>18</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>19</sup> Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs detailed above that are associated with the placement instability and overrepresentation in congregate care that these youth experience.

D. The Children’s Bureau Should Add Voluntary Gender Identity Questions for Foster Youth Over the Age of 14 and Foster and Adoptive Parents and Guardians Because this Information is Important and it is Efficient to Collect this Information Along with Current Data Elements.

A forthcoming study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the

---

<sup>15</sup> Same as 4 above.

<sup>16</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013,

<http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>17</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007).

<https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>18</sup> Same as 2 above.

<sup>19</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

youth's gender behaviors."<sup>20</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

- E. The sexual orientation and gender identity and expression data elements of foster youth can be administered safely, and the Children's Bureau should provide training and resources to states and tribes to do so.

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity ("SOGI") information about children, along with other critical information about the child's circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>21</sup> The guidelines address the need to collect SOGI information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children's Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession's understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>22</sup> The regulations promulgated under the Prison Rape Elimination Act ("PREA") require youth and adult correctional officers to collect SOGI information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>23</sup> Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment.

---

<sup>20</sup> Robinson, Brandon Andrew. Forthcoming. "Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality." *Child Welfare*. Robinson further states that "mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth's behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006)."

<sup>21</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>22</sup> Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

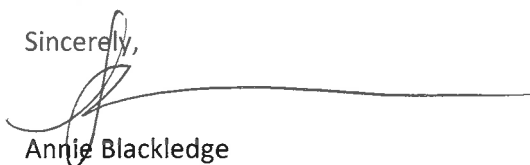
<sup>23</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

In the Final Rule, the Children’s Bureau summarized its well supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older. The Final Rule stated that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.” Additionally, the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”

F. Conclusion

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Children’s Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Annie Blackledge", is written over a long horizontal line that extends across the page.

Annie Blackledge  
Executive Director  
The Mockingbird Society

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-roj6
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0139  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Rebecca Rogan  
**Address:** 49684  
**Email:** Rrogantc@gmail.com

---

## General Comment

I urge DHHS to keep the voluntary question regarding childrens sexual orientation in its questionnaire. It is vitally important these vulnerable kids are protected and information is gathered to help shape future best practices policy.



# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-jjoo
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0140  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Kim Cromwell  
**Address:** 33704  
**Email:** tkcromwell@mac.com

---

## General Comment

Please do not take away those questions that would protect the rights of LGBTQ young people. The data gathered through these questions is essential to our understanding of the issues that they face.

There is no good reason to remove these questions unless we simply dont care about the issues. Please tell me that we DO care, and retain the questions. Thank you.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-5f3e
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0141  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Robert Cromwell

---

## General Comment

Please do not take away those questions that would protect the rights of LGBTQ young people. The data gathered through these questions is essential to our understanding of the issues that they face.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-le1d
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0142  
National Center for Transgender Equality (NCTE)

---

## Submitter Information

**Address:** 20036  
**Organization:** National Center for Transgender Equality (NCTE)

---

## General Comment

See attached

---

## Attachments

National Center for Transgender Equality (NCTE)



June 13, 2018

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW  
Washington, D.C. 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).

Dear Kathleen McHugh,

We appreciate the opportunity to provide comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11449 (“Proposed Rule”) proposing to streamline the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and requesting comments on whether some data elements are overly burdensome.

Founded in 2003, the National Center for Transgender Equality is one of the nation’s leading social justice organizations working for life-saving change for the over 1.5 million transgender Americans and their families. Through our work, we are deeply aware of the stigma and discrimination faced by transgender youth, who are frequent targets of harassment, mistreatment and abuse in schools, their homes, shelters, detention facilities, and in foster care. We have also seen the positive steps taken in recent years by various federal agencies to collect data on sexual orientation and gender identity, which is essential to understanding and addressing the diverse needs of the lesbian, gay, bisexual, and transgender (LGBT) population, including LGBT youth.

We strongly urge the U.S. Department of Health and Human Services (“HHS”), Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”), and Children’s Bureau (“Children’s Bureau”) maintain the current data elements outlined in the December 14, 2016 AFCARS Final Rule 81 FR 90524 (“Final Rule”), including those related to sexual orientation, gender identity, and gender expression. The Final Rule went through a thorough notice and comment period, during which HHS considered comments on the any potential burden of data elements proposed and adjusted the Final Rule to address them. Without adequate data on the particular risks that LGBT youth face in foster care, government agencies, states and tribes cannot adequately develop policies and services to best address the needs of these vulnerable populations, including Native American and Alaskan Native LGBT youth. We also urge the Children’s Bureau to include a gender identity measure in the instances where it already collects data on sexual orientation.

