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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-2018-0003-0146
Kalispel Tribe of Indians

Submitter Information

Name: Glen Nenema
Address: 99180
Organization: Kalispel Tribe of Indians

General Comment

See attached file(s)

Attachments

Kalispel Tribe of Indians

Kalispel Tribe of Indians
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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

Via electronic correspondence at: *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 Madam,

The Kalispel Tribe of 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.

The Kalispel Tribe opposes any diminishment or termination of this important ICWA data point collection. Any burdens perceived with the implementation of the Final Rule should be outweighed by the data that would be gained on child outcomes in ICWA cases.

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 that several states are 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 tribes, tribal 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 fail to provide justification to deviate from the statutory requirement forregulations.

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. 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 states additional resources to start anew.

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,

Glen Nenema
Chairman of the Kalispel Business Committee
Kalispel Tribe of Indians

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

Document: ACF-2018-0003-0147
National Council of Jewish Women, Inc

Submitter Information

Name: Nancy Kaufman
Organization: National Council of Jewish Women, Inc.

General Comment

See Attached

Attachments

National Council of Jewish Women, Inc

National Council of Jewish Women

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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.

Dear Ms. McHugh:

On behalf of the National Council of Jewish Women, we write to offer comments 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]. We 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."

As an organization dedicated to improving the quality of life for women, children, and families, we endorse and resolve to work for laws, policies, and programs that protect every child from abuse, neglect, exploitation, bulling, discrimination, and violence. Further, we believe in *kavod ha'briot*, that all individuals are deserving of respect and dignity. It is crucial that the federal government help protect LGBTQ children, who are especially vulnerable and overrepresented in the foster care system. Eliminating LGBTQ data collection sends the message that LGBTQ children are unworthy of our attention and care. We know this is not the case.

A FAITH IN THE FUTURE.

A BELIEF IN ACTION.®

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.

We 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.

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.

For any questions or for additional information, please contact Faith Williams, Senior Legislative Associate, at faith@ncjwdc.org or 202-375-5063.

Sincerely,

Submitted electronically by Nancy K. Kaufman, CEO, National Council of Jewish Women, Inc.

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0148
Comment on FR Doc # 2018-05042

Submitter Information

Name: Adam Fernandez

General Comment

Dear Ms. McHugh:

I write 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].

It is an unfortunate fact about our society, that parents sometimes reject their children for being LGBTQ. Studies show that approximately 20% of foster youth identify as LGBTQ, and they experience worse safety and well-being outcomes than non-LGBTQ youth. These failures of the foster care system lead to even more tragic statistics: 40% of all homeless youth are LGBTQ, and 40% of LGBTQ high school students are considering suicide, with an actual suicide rate seven times that of their heterosexual and cis-gendered peers. Given these facts, data collection on the state and national level is urgently needed, for states and tribes to improve outcomes and identify best practices for doing so.

I am very disappointed that you are considering removing the questions discussed below. We need to be doing more to protect the lives of LGBTQ youth, not less.

I urge HHS to keep asking whether reason a child was removed from a home was due to family conflict related to child's sexual orientation, gender identity, or gender expression. Failing to be mindful of this will lead to even worse outcomes for LGBTQ youth, including higher rates of homelessness and suicide.

I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents. There is a critical shortage of adoptive and foster parents in the US. Same-sex couples foster at six times the rate of their opposite-sex counterparts, and can provide loving, supportive homes for Americas 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.

Thank you, I look forward to you incorporating this feedback into your proposed rule.

Best,
Adam Fernandez, Esq.
@AdamaEsq

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

Document: ACF-2018-0003-0149
Washington State Children's Administration

Submitter Information

Name: Stephanie Sarber
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Organization: Washington State Children's Administration

General Comment

Washington State Children's Administration respectfully submits the attached comments.

Attachments

Washington State Children's Administration

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
CHILDREN'S ADMINISTRATION
PO Box 45040 • Olympia WA • 98504-5710

June 13, 2018

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

RE: Washington State's Comments on ANPRM
Adoption and Foster Care Analysis and Reporting System (AFCARS)
Docket number 2018-05042; RIN number 0970-AC72

Dear Ms. McHugh:

The State of Washington Children's Administration (CA) submitted responses to both the NPRM and SNPRM in 2015 prior to the issuance of the 2016 final rule and requests the ACF review those earlier responses. Washington recently submitted a response to RIN 0970-AC47 in support of the two-year implementation extension based on additional staff burden for training and data collection required in the 2016 Final Rule, and the costly and extensive changes to a fragile SACWIS system as we work toward a new/modernized Comprehensive Child Welfare Information System (CCWIS).

Washington now respectfully submits the following comments in response to the Advanced Notice of Proposed Rulemaking in the Federal Register issued by the Administration on Children, Youth and Families (ACYF) on March 15, 2018.

Washington has a strong relationship with our tribal partners and holds a very high value in complying with the Indian Child Welfare Act. Washington continues to support collection and reporting of essential Indian Child Welfare Act (ICWA) data and recognizes data is necessary in understanding compliance and technical assistance needs in an effort to improve outcomes for AI/AN children who are in foster care, adoption, and guardianship programs.

Washington also supports incorporating other federal data requirements into the AFCARS elements to simplify mandatory state reporting to the Children's Bureau (e.g. social worker monthly visits with children and commercially sexually exploited children data).

We sincerely hope our comments offer insight as to the challenges faced by state agencies in implementing these requirements, with the hope that ACYF might offer additional resources and greater system coordinated planning.

While Washington concurs with the need to ensure ICWA is consistently applied and that data is necessary to measure compliance as clearly outlined in the Department of Interior, Bureau of Indian Affairs NPRM issued in April 2015, we propose that AFCARS penalties should be waived for elements that rely on the action(s) and data of another entity. Data elements that fall in this category are:

- **18 – 20. (b.5) Court determination that ICWA applies**
- **24. (b.7) Request to transfer to tribal court – ICWA**
- **25 – 28. (b.8) Denial of transfer – ICWA**
- **166.(e.10) Good cause under ICWA**
- **167 - 171. (e.11) Basis for good cause**
- **267. (h.22) Good cause under ICWA**
- **268 – 272. (h.23) Basis for good cause**

As indicated in previous comments from 2015, Washington continues to have concerns with our ability to comply with reporting educational and medical data and information collected and maintained by other entities such as the WA Office of the Superintendent of Public Instruction (OSPI) and WA Health Care Authority (HCA).

Washington's Department of Social and Health Services Children's Administration and (OSPI) continue to work on a cooperative data share agreement, which has faced significant legal barriers related to federal law (e.g. Family Educational Rights and Privacy Act). We have recently reached agreement on a foundational data share agreement for a bidirectional interface to authorize an exchange of data to be used for individual child case management. However, we have yet to work through challenges/concerns regarding use of the data. In particular, OSPI and their legal counsel cite FERPA as restricting the use of these data by the public child welfare agency for summary reporting or to comply with federal reporting requirements (e.g. AFCARS). Washington recommends that the following data elements be removed from the AFCARS reporting requirements or that AFCARS penalties not be applied to these data elements until the Administration for Children Youth and Families and the federal Department of Education issue clear joint policy that grants child welfare agencies access to use data about foster children, which is currently interpreted by the education agency to be restricted from such use by FERPA.

Educational elements:

- **53. (b.14) school enrollment**
- **54. (b.15) Educational level**
- **55. (b.16) Educational stability**

- **66. (b.18) Special Education**

While new CCWIS rules require an educational data exchange, states should not incur penalties for information that they are unable to report until they are able to work through issues around FERPA interpretation and allowances. We recommend the ACF continue to work with the Department of Education to establish clear and consistent guidance at the federal level for all states.

Current AFCARS reporting, along with the 2016 Final Rule, also pose challenges due to HIPPA concerns the public child welfare agency's ability to access a child's medical information, particularly if the child is over the age of 12 and declines release of the information. There are no reporting options to account for this circumstance and can result in increased error rates, which under the new rules, will also result in penalties against the state.