## **Federal data collection on sexual orientation, gender identity and gender expression is essential to combat widespread discrimination, harassment and abuse faced by LGBT youth, including in the foster care system**

Population-based surveys have shown that 4.1% of Americans identify as LGBT, and that younger people are more likely to identify as lesbian, gay, bisexual, or transgender than older people at every age group (for example, Gallop estimates that 7.3% of millennials identify as LGBT, as compared to 3.2% of Generation X and 2.4% of baby boomers).<sup>1</sup> Transgender youth—young people who know themselves to be a gender that is different from the one they were thought to be at birth—live in every part of the United States. An estimated 0.7% of the U.S. population between the ages of 13 and 17 is transgender, representing 150,000 adolescents.<sup>2</sup>

Transgender people are particularly vulnerable to violence, harassment, and bullying. The 2015 U.S. Transgender Survey, a national study of nearly 28,000 transgender adults in the United States, found that in the year prior to taking the survey, 13% of respondents were physically attacked and 10% were sexually assaulted, and 47% had been sexually assaulted at some point in their lifetime. Additionally, of survey respondents who were out or perceived as transgender in K–12, nearly one-quarter reported being physically attacked and over one in eight were sexually assaulted at school because people thought they were transgender.<sup>3</sup> National data indicates that lesbian, gay, and bisexual (LGB) youth are also especially vulnerable to violence. For example, the National Youth Risk Behavior Survey conducted by the CDC in 2015 found that 10% of LGB students, compared with 5% of heterosexual students, reported being threatened or injured with a weapon on school property, and 34% of LGB students, compared with 19% of heterosexual students, reported being bullied on school property.<sup>4</sup>

Family rejection and mistreatment is a major contributor to disproportionate high levels of homelessness among LGBT youth. A 2012 study estimates that LGBT youth comprise 40% of the homeless youth population, with family rejection the major driving factor that leads to homelessness in this population.<sup>5</sup> The U.S. Transgender Survey found that one in ten (10% respondents) who were out to their immediate family reported that a family member physically abused them because they were transgender. One in twelve (8%) respondents who were out to their immediate family were kicked out of the house, and one in ten (10%) ran away from home. Nearly one in three (30%) respondents experienced homelessness during their lifetime. The rate of homelessness was

---

<sup>1</sup> Gary J. Gates, Gallup, *In US, More Adults Identifying as LGBT* (2017), <http://www.gallup.com/poll/201731/lgbt-identification-rises.aspx>. See also: Jody L. Herman et al. *Age of Individuals who Identify as Transgender in the United States* (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf> (estimating that 0.7% of persons aged 13 to 17 in the United States identify as transgender, as compared to 0.6% of adults).

<sup>2</sup> Jody L. Herman et al. *Age of Individuals who Identify as Transgender in the United States* (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/TransAgeReport.pdf>; See also Andrew R. Flores et al., *How Many Adults Identify as Transgender in the United States?* (2016), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf> (estimating that 0.6% of the United States adult population, or 1.4 million adults, are transgender).

<sup>3</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 95 (2016), [www.ustranssurvey.org/report](http://www.ustranssurvey.org/report).

<sup>4</sup> Laura Kann et al., *Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12—United States and Selected Sites*, 65 MORBIDITY & MORTALITY WEEKLY REPORT 1, 11, 15 (2015), <https://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>; See also Human Right Watch, “*Like Walking Through a Hailstorm*”: Discrimination Against LGBT Youth in U.S. Schools (2016), <https://www.hrw.org/report/2016/12/07/walking-through-hailstorm/discrimination-against-lgbt-youth-us-schools> (finding that LGBT youth are “...more than twice as likely as non-LGBT youth to be physically attacked at school...”); Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, *Current Measures of Sexual Orientation and Gender Identity in Federal Surveys* 19 (2016) (discussing the higher victimization rates of sexual and gender minorities when incarcerated).