- **41. (b.13) Health, behavioral or mental health conditions.**

In addition to reporting concerns, there are opportunities to streamline reporting. Unless there are specific business needs for higher specificity, elements like the health, behavioral or mental health conditions should be reviewed to determine if they could be streamlined:

- **42. (b.13.i) Intellectual disability**
- **47. (b.13.vi) Mental/emotional disorders**
- **49. (b.13.vii) Serious mental disorders**
- **50. (b.13.ix) Developmental delay**
- **51. (b.13.x) Developmental disability**

Could be streamlined to:

- Intellectual delay or disability
- Mental/Emotional disorder

- **(d.6) Child and family circumstances at removal.**
  - The existing Circumstances Associated with Removal currently has **17** identified circumstances, the 2016 Final Rules expand this under the Child and Family circumstances at removal to **34** separate circumstances. Each circumstance must be accounted for in the extraction code and mapped to "applies" or "does not apply".

- **136. (d.6.xxix) Parental Immigration detainment or deportation**
  The parent is or was detained or deported by immigration officials.
  - Incarceration of caretaker covers this sufficiently and is already an existing option under Circumstances Associated with Removal and continues to also be an option under the new 2016 final rules within the Child and Family Circumstances at

Removal. What is the reporting need to identify parental deportation separately from incarceration? Washington strongly disagrees with the collection and reporting of this information. In the 2016 proposed rules, Parental Immigration Detainment or Deportation was identified as a separate data element, which was opposed by many states. Unfortunately, in the 2016 rules, while it is moved as a selection under an overall data element of circumstances at removal, it still represents an attempt to collect this data.

- **(d.6.xxx) Family conflict related to child's sexual orientation, gender identity, or gender expression.**
    - Child sexual orientation is self-reported. We will address concerns regarding this data collection, however specific to circumstances at removal, we feel this can be captured as it currently is under the existing parent/child conflict option.

It is Washington's policy to record information about foster and adoptive parents that is relevant to our decision to approve a home study or that is a major determinant in the decision to place a child in the home. We do not consider a caregiver's sexual orientation, marital status, or gender in either of these determinations; therefore, the state is not supportive of asking about or recording this information in the electronic information system. The following is a list of the data elements that we recommend removing for this reason and other issues as noted:

- **184. (e.18) Gender of first foster parent**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **185. (e.19) First foster parent sexual orientation**
- **196. (e.24) Gender of second foster parent**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **197. (e.25) Second foster parent sexual orientation**
- **172. (e.12) Marital status of the foster parent(s)**
- **243. (h.7) Gender of first adoptive parent or guardian**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **255. (h.13) Sex of second adoptive parent, guardian, or other member of the couple**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
    - We also question the wording inconsistency between h.7 and h.13.
- **256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.**
    - We also question the wording inconsistency between e.25 and h.14.
- **24. (h.1) Marital status of the adoptive parent(s) or guardian(s).**

While we concur that the sexual orientation of the youth and that of the foster and/or adoptive parents may help agencies better understand the experiences and outcomes of LGBTQ youth, we feel that information can be discussed under case planning for individual youth and are concerned that questioning youth and caregivers could result in negative impacts and a perception of bias.

The Final Rule is admirable in its intent to use administrative data to improve outcomes for children and families, however the new AFCARS requirements pose a significant impact to states and creates an undue burden at a time when limited resources are needed to support casework practice. This impact is summarized in the table below, indicating that 60 percent of the data elements in the final rule will require system modifications just to be available for reporting and more than 60 percent will require new extraction code to be developed.

Analysis of the overall level of effort around changes specific to the data elements.

Level of Effort Required to Come into Compliance with New AFCARS Requirements	Number of NEW AFCARS Elements with NO Crosswalk to Current Elements	Number of NEW AFCARS Elements that Federal Crosswalk Linked to Current Elements	Total
Requires NEW fields and functionality to be added to system. Much of the information is only available in narrative.	102	21	123
Requires MODIFICATIONS to the system for existing information to be reported as required.	19	29	48
Currently AVAILABLE in the system; some will require new extraction code to meet new requirements.	30	90	120
TOTAL	151	140	291

In Summary, Washington concludes with the following overall recommendations:

- Concur with incorporating other reporting requirements under IVE in to AFCARS (e.g. SW visits), ICWA elements that fall under the child welfare responsibilities for compliance and adding in reporting elements related to newer federal legislation (e.g. commercially sexually exploited children). However, the extensive changes and additions that fall outside of these reporting responsibilities needs to be carefully reviewed and should be supported by an identified business justification.

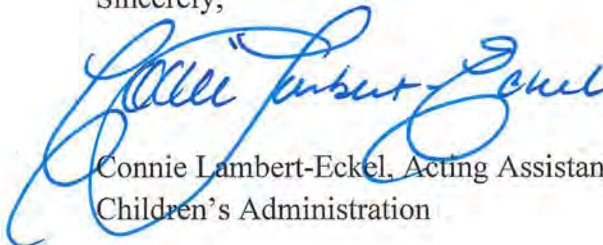
- Recommend further work between ACYF, states and tribes to thoroughly review all data elements, develop clear definitions and standards to ensure consistency in reporting and comparisons, and determine relevance of collecting each data element.
    - Recommend the convening of a special workgroup comprised of all states/tribes with direct AFCARS reporting responsibilities to work together with the ACF to review and streamline AFCARS data collection/reporting with a focus on federal requirements and outcomes. We believe there are a number of opportunities to streamline the data collection requirements under AFCARS to meet federal, tribal and state business needs in measuring compliance and outcomes.

- Penalties – Washington currently has an AFCARS improvement plan to address deficiencies identified during our most recent AFCARS review. Implementing the penalties section outlined in the proposed rules would negatively impact our ability to complete work timely by further reducing our resources.
    - Any data collection/reporting on elements that do not specifically fall into ensuring compliance around rules and outcomes, at the very least, should not be subject to penalties.
    - Should consider availability of the data, particularly when the data is based on the action or under the authority of a 3rd party.
    - Recommend that penalties be waived as long as the state is in compliance with an approved AFCARS Improvement Plan.

- Data collection should be assessed for negative impacts.

Thank you for your consideration of these comments.

Sincerely,



Connie Lambert-Eckel, Acting Assistant Secretary
Children's Administration

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

Document: ACF-2018-0003-0150
Equality California

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General Comment

See Attached

Attachments

Equality California

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June 13, 2018

Ms. Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
Director, Policy Division
330 C Street SW
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CBComments@acf.hhs.gov

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

Dear Ms. McHugh:

On behalf of our 800,000 members, Equality California appreciates the opportunity to express our views regarding the Department of Health and Human Services' implementation of the Final Rule for the Adoption and Foster Care Analysis and Reporting System (AFCARS) for the Administration for Children and Families, Administration on Children Youth and Families, and Children's Bureau.

Equality California, the nation's largest statewide lesbian, gay, bisexual, transgender and queer (LGBTQ) civil rights organization, works within California, at the Federal level, and directly with other states to win and protect full equality for LGBTQ people through education, electoral, advocacy and mobilization programs to achieve our mission.

Comprehensive data collection by government agencies is essential – the quality, utility, and clarity of the data collection guides the subsequent allocation of Federal and state funding. It is shocking that AFCARS has not been updated since its inception in 1993, given that its very description is the "only Federal national data set that collects case level information on all children in foster care and children adopted with the involvement of the title IV-E (child welfare) agency." The Children's Bureau own website explains its mission is to "collect demographics on foster/adopted children and biological/foster/adoptive parents, the number of children entering/exiting foster care and awaiting adoption, and information on placements and permanency plan goals."

Of the more than 437,000 youth in foster care nationwide in 2016, nearly 55,000 lived in California. Numerous studies indicate that many of those children are LGBTQ; while data is limited because there is no Federal requirement to track this data, existing research indicates LGBTQ youth are overrepresented in the foster care system – possibly as high as 19%. But until states and tribes have more information about these youth, their experiences and their outcomes, institutions will be unable to meet the needs of acutely vulnerable children.

LGBTQ youth enter foster care for the same reasons as their non-LGBTQ peers — abuse, neglect and parental substance abuse. But many have experienced further trauma stemming from family rejection or mistreatment and school bullying because of their sexual orientation, gender identity or gender expression. Presumably as a direct result of discrimination and its resulting trauma, LGBTQ youth in foster care have a higher average number of placements and a higher likelihood of living in group homes than their non-LGBTQ peers. The impact is highest on children of color who comprise more than 50% of children in foster care, including Alaskan and Native American children who are subject to the Indian Welfare Act.