<sup>5</sup> Durso, Laura, Gary J Gates, The Williams Institute, *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* (2012), <https://williamsinstitute.law.ucla.edu/research/safe-schools-and-youth/serving-our-youth-july-2012/>

substantially higher among respondents whose immediate family had kicked them out of the house, with nearly three-quarters (74%) of these respondents experiencing homelessness.<sup>6</sup>

Extreme family rejection and homelessness also result in many LGBT youth being placed in foster care.<sup>7</sup> A 2013 study conducted in connection with theACYF-funded R.I.S.E. Project illustrates the disproportionately high levels of LGBT youth in the foster care system.<sup>8</sup> The purpose of the study was to determine the percentage of Los Angeles County foster youth who identify as LGBT, and whether their experiences in foster care were different from those of their peers. The study found that almost one in five (19%) of youth ages 12-21 in foster care self-identify as LGBT, and 5.6% identify as transgender, the majority of which are youth of color. The study concluded 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>9</sup> Other studies have estimated even higher numbers of LGBT youth in foster care.<sup>10</sup>

In addition to being disproportionately represented in the system, LGBT youth experience worse conditions and outcomes in foster care. The federally-funded R.I.S.E. study found that LGBT youth have a higher number of foster care placements and are more likely to be living in a group home.<sup>11</sup> Over twice as many LGBT youth reported being treated poorly by the foster care system compared to non-LGBT youth, and LGBT youth were almost three times more likely to be hospitalized for emotional reasons.<sup>12</sup> All of these factors contribute to increase barriers to permanency for LGBT youth in the system.<sup>13</sup>

In the past few years, several public agencies have been successfully collecting sexual orientation and gender identity data on LGBT youth to better assess risk and track disparities and outcomes in different areas of federal policy.<sup>14</sup> For example, the National Survey of Youth in Custody (NSYC) includes a measure of sexual orientation for youth over the age of 14,<sup>15</sup> and has provided a wealth of important information about disproportionate incarceration and sexual victimization of LGB youth in custody.<sup>16</sup> The National Survey of Family Growth (NSFG), which includes respondents as young as 15, similarly includes a sexual orientation measure.<sup>17</sup> Sexual orientation questions have also been included on school-based surveys of adolescents since the

<sup>6</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 95 (2016), [www.ustranssurvey.org/report](http://www.ustranssurvey.org/report).

<sup>7</sup> 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> + [https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf?\\_ga=2.203792144.123444589.1528475781-119191609.1523902394](https://assets2.hrc.org/files/assets/resources/HRC-YouthFosterCare-IssueBrief-FINAL.pdf?_ga=2.203792144.123444589.1528475781-119191609.1523902394)

<sup>8</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>9</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>10</sup> See for example Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf> (noting that a forthcoming study estimated that 22.8% of youth in foster care identify as LGB, and noting that number should be even higher since estimate does not include transgender youth in foster care).

<sup>11</sup> Same as 8 above.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> Sexual Minority Assessment Research Team (SMART), Williams Institute, *Best Practices for Asking Questions about Sexual Orientation on Surveys* 24 (2009), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf> (citing various surveys).

<sup>15</sup> Bureau of Justice Statistics, *Data Collection: National Survey of Youth in Custody (NSYC)*, <https://www.bjs.gov/index.cfm?ty=dcdetail&iid=321> (last visited May 5, 2018).

<sup>16</sup> See, e.g., Bianca D.M. Wilson et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. YOUTH & ADOLESCENCE 1547 (2017); Alan J. Beck et al., Bureau of Justice Statistics, *Facility-Level and Individual-Level Correlates of Sexual Victimization in Juvenile Facilities, 2012*, NCJ Publication No. 249877 (2016), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5663>.

<sup>17</sup> See Anjani Chandra et al., *Sexual Behavior, Sexual Attraction, and Sexual Identity in the United States: Data From the 2006–2008 National Survey of Family Growth*, 36 NATIONAL HEALTH STATISTICS REPORTS 1, <https://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf>.

mid-1980s through versions of the Youth Risk Behavior Survey (as noted in the Children's Bureau comments to the Final Rule)<sup>18</sup> and sexual orientation and gender identity data is collected by many health care providers.<sup>19</sup> The rules promulgated under the Prison Rape Elimination Act ("PREA") require youth and adult correctional officers to collect sexual orientation and gender identity information as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>20</sup>

Despite this modest progress, a lack of comprehensive federal data on the needs and experiences of LGBT people, especially LGBT youth, continues to be a pervasive problem. This is particularly true of data on transgender youth. As recognized by the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, "there remains a lack of data on the characteristics and well-being"<sup>21</sup> of LGBT people. The Working Group concluded that "in order to understand the diverse needs [of LGBT people]..., more representative and better quality data need to be collected."<sup>22</sup> Without this data, public policymakers, government and state agencies, service providers and tribes cannot adequately understand or address the diverse needs of the LGBT populations, including LGBT youth. This type of data is essential to develop and implement sound policymaking, determine appropriate level of funding, improve outcomes, replicate best practices and reduce costs and disparities for LGBT youth, including LGBT-identified American Indian and Alaska Native youth.