Once LGBTQ youth enter the foster care system, they're less likely than their non-LGBTQ peers to be placed in a safe and supportive home; according to a 2014 Williams Institute survey, 12.9% of LGBTQ youth (aged 12-21) in Los Angeles County reported being treated poorly by the foster care system, compared to 5.8% of non-LBTQ youth. This finding is highly disturbing, given that California's non-discrimination protections are far more robust than in most states in the country.

Unsupported foster youth are more likely to experience school interruptions, fall behind academically, and be truant, which too often translates into eventual school drop-out, putting young people at much higher risk for poverty, homelessness, incarceration, and early parenthood. Nor are the effects confined to education; LGBTQ youth are more likely to be hospitalized for emotional reasons and self-harm -- lesbian, gay and bisexual youth are 3-4 times more likely than their non-gay peers to attempt suicide, and a staggering 60% of transgender youth report having suicidal ideation.

Equality California opposed the delay in implementing the Final Rule, and we believe that claims that data elements in the Final Rule are 'burdensome' are marginal in importance when weighed against the potential 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. We therefore strongly oppose the dropping of voluntary questions related to sexual orientation, gender identity and gender expression for those in the child welfare system who are 14 and older, so that affirming permanent homes can be found for LGBTQ youth.

Equality California strongly urges the retention of the data element related to the removal of a child from a family home due to "family conflict related to child's sexual orientation, gender identity or gender expression" because if social services have funding and supportive resources in place to encourage family acceptance and family preservation, LGBTQ children might not enter the foster care system in the first place.

Equality California also strongly supports the retention of a voluntary question about sexual orientation of prospective guardians, adoptive and foster parents because this is most likely where loving and affirming homes will be found. In advocating for affirming placements at the national and state level, Family Equality Council cites Williams Institute findings that nearly two million LGBTQ adults have expressed interested in becoming foster or adoptive parents. Moreover, same-sex couples are six times more likely to foster children and at least four times more likely to adopt than non-LGBTQ

couples. Sadly, because of systemic discrimination, far too many of the 111,000 youth who are eligible for adoption will "age out" of foster care, despite the willingness of prospective LGBTQ adoptive and foster parents to provide permanent homes.

For the reasons set forth 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.

Sincerely,

Valerie Ploumpis
National Policy Director
Equality California

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

Document: ACF-2018-0003-0151
American Academy of Pediatrics

Submitter Information

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General Comment

On behalf of the American Academy of Pediatrics, a non-profit professional organization of 66,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health of all children, we appreciate the opportunity to provide input on streamlining the 2016 final rule to update the Adoption and Foster Care Analysis and Reporting System. We oppose the proposed delay of the 2016 final rule and we strongly encourage the implementation of the 2016 final rule with no further changes.

See attached file

Attachments

American Academy of Pediatrics

American Academy of Pediatrics

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June 13, 2018
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

Dear Ms. McHugh:

On behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 66,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety and well-being of infants, children, adolescents, and young adults, we appreciate the opportunity to provide input on the Administration for Children and Families' (ACF) Advanced Notice of Proposed Rulemaking (ANPR) requesting input on streamlining the 2016 final rule to update the Adoption and Foster Care Analysis and Reporting System (AFCARS). The AAP does not believe that further changes to the 2016 final rule are necessary and opposes the Administration's proposed delay of the 2016 final rule because it will negatively affect ACF's ability to address the health needs of vulnerable children in foster care. We strongly urge you to move forward with implementation of the 2016 final rule without delay.

Children in foster care experience disproportionate exposure to trauma and, as a result, often have complex health, including medical, developmental, educational, and behavioral and mental health, needs. Access to coordinated, high-quality, and trauma-informed health care is essential to ensuring that children in foster care receive the health services they need to thrive. Safety, permanency, and the well-being of children in foster care are three key precepts that inform the work of ACF, state child welfare agencies, and professionals serving children in foster care, including pediatricians. A thorough understanding of a child's health status and the work of professionals to promote child health play a critical role in advancing those three precepts. Well-being remains the most complex to define, measure and improve. For this reason, we strongly supported the 2016 final rule for updating AFCARS in a way that begins to engage some of the factors of well-being, including health.

Quality child welfare data collection is crucial to the improvement of children's health and well-being. As state and local child welfare agencies look to improve the overall health of the children in their care, effective and robust data collection tools are increasingly necessary. AFCARS offers states a critical tool to conduct this important work. The health-related elements within the 2016 AFCARS final rule lend themselves to the improved coordination of the health and social services necessary to support the safety, permanency, and well-being of children in out-of-home care. Ongoing trends in child welfare data improvement, including ACF's work to transition the Statewide Automated Child Welfare Information System to the Comprehensive Child Welfare Information System, underscore the importance of ensuring the collection of child welfare and health data to improve child outcomes. As an additional example, Ohio has created a data portal, IDENTITY, which links electronic health record with child welfare data to improve communication between health care providers and the child welfare system. This new portal will also support the state's ability to meet AFCARS reporting requirements more efficiently. These ongoing trends point to the critical importance of collecting quality data through AFCARS to support improved child health and wellbeing.

AFCARS plays a key role in tracking the experience of children in foster care and the success of implementation of federal child welfare law at the state level. The AAP supports the 2016 final rule as an important improvement to AFCARS, particularly the expansion of the Children's Bureau's ability to collect and analyze information about the health of children in foster care and the health services they receive. In addition, the update created important new data elements and structures to examine the extent to which states are complying with the health-related requirements of federal law, particularly the Health Oversight and Coordination Plan (HOCP) requirements in Fostering Connections. AAP also applauds ACF for expanding the perspective of AFCARS to allow for longitudinal and cohort analysis, which will improve providers' ability to help children in foster care.

ACF has implemented several landmark updates to federal child welfare law in the nearly twenty years prior to the last update to AFCARS in 2016. This includes major updates to the requirements for the provision and oversight of health services for children in foster care, such as those made under the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), the Child and Family Services Improvement and Innovation Act (P.L. 112-34), and the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183). ACF is now also starting to implement the recently enacted *Family First Prevention Services Act* (P.L. 115-123), which will also help improve the health and well-being of children in foster care. Policymakers, advocates, and service providers have worked collaboratively to develop improvements to the child welfare system that improve the health and well-being of children in foster care. It is important that the update of AFCARS facilitate robust examination of the implementation of these policies to support ongoing quality improvement. We urge ACF not to rescind the progress made towards better data collection of the health information of children in foster care represented by the 2016 final rule.

We encourage ACF to retain and implement the 2016 final rule without delay. With increasing numbers of children entering foster care because of the opioid epidemic and the associated traumas that come with that, it is critical that states and ACF collect useful data that support improved access to care for vulnerable children. This delay will perpetuate outdated and inefficient data systems that inhibit the ability of child welfare agencies to ensure children receive coordinated, high-quality, and efficient care. This delay would be a significant obstacle

in the advancement of children's health for those within the foster care system, and we strongly oppose any delay of the 2016 rule implementation.

These comments: 1) outline AAP's feedback to the overall proposal to delay and update the AFCARS final rule; 2) highlight the importance of key AAP-supported AFCARS provisions; and 3) provide specific responses to questions that ACF raises in the ANPR.

Role of 2016 Final Rule in Ensuring Effective Implementation of Health Oversight and Coordination Plans

Central to the importance of the 2016 final AFCARS rule is its role in assessing states work to oversee and coordinate health services for children in foster care. *Fostering Connections* requires states to include Health Oversight and Coordination Plans (HOCP) as part of their five-year Child and Family Service Plans (CFSPs). The AAP remains concerned about the issue of states' fidelity to the HOCP provisions of their CFSPs. HOCPs have the potential to serve as critical avenues to continually improve health outcomes for children in foster care. However, they cannot serve this function without effective implementation at the state level, which depends upon federal guidance, technical assistance, and oversight. The most recently available evidence indicates that there is still significant room for progress in this area.

HOCPs must include: initial and follow-up health screenings; how children's health needs identified through screenings are monitored and treated; how children's medical information is updated and shared via electronic medical records; how the state ensures continuity of health services and establishes medical homes for every child in foster care; how the state conducts oversight of prescription medicines; how the state actively consults with physicians and professionals in determining appropriate medical treatment for children in foster care; whether the state has a transition plan that meets the health care needs of children aging out of foster care; and what steps a state is taking to monitor and treat emotional trauma associated with a child's maltreatment and placement in foster care.

Because ACF has not yet implemented updates to AFCARS that reflect the provisions of *Fostering Connections*, ACF does not currently have the necessary data to assess state implementation of these provisions. We strongly support the collection of the information needed to assess state progress in implementing HOCPs, and commended ACF for including these updates in the 2016 AFCARS final rule. We had also urged ACF to include in AFCARS data elements that measure not just screenings but each aspect of state HOCPs highlighted above to ensure the Children's Bureau has the data needed to examine HOCP implementation during Child and Family Service Reviews (CFSR).

Absent implementation of the 2016 final rule, ACF will not have the necessary tools available to determine whether states are meeting the provisions in their HOCPs. These are vital data that are key to improving the wellbeing of children in foster care. We strongly oppose ACF's proposal to delay, and potentially reduce, the scope of the 2016 AFCARS final rule. We urge you to implement the final rule as promulgated without delay. The following are responses to the individual questions of the ANPR. AAP did not weigh in on the Indian Child Welfare Act (ICWA) elements during the notice and comment period for the development of the 2016 final

rule, so these comments do not include a response to Question 2, which is specific to the ICWA elements.

ANPR Question #1: Identify the data elements, non-ICWA related, that are overly burdensome for state and tribal title IV-E agencies and explain why.

The AAP does not believe that the 2016 AFCARS final rule was overly burdensome. The 2016 final rule was a significant compromise, which left out many important data elements AAP proposed such as: whether a child was born in the U.S.; sources of state assistance in a child's living arrangement; immunization data; the mental health services a child in foster care receives, including whether they are evidence-based and trauma-informed, what their treatment plan is, and the frequency of the services; whether an adoption is open or closed; whether a child is receiving dental care; the extent to which foster parents have completed evidence-based trauma-informed training; and tracking of child health outcomes associated with a child's physical and mental health diagnoses.

Although ACF did not include these important elements, AAP still supported the 2016 final rule because of the importance of the data elements the rule would add to AFCARS. The following are vital data elements in the 2016 final rule that AAP strongly supports. We urge you to implement the 2016 final rule without delay, and offer these highlighted data elements as illustrative of the critical importance of the rule's role in promoting improved health for vulnerable children in out-of-home care.

§ 1355.43 (b): Data Reporting Requirements: Out-of-home data file elements

The AAP supports the 2016 final rule that allows for the longitudinal and cohort analysis of AFCARS data. This is a critically important element that enables the review of a child's experience including health status and health services they have received. This information would support ACF's work to ensure child health and wellbeing as well as promote improved outcomes.

§ 1355. 44(b)(11)(ii) Out-of-Home Care Data File Elements: Date of Health Assessment

The AAP supports the inclusion of the 2016 final rule element that notes the date of a child's health assessment within AFCARS. This information is important for assessing access to care for a significant portion of the foster care population at the state and national level. This is an important aspect of measuring a state's compliance with its HOCP. We greatly appreciate the inclusion of health assessment dates in the 2016 final rule, which provide a baseline understanding of the health of children entering the child welfare system.

Within this element, we had strongly recommended the inclusion and use of the *Fostering Health* standards for health care for children in foster care. *Fostering Health* is a set of practice standards designed specifically for the health needs of children in foster care. An AAP multidisciplinary panel of experts developed these standards, which establish a three-stage health assessment process that occurs over the first 2-3 months after a child's removal from their family and placement in foster care. Under *Fostering Health*, the initial health screening should occur within 24 hours of removal and is ideally conducted by the pediatrician servicing the child's medical home or a pediatric specialist in child welfare, with a possible extension of up to 72 hours. We also suggested that AFCARS collect data for each screening, not just the most recent, to provide a more holistic outlook on the health of the children entering this system. This data

collection can provide more comprehensive information on a child's health, such as the medications a child is taking. We believe the 2016 final rule strikes an appropriate balance.

The inclusion of the date of a child's health assessment is particularly important given the nationwide increase in parental substance use disorders, which has resulted in more children entering the foster care system with significant trauma. Children can manifest this trauma by developing various physical, developmental, educational and mental health conditions. By having a greater understanding of how this trauma is affecting these children, children can receive needed services sooner and better heal from the trauma that they have experienced.

§1355.44 (b) (12): Out-of-Home Care Data File Elements: Timely Health Assessment

The AAP strongly supports this element from the 2016 final rule. Timeliness of health assessment is critical to ensuring that child welfare agencies can appropriately identify health needs such as trauma-related behavioral challenges and developmental delay. We had originally recommended that ACF assess if children in foster care are receiving Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services under Medicaid, if eligible.

We also recommended that ACF clarify within AFCARS the definition of health assessment. Currently, there is too much variability within state child welfare agencies' definitions of health assessment, encouraging inconsistency on their content and timing. We recommended basing it on the AAP's *Fostering Health* standards. We also suggested, to ensure the consistent collection and reporting of AFCARS data, that ACF provide guidance to states and child welfare professionals as to the difference between a health screening and a health evaluation. A health screening is not a full preventive visit. The clarification of these two elements would facilitate a greater amount of consistency within the data AFCARS collects.

§1355.44(b)(13) Out-of-Home Care Data File Elements: Physical Health, Developmental, Behavioral, or Mental Health Conditions

The AAP supports the inclusion of this element and urges its retention. This element helps to further detail important health data about the children entering the foster care system. We are also in strong support of ACF's option to maintain this file over time and not overwrite a child's previous data for every entry. This is essential for providers to revisit diagnoses over time based on the needs of the child, and equally helps to gather longitudinal information on a child's diagnoses to create an accurate view of their health history.

The AAP greatly appreciated the inclusion of specific mental health disorders as individual health diagnoses in the 2016 final rule. These individual elements would allow for providers to develop more specific treatment plans for children with these conditions, in a timelier manner. We also recommended the inclusion of initial mental health screenings at entry into the foster care system, and within 30 days a full mental health evaluation including a trauma assessment by a trauma-informed pediatric mental health professional. Many of the children entering foster care have been exposed to significant levels of trauma and multiple adverse childhood experiences. These assessments provide a better understanding of children's trauma history and what services they need to heal. This is an important item to monitor given that *Fostering Connections* mandates that states have established plans for steps to monitor and treat the emotional trauma associated with a child's maltreatment and placement in foster care. Evidence shows that

addressing childhood trauma sooner improves children's lifelong health and wellbeing, and can reduce future health care costs associated with the long-term sequelae of trauma.

This element is vital to ensuring the health and wellbeing of children in foster care. By recording in detail, the health conditions of children in foster care, health care providers can better assess their health status. This will allow for a better analysis of the improvements necessary in health service delivery for this population.

§ 1355.44(b)(14): School Enrollment/ §1355.44(b)(15): Educational Level/ §1355.44(b)(16): Educational Stability

The AAP supported these school-related elements in the 2016 final rule as they have important health implications. These data are important for assessing the educational experiences of children in foster care. While we greatly appreciated the inclusion of this element, we had also suggested the inclusion of a truancy element to determine the number of school days that a child misses, as a further measure of educational stability. We had suggested that this also include the reasons for said misses, including, but not limited to, suspension and expulsion.

The AAP also suggested the addition of fields to capture information on child development and early childhood education. In addition to capturing information from kindergarten onward, early childhood development, which plays a critical role in health and school readiness, has important implications for ensuring the appropriate oversight and coordination of health services for children in foster care. The development that takes place in a child's pre-kindergarten years is formative and especially significant if that child enters foster care during that time.

§1355.44(b)(18): Special Education

The AAP supported the inclusion of this data element in the 2016 final rule. This element would assess the number of children in foster care with special education needs. Within this element we suggested the addition of an element aimed at assessment of the reception of services by children in foster care, as indicated in their 504 or Individualized Education Plans (IEP).

With that addition, this element would further improve service coordination for children with special health care needs, further increasing the potential for collaborative inter-agency efforts as a means of improving the well-being of children in foster care.