**Retaining existing data collection initiatives on sexual orientation, gender identity and expression, and improving data collection on transgender youth will improve the safety, permanency and well-being of LGBT youth and result in cost savings**

Data on LGBT foster youth is necessary to inform law, policy and funding determinations, identify best practices for replication and, importantly, to enhance the Administration on Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families. Collecting data on LGBT foster youth nationally will allow the Children's Bureau, states and tribes to identify successes and best practices in improving outcomes for LGBT foster youth and to replicate them to address disparities experienced by LGBT foster children.

The Social Security Act requires collection of data regarding characteristics of all children in foster care.<sup>23</sup> The core objectives of safety, permanency, and well-being apply to all children in the custody of state and tribal child welfare systems, including LGBT children. In April 2011, ACF reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."<sup>24</sup> ACF acknowledged that LGBT youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness.<sup>25</sup>

---

<sup>18</sup> Laura Kann et al., Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9-12—United States and Selected Sites, 2015, 65 *Morbidity & Mortality Weekly Report* 1, 11, 15, <https://www.cdc.gov/mmwr/volumes/65/ss/pdfs/ss6509.pdf>, at 2.

<sup>19</sup> Sean Cahill and others, "Do Ask, Do Tell: High Levels of Acceptability by Patients of Routine Collection of Sexual Orientation and Gender Identity Data in Four Diverse American Community Health Centers," *PLoS ONE* 9 (9) (2014): e107104, available at <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0107104>.

<sup>20</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

<sup>21</sup> Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, *Current Measures of Sexual Orientation and Gender Identity in Federal Surveys* (2016).

<sup>22</sup> *Id.*

<sup>23</sup> [https://www.ssa.gov/OP\\_Home/ssact/title04/0479.htm](https://www.ssa.gov/OP_Home/ssact/title04/0479.htm)

<sup>24</sup> 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>

<sup>25</sup> *Ibid.*

HHS should retain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that agencies, states and tribes can improve outcomes, identify and fund needed resources, and reduce the disparities experienced by LGBT foster children.

The 2016 Final Rule streamlined much of the data collection elements in the original proposed rule (2015 NPRM<sup>26</sup> and 2016 SNPRM<sup>27</sup>), and addressed burdens identified by States, tribal entities and other stakeholders through years of public comments on AFCARS data elements. The Final Rule data elements reflect this substantial public input, are not overly burdensome, and include statutorily required data on marginalized youth.<sup>28</sup> These data elements will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any potential burden involved in implementing new data elements will be outweighed by the benefit of more informed state and federal policy and program decisions, which will serve to improve outcomes for some of the most marginalized children in the child welfare system, and to reduce the costs needed to protect and care for them.

In particular, in order to ensure that data on LGBT foster youth and parents is adequately collected, we recommend the following:

- 1) **The Children’s Bureau should retain the data element on the reason for removal of a child from a family home due to “family conflict related to child’s sexual orientation, gender identity, or gender expression”:** Family preservation is a current priority of the ACF. Data on the impact of family conflicts in removal can help focus much-needed resources on helping children remain with their family of origin through targeted supportive services, potentially resulting in enormous cost savings for states and tribes. This data element will be crucial to successfully implement Family First prevention funding to keep the estimated 19% of foster children who are LGBT with their families of origin, rather than entering foster care. Research shows that reducing the severity of family rejection of LGBT youth leads to reductions in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections.<sup>29</sup> All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. Continuing to gather this data will help drive effective case planning and services, resulting in better outcomes for youth and families and cost savings to states and tribes. Removing this data element would make it harder for states and tribes to reduce the over-representation of LGBT youth in care, and LGBT youth of color in particular.
- 2) **The Children’s Bureau should retain the voluntary sexual orientation question for foster youth over the age of 14:** All of the poor conditions and outcomes that disproportionately affect LGBT foster youth carry substantial costs to state and tribal child welfare systems. Identifying LGB foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce

---

<sup>26</sup> 80 FR 7132

<sup>27</sup> 81 FR 20283

<sup>28</sup> Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the Preventing Sex Trafficking and Strengthening Families Act (P.L. 110-351) and changes in foster care services and oversight in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), and the Child and Family Services Improvement and Innovation Act (P.L. 112-34). Critically, the Final Rule will also provide data to ensure implementation and oversight of the Indian Child Welfare Act (P.L. 95-608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed Family First Prevention Services Act (“Family First,” P.L. 115-123).