§1355.44(b) (19): Prior Adoption; §1355.44(b)(20) (i-ii): Prior Guardianship

The AAP also supported the data collection elements regarding prior adoptions and/or guardianships in the 2016 final rule. The inclusion of these elements would provide further insight into the nature of prior adoptions and guardianships for these children now entering the foster care system. Every change of caregiver disrupts attachment and is traumatizing for a child. By including intercountry adoptions as well as reasons for the dissolution of these relationships, ACF and state child welfare agencies can gain a better understanding of the supports needed by adoptive families and guardians. This understanding can potentially lead to better support services for children and families, particularly for treatment of behavioral and mental health issues.

§1355.44(b)(21) (i-xiii): Child Financial and Medical Assistance

The AAP applauded the inclusion of this element in the 2016 final rule and its subsequent descriptive individual elements denoting type of assistance, particularly the inclusion of state and tribal child financial and medical assistance. These fields would provide a more robust analysis of all such assistance a child is receiving, with important implications for their medical coverage. This would improve efficiency in caring for children by ensuring efficient service delivery and financing.

§1355.44 (d) (7): Victim of sex trafficking prior to entering foster care/ §1355.44 (d) (8): Victim of Sex Trafficking while in Foster Care

The AAP strongly supported the inclusion of this information to review implementation and effectiveness of P.L. 113-183 in the 2016 final rule. We previously suggested adding categories to identify any health and mental health services a child receives as a result of their sex trafficking, in order to determine what states are doing in an effort to support these identified child sex trafficking victims. We also suggested that ACF provide more clarity in terms of those who are victims during the time that they run away from foster care. This collection of data can prove to be an enormous resource in combatting such a traumatic experience as sex trafficking and also identify youth at risk of pregnancy and sexually transmitted infections and more extensive medical evaluation.

§1355.44(d) (4): Environment at Removal

The AAP also supported this element in the 2016 final rule. We also greatly appreciated the inclusion of homelessness as a subcategory within the "Other" selection. Understanding the home life of children entering foster care would provide insight into the types of supports and services they and their caregivers may need.

§1355.44(d) (6): Child and Family Circumstance at Removal

The AAP strongly supported this section of elements in the 2016 final rule. We particularly supported the addition of the categories ""psychological or emotional abuse", "medical neglect", "domestic violence", "diagnosed condition", "inadequate access to mental health services", and "inadequate access to medical services" as categories. We supported the differentiation made between prenatal exposure to substances and childhood exposure, which is important within the context of the ongoing opioid crisis. We also supported the inclusion of categories that highlight and capture those children that have entered out-of-home care due to the immigration status of their birth parents. In addition to these categories, we suggested the inclusion of a category meant to denote those children that are placed into the foster care system due to the status as an "unaccompanied minor immigrant".

The relevance of these elements ties in directly with those regarding the environment at removal. Given the environmental circumstances at removal, certain familial circumstances may be present as well, which in turn would necessitate pertinent family support services. Understanding the family ecology from which the child came can help health care providers better meet a child's health needs and help promote familial healing.

§1355.44(e): Living Arrangement and Provider Information

The AAP supported this element in the 2016 final rule. We appreciated the incorporation of additional differentiation among living arrangements and providers, and suggested the inclusion of "skilled nursing facility" as an additional living arrangement category.

Given the newly enacted *Family First Prevention Services Act*, these data could support ACF's understanding of children's placement settings, which is important context for the oversight of IV-E financed prevention services.

§1355.44 (b) (23-25): Sibling Information

The AAP supported these elements in the 2016 final rule. These data are important for capturing the number and type of siblings that a child entering foster care has. The inclusion of the element detailing the foster care status of those siblings is also critical. We had also urged ACF to collect information on the extent to which children have ongoing interactions with extended family members. This sustained connection to a child's birth family can help to alleviate the traumatic experience that is removal and placement into out-of-home care. It can also help in allowing for a kinship placement to take place in the future, as well as potentially improving the connection with the birth parent on their path back to reunification.

§1355.44(f) (1): Permanency Plan

The AAP fully supported the 2016 final rule's planned collection of permanency plan information within AFCARS. For those children with permanency plans targeting reunification, the collection of information regarding visitation frequency and the nature of the visit is crucial.

§1355.44 (f) (5): Juvenile Justice

The AAP fully supported this element of the 2016 final rule and its ability to examine the overlap of children in the Child Welfare and Juvenile Justice systems. This examination could be used on the national level to determine how the intersection of Title IV-E dollars serve children in both systems and how best to improve their health and wellbeing.

§1355.44(f) (6-7): Caseworker Visit Information

We also supported this element of the 2016 final rule and suggested gathering information on parental visits similar to the permanency plan element. Where reunification is the goal, birth parent contact is crucial. It serves as an impetus for the parent to meet the necessary requirements for reunification, as well as a comfort to the child experiencing the trauma of removal from their parent. Along with this information, we suggested the information on the visits include anything outside of routine supervision, such as Parent Child Interaction Therapy (PCIT), Child Parent Psychotherapy (CPP), Visitation Coaching, and Parents as Teachers (PAT). Pediatricians play an important role in assessing the impact of visitation on children, in supporting appropriate visitation for a child's developmental and legal status, and in advocating for changes when indicated, whether that be for an increase or reduction, change in venue or supervision or services.

§1355.44 (f) (8): Transition Planning

The AAP supported the transition plan elements within the 2016 final rule, particularly those related to health. We suggested a more deliberate inclusion of health data elements into this field,

to further encourage the healing of the children transitioning out of the foster care system. This should include discussions with a child's caseworker on their eligibility for Medicaid. We also suggested the addition of an item focused on whether a child's health coverage and treatment information are coordinated with a child's medical home during the transition. Health practitioners play an important role in providing developmentally appropriate advice and support for youth and families during transitions, linkages to ongoing primary and subspecialty care, prescriptions for medications and health education.

ANPR Question #3: 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 suggestions that may include its reference 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 outlined above, the health-related elements of the 2016 final rule are vital to monitoring compliance with the Title IV programs, and particularly the HOCPs states develop pursuant to Title IV-B. Individual case review has proven insufficient for this purpose, as demonstrated by the significant barriers to the operationalization of the health screening element of state HOCPs.

The March 2015 U.S. Department of Health and Human Services (HHS) Office of the Inspector General (OIG) Report "Not All Children in Foster Care Who Were Enrolled in Medicaid Received Required Health Screenings"[1] examined the provision of initial health screenings to children in foster care in four states: California, Illinois, New York, and Texas. The report found that in those four states, nearly one-third of children in foster care enrolled in Medicaid did not receive at least one health screening, and over one-quarter received at least one screening late. The provision of initial and follow-up health screenings is one required element for state HOCPs under *Fostering Connections*, so this finding by the OIG provides cause for concern and likely points to issues implementing other aspects of *Fostering Connections*.

National level data related to child health and wellbeing are critical to ensuring the effective provision, coordination, and oversight of health services for children in foster care. These data are also critical for identifying and addressing potential barriers to children accessing needed care. The AAP strongly supports the collection of national level data in the 2016 final rule, and particularly the elements identified in our response to Question 1.

ANPR Question #4: 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.

We believe the 2016 final rule strikes an effective compromise that has already effectively balanced the need for administrative simplicity with the need for actionable data that can support the work of ensuring the safety, permanency, and wellbeing of children in out-of-home care. As we note in our response above to Question 1, there were numerous elements AAP suggested for inclusion which ACF declined to incorporate into the 2016 final rule. We believe that the 2016 final rule as written balances the necessary interests and achieves the goals of AFCARS. In addition, the decades-long ongoing delay of an update to AFCARS has itself contributed to inefficiencies in child welfare data systems and a lack of information states need to manage their

[1] See https://oig.hhs.gov/oei/reports/oei-07-13-00460.pdf

programs and ACF needs to monitor their compliance with federal child welfare law. The continued delay of the implementation of the 2016 final rule creates significant administrative burden within ACF by limiting the agency's ability to ensure the effective implementation of federal laws designed to, among other things, ensure vulnerable children in foster care have access to needed health services.

ANPR Question #5: Please 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.

The 2016 final rule is an effective compromise that includes critical data ACF will need to monitor the Title IV-B and IV-E programs. We do not recommend the removal of data elements from the final rule. The AAP opposes the ongoing delay of the 2016 final rule, and we urge ACF to implement it as written without delay.

Conclusion

The AAP greatly appreciates the major improvements already made to AFCARS. We strongly encourage the reinstatement of the 2016 final rule immediately. Concurrently, we strongly oppose any potential delay to the implementation of this rule as well as a scaling back of the elements listed in the rule. The updates ACF has included are a significant improvement over the previous system, and we look forward to working with you to continue to promote the health and well-being of children in foster care. If you have any questions please do not hesitate to contact Zach Laris in our Washington, D.C. office at 202/347-8600 or zlaris@aap.org.

Sincerely,

Colleen A. Kraft, MD, FAAP
President

CAK/me

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Tracking No. 1k2-93p6-ymco
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AFCARS 2018-2020

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

Document: ACF-2018-0003-0152
Equality Virginia

Submitter Information

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Email: jparrish@equalityvirginia.org
Organization: Equality Virginia

General Comment

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]

Dear Ms. McHugh:

We are writing 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]. We 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 Americas 400,000+ foster youth.

We 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.

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.

At Equality Virginia, we work towards creating a safe, equal, and welcoming place for lesbian, gay, bisexual, and transgender individuals and their families to live, work, and play. One of the largest barriers we face in doing so is the general lack of awareness around basic issues of LGBT discrimination. Data collection is a critical priority to ensure that LGBT needs are understood and met. Without data, we cant document the evidence needed for policy changes, and policymakers cant assess the need for policies and services or efficiently target their programs.

For the reasons outlined above, we urge the U.S. Department of Health and Human Services, ACYF, ACF, Childrens 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,

James Parrish
Equality Virginia
Executive Director
P.O. Box 17860
Richmond, VA 23226

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0153
Montana

Submitter Information

Name: Janice Basso
Address: 59604
Organization: Montana

General Comment

Montana's Response to the Advanced Notice of Proposed Rule Making (ANPRM)
Posted on: Federal Register/Vol. 83, No. 51/ Thursday, March 15, 2018
See attached file(s)

Attachments

Montana

Department of Public Health and Human Services

Child & Family Services Division ♦ 301 S. Park Avenue, 5th Floor ♦ Helena, MT 59604 ♦ fax: (406) 841-2487

Steve Bullock, Governor

Sheila Hogan, Director

June 13, 2018

Kathleen McHugh
Division of Policy
Children's Bureau,
Administration on Children, Youth and Families
1250 Maryland Ave., S.W., 8th Floor
Washington, D.C., 20024
Via the Internet: http://www.regulations.gov/

RE: Advanced Notice of Proposed Rule Making (ANPRM)
Adoption and Foster care Analysis and Reporting System (AFCARS)
Posted on: Federal Register/Vol. 83, No. 51/ Thursday, March 15, 2018

Dear Ms. McHugh:

On behalf of the State of Montana, Department of Public Health and Human Services, Child and Family Services Division, I would like to take this opportunity to comment on the Advanced Notice of Proposed Rulemaking (ANPRM) regarding the AFCARS regulations published in the Federal Register on March 15, 2018.

The State of Montana appreciates the opportunity to provide input toward the NPRM as it relates to the AFCARS changes that went into effect on January 13, 2017. Montana responded to the request for input regarding these changes in April 2015. At that time, we reported that it would take 10,000 hours of programmer time to implement all of the changes. ICWA changes were not calculated in that total and we have since determined that it would take an additional 4,000 hours of programmer time to include the ICWA requirements.

Montana has been working on adding the new requirements to our system of record (CAPS) and will continue to work toward compliance. Montana is also in the process of developing a new case management system which will ultimately become our system of record. Until that time, the state will need to balance our resources between our existing system and our new system to ensure adequate level of effort is being provided to ensure we are meeting the needs of the caseworkers in providing an intuitive system that will help guide practice and promote safety, permanency and well-being of the children and families while at the same time meeting our compliance requirements around data submissions. With that said, Montana continues to advocate toward a stronger emphasis on requiring data sharing with other agency's that already collect the data elements, utilize the courts in collecting the ICWA specific data elements, and increasing the time allowed to implement the remainder of the elements in order to maximize the systems change and enhancements required of both AFCARS and CCWIS.

Thank you for the opportunity to comment on the proposed AFCARS rules. I would like to reiterate my belief that access to improved and timely data can add value to child welfare systems. However, the ultimate impact of implementing the changes outlined in the NPRM as proposed is the loss of valuable time spent with children and families.

Please see our prior submission for additional information.

Sincerely,

Nikki Grossberg
Deputy Division Administrator, Child and Family Services Division

cc: Sheila Hogan, DPHHS Director
Laura Smith, DPHHS Economic Securities Branch Manager

PUBLIC SUBMISSION

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

Document: ACF-2018-0003-0154
Confederated Tribes of the Colville Indian Reservation

Submitter Information

Name: Michael Marchand
Address: 99155
Organization: Confederated Tribes of the Colville Indian Reservation

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General Comment

See Attached

Attachments

Confederated Tribes of the Colville Indian Reservation

The Confederated Tribes of the Colville Reservation
P.O. Box 150, Nespelem, WA 99155 (509) 634-2200
FAX: (509) 634-4116

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

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

Dear Ms. McHugh:

The **Confederated Tribes of the Colville Reservation** 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). Our 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). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

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 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.

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,

Dr. Michael Marchand, Chairman
Confederated Tribes of the Colville Reservation

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0155
Mazzoni Center

Submitter Information

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Organization: Mazzoni Center

General Comment

See Attached

Attachments

Mazzoni Center

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.

Dear Ms. McHugh:

I am writing on behalf of Mazzoni Center 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]. We 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.

We 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.

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.

Founded in 1979, Mazzoni Center is the only health care provider in the Philadelphia region specifically targeting the unique health care needs of LGBTQ community by providing comprehensive health and wellness services in an LGBT-focused environment while preserving the dignity, and improving the quality of life of the individuals it serves. Mazzoni's Pediatric & Adolescent Comprehensive Transgender Services program, also known as PACTS, is a comprehensive approach to addressing the specific needs of trans youth and their families. Our collaborative approach to care draws on the input and expertise of multiple departments within Mazzoni Center - medical providers, social workers, therapists, and legal staff - to provide the best possible care for clients. PACTS currently serves more than 350 young people, ranging in age from 4 to 20, along their families.

Throughout our continuum of care, service providers at Mazzoni Center see the harm and mistreatment that LGBTQ youth face when other service providers are absent or lack the cultural competence to

engage this vulnerable population in a supportive manner. Failing to ask voluntary demographic questions will only serve to increase the invisibility that many of these young people already fear and experience. Only by gathering information about this population can organizations and families meaningfully evaluate the scope of their needs and address them. Sadly, many youth are in need of foster care and adoption because of family rejection issues, and failing to ask these questions hinders efforts to address this chronic and population-specific problem stemming from lack of family acceptance. And asking demographic questions about sexual orientation of foster and adoptive parents is the best way to ensure that they receive the support that they need, and also that they are not being denied services provided through foster care and adoption service providers.

For the foregoing reasons, we urge you to retain, or add, the important data collection questions listed above.

Sincerely,

Thomas W. Ude, Jr.

Thomas W. Ude, Jr., Esq. | Legal and Public Policy Director
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The mission of Mazzoni Center is to provide quality comprehensive health and wellness services in an LGBT-focused environment, while preserving the dignity and improving the quality of life of the individuals it serves.

PUBLIC SUBMISSION

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

Document: ACF-2018-0003-0156
Comment on FR Doc # 2018-05042

Submitter Information

Name: Susan Lambert

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 childs sexual orientation, gender identity, or gender expression.

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.

As a parent and someone who has worked with runaway and foster youth, it is especially important to me that children are protected. It's especially important for vulnerable children who are at higher risk because they identify as LGBTQ and for American Indian and Native Alaskan youth.

Children in this category need to have their rights respected. It is important to the future of these children, the parents involved and the future of this country. Preventing trauma saves lives and money. Protecting the most vulnerable citizens is imperative to our nation & must be a priority.