<sup>29</sup> See, for example: Cornell University, What We Know, What does the scholarly research say about the link between family acceptance and LGBT youth well-being?, <https://whatwewknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-acceptancerejection-of-lgbt-youth-2/>



instability, minimize costly stays in group homes and hospitals, and improve permanency in family home settings would provide cost savings. The many benefits resulting from information from the data elements on sexual orientation for youth over 14 outweigh any labor and cost associated with implementation.

- 3) The Children’s Bureau should retain the voluntary sexual orientation question for adoptive and foster parents and guardians:** Same-sex couples are raising an estimated 3,400 foster children in the United States, and are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>30</sup> Studies estimate that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>31</sup> Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support LGB caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGB families. In its April 2011 guidance, ACF affirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”<sup>32</sup> Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>33</sup> Recruitment of LGB families could provide affirming, supportive homes for youth, including LGBT foster youth, reducing the costs detailed associated with placement instability and overrepresentation in group homes that these youth experience.
- 4) The Children’s Bureau should add voluntary gender identity questions for foster youth over the age of 14 and foster and adoptive parents and guardians:** Transgender foster youth face high levels of discrimination, mistreatment, and homelessness. In the foster care system, LGBT youth are often targeted and policed by providers, caretakers and peers for their behaviors associated with gender and for how their gender identity is perceived.<sup>34</sup> Because of the particular, compounded challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes identify affirming placements and reduce placement instability, resulting in better outcomes and cost savings. Other federal agencies already collect data on gender identity amongst teenagers using well-tested methods.<sup>35</sup> Collecting gender identity data in conjunction with sexual orientation data will also help states and tribes develop streamlined comprehensive services. Collecting gender identity data will be especially useful and efficient as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

---

<sup>30</sup> Gary Gates, LGBT Parenting in the United States, The Williams Institute, UCLA School of Law, February 2013, <http://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>31</sup> The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>32</sup> Same as 2 above.

<sup>33</sup> *ECDF Act Facts*, Family Equality Council (2017), [https://www.familyequality.org/get\\_informed/advocacy/ecdf/ecdf-facts/](https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

<sup>34</sup> Robinson, Brandon Andrew. “Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.” *Child Welfare*. Child Welfare Journal Vol. 96, No. 2 Special Issue: LGBTQ. Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>35</sup> See: Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, *Current Measures of Sexual Orientation and Gender Identity in Federal Surveys* (2016), at 13.

- 5) **Children’s Bureau should provide adequate training and resources to agency staff, states and tribes involved with administering sexual orientation and gender identity and expression data elements for foster youth:** The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity data about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing this information in child welfare systems to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.<sup>36</sup> In the Final Rule, the Children’s Bureau summarized its well-supported rationale for collecting information regarding the sexual orientation of youth 14 years old and older, finding that “[i]nformation on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality.”<sup>37</sup> Additionally, the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”<sup>38</sup> The Children’s Bureau should provide adequate training and resources to states and tribes who are involved in collecting this data, in line with its 2016 Final Rule.

#### A. Conclusion

For the reasons outlined above, we strongly urge HHS, ACYF, ACF, Children’s Bureau to retain all of the data elements in the 2016 AFCARS Final Rule, including the data elements related to sexual orientation and gender identity and expression. We also urge the Children’s Bureau to include a gender identity measure in the instances where it already collects data on sexual orientation. Retaining this type of data collection will not increase burdens and will improve cost savings. Federal data collection LGBT foster youth is essential to combat the widespread levels of discrimination, and the disparate outcomes faced by these populations, which are disproportionately represented in the foster care system. Collecting data on sexual orientation and gender identity of foster youth allows government agencies, states and tribes to develop policies and services to best address the needs of this vulnerable population. This type of data is also essential to adequately fund programming to improve outcomes, replicate best practices and reduce costs and disparities for LGBT youth, including LGBT-identified American Indian and Alaska Native youth.

Thank you for your consideration.