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

Document: ACF-2018-0003-0157
Comment on FR Doc # 2018-05042

Submitter Information

Name: Valerie Hurt
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General Comment

Please keep asking if children were removed from their home due to family conflict related to childs sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents. These individuals are very vulnerable. We have a responsibility to take care of them and keep track of whats happening to them. Thanks.

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0158
Global Justice Institute/ Metropolitan Community Churches

Submitter Information

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Organization: Global Justice Institute/ Metropolitan Community Churches

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General Comment

See attached file(s)

Attachments

Global Justice Institute/ Metropolitan Community Churches

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.

Dear Ms. McHugh:

On behalf of the Global Jstice Institute and Metropolitan Community Churches (GJI/MCC) 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. GJI/MCC 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 Global Justice Institute and Metropolitan Community Churches have served marginalized communities around the globe for 50 years, and we know firsthand: silence = death. To fail to collect data on specific groups of children is to fail to serve them.

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.[1] 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."[2] 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.[3] 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.

[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm
[2] 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
[3] *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.[4] 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.[5] 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.[6] 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.[7]

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.[8] 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.[9] They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[10] 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

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[4] 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
[5] *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
[6] 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.
[7] Same as 5 above.
[8] Same as 4 above.
[9] *Ibid.*
[10] *Ibid.*

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.[11] 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.[12] 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.[13] Based on average annual foster care maintenance payments per child of $19,107 in FY2010,[14] 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.

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[11] 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
[12] *Ibid.*
[13] 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
[14] Same as 11 above.

Given that an estimated 19% of foster youth identify as LGBTQ[15], 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.[16] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[17] 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."[18] 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.[19] 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.

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[15] Same as 4 above.
[16] 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/
[17] 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/
[18] Same as 2 above.
[19] *ECDF Act Facts*, Family Equality Council (2017), 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."[20] 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.[21] 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.[22] 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.[23] Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing

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[20] 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)."

[21] 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

[22] 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).

[23] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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,

Bishop Pat Bumgardner, Executive Director
Global Justice Institute
Metropolitan Community Churches

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

Document: ACF-2018-0003-0159
Juvenile Law Center

Submitter Information

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Organization: Juvenile Law Center

General Comment

Please see attached file.

Juvenile Law Center requests that U.S. Department of Health and Human Services, Administration for Children and Families (ACF), Administration on Children Youth and Families (ACYF), Childrens Bureau (Childrens Bureau) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (Final Rule), including those related to education, LGBTQ children and youth, and the Indian Child Welfare Act (ICWA).

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 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 better 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.

Attachments

Juvenile Law Center

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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, 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,

On behalf of Juvenile Law Center 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. Juvenile Law Center 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 education, LGBTQ children and youth, and the Indian Child Welfare Act (ICWA). 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.

Juvenile Law Center is the first non-profit, public interest law firm for children in the country. Juvenile Law Center advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, and consistent with children's unique developmental characteristics. Juvenile Law Center is also a partner in the Legal Center for Foster Care and Education. Through the Legal Center, we advocate for better educational opportunities for youth in care in Pennsylvania and nationwide. The Legal Center has been instrumental in helping jurisdictions implement the educational requirements of the Fostering Connections to Success and Increasing Adoptions Act and the school stability requirements of the Every Student Succeeds Act.

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Juvenile Law Center submitted comments related to AFCARS in 2008, 2010, and 2015 in support of updating AFCARS requirements to better reflect new and changing federal laws and improve the quality of data collected about children in foster care. In April 2018, we submitted comments opposing the Proposed Delay of the AFCARS Final Rule.

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 better 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.

Although educational information was not part of AFCARS prior to the 2016 Final Rule, several of the 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 straight-forward – qualitative review or case study is not required for accurate reporting.

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, educational stability, 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).

B. The 2016 Final Rule Represents Exemplary Changes that Are Long Overdue

The requirements within the 2016 Final Rule represent a shift away from "point-in-time" data towards longitudinal data systems which better reflect the experiences of children in foster care. Furthermore, the data collection requirements outlined within the 2016 Final Rule are necessary for the proper performance and function of child welfare agencies. Information collected can guide agencies to improve practice and programs to more effectively address families' needs. With the new data elements, agencies will have more comprehensive information about system-involved children and families, such as the circumstances which bring families into contact with agencies and data elements on medical needs, living arrangements, older youth, and behavioral and mental health. Although there were many significant changes included in the 2016 Final Rule, three particular areas of importance are the changes to education, LGBTQ, and Indian Child Welfare Act (ICWA) data collection requirements. The inclusion of these data elements is long overdue and is crucial to improving the quality of collected child welfare data and our capacity to provide programs and services that match the needs of children and families.

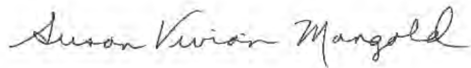
- **Education:** The new education data elements in the 2016 Final Rule are basic, critically important, and not overly burdensome. Juvenile Law Center has submitted comments in response to numerous NPRMs, emphasizing the importance of including elements relating to education in AFCARS. Maintaining key educational data is essential to monitoring states' compliance with the education requirements of the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), which were further supported by the Every Student Succeeds Act (ESSA), and most importantly, to ensuring that the well-being needs of children in foster care are being met. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. Having this limited data in AFCARS is necessary to inform and improve states' practice and policies and enable them to measure and track the education progress of children in care. As such, Juvenile Law Center enthusiastically supports retaining the four basic education-related data elements included in the 2016 Final Rule; this includes data pertaining to school enrollment, educational level, educational stability, and special education.

- **LGBTQ:** There is evidence that LGBTQ-identified youth are over-represented in the child welfare system, and that their specific needs are best served when child welfare agencies have information about which children fit into this category. Juvenile Law Center opposes the removal of data elements related to foster youth sexual orientation and gender identity and expression as this would negatively impact the safety, permanency, and well-being of LGBTQ children. Removing these data elements would also eliminate cost savings associated with finding affirming, supportive pre-adoptive families for an LGBQ child – which would be impossible to do if the child's sexual orientation was unknown. The Final Rule noted that this information should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality. 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 LGBTQ children and youth in foster care.

- **ICWA:** The data in the 2016 Final Rule is vital to the federal government, Congress, states, and tribes to effectively address the needs of American Indian and Alaska Native (AI/AN) children and families. Juvenile Law Center opposes any streamlining, modification, or elimination of the AFCARS data pertaining to the Indian Child Welfare Act (ICWA) for AI/AN children. 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. 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.

For the reasons outlined above, Juvenile Law Center urges 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 education, LGBTQ children, and ICWA. We look forward to working with child welfare stakeholders to move forward with implementation of the Final Rule. Thank you for the opportunity to comment.

Sincerely,



Susan Vivian Mangold, Esq.
Executive Director
Juvenile Law Center

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

Document: ACF-2018-0003-0160
Center for Children and Youth Justice

Submitter Information

Name: Nicholas Oakley
Address: 98104
Organization: Center for Children and Youth Justice

General Comment

See Attached

Attachments

Center for Children and Youth Justice

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.

Dear Ms. McHugh:

On behalf of the Center for Children & Youth Justice ("CCYJ") 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. CCYJ 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.

CCYJ advances justice for children and youth through child welfare and juvenile justice systems reform. For over 11 years, we have built diverse partnerships with state agencies, courts, and social service providers, and developed and pioneered innovative reforms that support children and youth, stabilize families, and strengthen communities. The eQuality Project at CCYJ works to eliminate long-standing barriers for LGBTQ youth involved in these systems through the development of model policies, training, technical assistance, and data collection.

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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

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data regarding characteristics of all children in care.[1] 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."[2] 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.[3] 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.

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.

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[4], 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

[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm
[2] 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
[3] *Ibid.*
[4] Same as 4 above.

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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.[5] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[6] 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."[7] 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.[8] 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."[9] Because of the particular challenges faced by transgender foster youth, adding

[5] 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/
[6] 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/
[7] Same as 2 above.
[8] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/
[9] 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

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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.[10] 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.[11] 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.[12] 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.

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)."

[10] 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

[11] 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).