---

<sup>36</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>37</sup> 81 FR 90524

<sup>38</sup> 81 FR 90524

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-3uvr
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> E-mail

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0143  
Ohio Dept. of Job and Family Services

---

## Submitter Information

**Name:** Carla Carpenter  
**Address:** 43218  
**Organization:** Ohio Dept. of Job and Family Services

---

## General Comment

See attached

---

## Attachments

Ohio



Department of  
Job and Family Services

John R. Kasich, Governor  
Cynthia C. Dungey, Director

June 13, 2018

Ms. Kathleen McHugh, Director  
Children's Bureau Policy Division  
Administration for Children and Families  
United States Department of Health and Human Services  
330 C Street SW  
Washington, DC 20024

Re: RIN 0970-AC72 AFCARS December 2016 Final Rule Comments

Dear Ms. McHugh:

Thank you for the opportunity to provide additional comments on the implementation of the December 2016 Final Rule for AFCARS. The State of Ohio recognizes the value of robust data collection and reporting and has made continuous enhancements to its SACWIS to support improved data quality. However, Ohio also seeks to maintain a balance between caseworker focus on family safety and engagement and collecting data to support the enhancement of child welfare practice.

In examining the prospective impacts of the AFCARS changes, Ohio has determined that the impact on both fiscal and human resources will be substantial. Our initial estimate of the SACWIS enhancements required to enact the proposed changes would exceed 10,000 hours of development, testing, and implementation. The projected cost is estimated at over 1 million dollars for system changes alone.

Further, Ohio currently requires caseworkers to commit a substantial amount of time to ensure comprehensive data entry within its SACWIS. Although there is added value in documenting the additional elements, the burden on Ohio's caseworkers would increase if the December 2016 Final Rule for AFCARS is implemented. Ohio SACWIS Project is focused on enhancing SACWIS to provide more streamlined and efficient functional usability. Adding the additional 2016 Final Rule elements has the potential to detract from this critical goal.

AFCARS December 2016 Final Rule integrates 153 new AFCARS related data points. Of the 153 new data points, 65 of them are related to the Indian Child Welfare Act (ICWA). Ohio's population of children in care during FFY2017 who are eligible for a tribal affiliation is .03%. Of the children in care during FFY2017, no child has a tribal status of eligible. In

30 East Broad Street  
Columbus, Ohio 43215  
jfs.ohio.gov

light of the significant resources required to implement these changes, Ohio would like to respectfully submit that we are not in favor of additional changes to enhance ICWA-related functionality.

To support the goals of more robust data reporting efforts, Ohio is in favor of reporting to AFCARS select data that is currently entered into SACWIS by caseworkers. Ohio also supports the addition of data entry that would not require Ohio caseworkers to become overburdened and data enhancements that would not require substantial development resources and costs. Ohio is county administered and state supervised; therefore, a collaborative approach with Ohio's stakeholders would be required to fully define the enhancements that would fall under this proposal.

The addition of the elements identifying LGBTQ youth in foster care are helpful in assessing the need for additional and/or specialized services for this population, thus creating successful outcomes.

Thank you once again for the opportunity for Ohio to be a voice in the December 2016 Final Rule for AFCARS. Please feel free to contact our office with any questions regarding our state's comments.

Sincerely,



Carla K. Carpenter  
Deputy Director  
Office of Families and Children  
P. O. Box 183204  
Columbus, Ohio 43218-3204

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p4-2irx
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0144  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Anonymous Anonymous

---

## General Comment

Do not take away the question that asks if children left home because of family conflict related to child's sexual orientation, gender identity, or gender expression.

LGBTQ children are at unique risk of harm and need to be protected. They can't be if we don't know who they are and what they face. As a lesbian and former foster parent, I urge this question remain.

# PUBLIC SUBMISSION

<b>As of:</b> September 14, 2020
<b>Received:</b> June 13, 2018
<b>Status:</b> Posted
<b>Posted:</b> June 13, 2018
<b>Tracking No.</b> 1k2-93p5-31zj
<b>Comments Due:</b> June 13, 2018
<b>Submission Type:</b> Web

**Docket:** ACF-2018-0003  
AFCARS 2018-2020

**Comment On:** ACF-2018-0003-0001  
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

**Document:** ACF-2018-0003-0145  
Comment on FR Doc # 2018-05042

---

## Submitter Information

**Name:** Shelley Scanlon

---

## General Comment

LGBTQ and American Indian/Alaska Native youth, targeted in the proposed rule, are dramatically overrepresented in foster care and experience worse outcomes than their non-LGBTQ and non-Indian counterparts; elimination of data collection would significantly set back efforts to improve outcomes for these groups.