[12] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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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, CCYJ urges 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. I appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

Nicholas Oakley, J.D.
Senior Projects Manager

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

Document: ACF-2018-0003-0161
Human Rights Campaign

Submitter Information

Name: Cathryn Oakley
Organization: Human Rights Campaign

General Comment

See attached file(s)

Attachments

Human Rights Campaign

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;RIN 0970-AC72

To Whom It May Concern:

On behalf of the Human Rights Campaign's nearly 3 million members and supporters nationwide, I write in response to the request for public comment regarding proposed changes by the Administration for Children and Families (ACF) to AFCARS' data collection procedures published March 15, 2018. As the nation's largest organization working to achieve equal rights for the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community, HRC strongly supports comprehensive federal data collection efforts that directly address sexual orientation and gender identity. HRC strongly urges ACF to maintain the current data elements of AFCARS and to collect information on the sexual orientation, gender identity, and gender expression of children both in out-of-home care and of foster parents, adoptive parents, and legal guardians. By retaining sexual orientation, gender identity, and gender expression ("SOGI") in the data elements of AFCARS, ACF can ensure that the child welfare system is able to provide a safe, loving, and affirming placement to every child who is unable to live with their parents.

I. The data elements currently in AFCARS are not overly burdensome and have already been streamlined through numerous comment periods.

The December 14, 2016 AFCARS Final Rule ("Final Rule") established that questions regarding sexual orientation, gender identity, and gender expression should be included in AFCARS data collection process. The Final Rule is the result of streamlining the original proposed rule.[1] Stakeholders and interested parties had ample opportunity to provide feedback and voice concerns on the data elements included in AFCARS. The Final Rule from 2016 reflects this public input and the data elements that it introduces, including questions about SOGI, are not overly burdensome. Any additional burden incurred by collecting these data elements are far outweighed by the benefits of more informed policy; without accurate and comprehensive information about sexual orientation and gender identity, it is impossible to know how the child welfare system can best serve LGBTQ children and youth.

These changes also bring AFCARS into compliance with statutory requirements for data collection as outlined in the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) as well as changes to foster care services introduced 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). The Final Rule also introduces data elements that ensure implementation of the *Indian Child Welfare Act* (P.L. 95-608), which seeks to improve outcomes for tribal youth. Again, any burdens resulting from these changes are mitigated by the improvements that comprehensive data will make possible in implementing and assessing these policies.

Furthermore, the 2016 Final Rule represents the first time AFCARS has been amended since 1993. The data elements introduced by the Final Rule represent a much-needed updating of AFCARS and reflect advances in child welfare policy and practice. The child welfare profession has acknowledged the importance of collecting SOGI information about children for creating individualized case plans and tracking outcomes in individual cases. 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 professional guidelines addressing managing SOGI information in child welfare systems. The guidelines emphasize that population-based data for LGBTQ youth in foster care is necessary for policymakers to make informed, evidence-based decisions about allocating resources, providing support, and assessing outcomes for LGBTQ

[1] 2015 NPRM: https://www.federalregister.gov/documents/2015/02/09/2015-02354/adoption-and-foster-care-analysis-and-reporting-system; 2016 SNPRM: https://www.federalregister.gov/documents/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system

children.[2] Removing SOGI data elements from AFCARS data collecting procedures would leave ACS out-of-step with the current recommendations of child welfare specialists and professionals.

II. Maintaining the collection of SOGI data is critical to the safety, permanency, and well-being of LGBTQ children in foster care.

Data collection and LGBTQ children

We strongly recommend that ACS maintains the data elements in the Final Rule related to sexual orientation, gender identity, and gender expression. LGBTQ youth are disproportionately overrepresented in the foster care system. A 2013 study conducted with the R.I.S.E Project[3], a 5 year $13.3 million demonstration grant funded by the ACF to create a model program to support LGBTQ youth in the foster system, found that 19% of youth ages 12-21 in foster care self-identify as LGBTQ. This is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care.[4] LGBTQ youth are also more likely to be living in congregate care, such as group homes, residential treatment facilities, and psychiatric institutions. They are also more likely to have been homeless, more likely to have been hospitalized for emotional reasons, and more likely to report being mistreated by the foster care system -- at rates 2 times higher than their non-LGBTQ peers.[5] Further data on the experiences of LGBTQ youth in the foster care system is imperative to improving outcomes, reducing costs, and reducing disparities.

These disparities in experiences with the foster care system are consistent with a growing body of research demonstrating that LGBTQ youth suffer from a range of health and mental health disparities associated with family rejection, school bullying, societal stigma, and discrimination. The Human Rights Campaign Foundation and the University of Connecticut recently published a report based on a survey of over 12,000 LGBTQ teens. Among the key findings are 67% of LGBTQ teens hear their family members make negative comments about LGBTQ people, 73% have experience verbal threats based on their sexual orientation or gender identity, and 95% report difficulty sleeping at night due to stress. In order to identify these risks, the child welfare system must affirmatively collect information about the sexual orientation and gender identity, and expression of the children in its custody. Failure to understand these aspects of a child's identity can lead to poor decisions that seriously undermine the child's permanency, safety, and well-being.

---

[2] Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, "Sexual and Gender Minority Youth in Foster Care," August 2014. https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf

[3] https://lalgbtcenter.org/rise

[4] *See* "Sexual and Gender Minority Youth in Foster Care, *supra* note 2

[5] *Ibid.*

The 2016 Final Rule introduced voluntary questions regarding the sexual orientation of foster youth over the age of 14. HRC strongly urges that these questions be retained. The poor outcomes experienced by LGBTQ youth are extremely costly for state and tribal welfare systems. Identifying LGBTQ youth through a voluntary sexual orientation question enables states and tribes to implement effective interventions, minimize stays in congregate care, and improve the permanency of placements. All of these measures reduce the overall costs of the child welfare system and justify any burden incurred by asking a question about sexual orientation.

HRC urges ACF to retain the data element related to the 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, or helping a child remain with their family of origin, is a priority of the current ACF administration. Including information about removal in AFCARS can inform approaches to and funding for family conflict and acceptance work. The high numbers of LGBTQ youth who end up in foster care suggests that improved family preservation could significantly reduce the number of LGBTQ children who are removed from their families. Removing this data element would impair the ability of states and tribes to improve outcomes for LGBTQ youth and to reduce the over-representation of LGBTQ youth in care.

Data Collection and LGBTQ parents

In addition to LGBTQ youth in the foster care system, it is also critical to collect SOGI-related data on foster and adoptive parents. Like LGBTQ youth, LGBTQ parents are disadvantaged by the foster care system and remain a significantly under-tapped resource in the effort to place children with permanent families. National surveys indicate that nearly 2 million LGBTQ adults are interested in adopting children.[6] Given the chronic shortage of foster homes in the United States, every effort should be made to recruit and retain all qualified prospective resource families. Including the SOGI of foster families in AFCARS will increase disclosure and ensure that all applicants are thoroughly assessed, which will allow for placements that are most likely to be successful and permanent. Data collection will help identify trends in the types and successes of placements, such as the number of foster placements that result in permanent adoptions. Comprehensive data about SOGI in the foster care system is necessary to maximize the pool of permanent placements for children. To that end, ACF should retain the question in AFCARS regarding the sexual orientation of adoptive and foster parents and guardians.

* * * * *

[6] The Williams Institute and 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/

HRC urges the U.S. Department of Health and Human Services and the ACF to retain all of the data elements in the 2016 AFCARS Final Rule, including those related to sexual orientation, gender identity, and gender expression. LGBTQ children are among the most vulnerable populations that ACF serves. By retaining SOGI questions in its data collection efforts, ACS can take important steps to ensure that all LGBTQ youth in foster care feel safe, affirmed, and loved.

Sincerely,

David Stacy
Government Affairs Director
Human Rights Campaign

PUBLIC SUBMISSION

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

Document: ACF-2018-0003-0162
Utah Division of Child & Family Services

Submitter Information

Name: Diane Moore
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Organization: Utah Division of Child & Family Services

General Comment

Please see the attached comments from the Utah Division of Child and Family Services.

Attachments

Utah Division of Child & Family Services

State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

DIVISION OF CHILD AND FAMILY SERVICES

Diane Moore
Director

June 13, 2018

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

SUBJECT: Docket Number 2018-05042 / RIN # 0970-AC72

Dear Ms. McHugh:

Utah appreciates the opportunity to provide comments and respectfully submits this letter in response to the Advanced Notice of Proposed Rulemaking pertaining to 45 CFR Part 1355, the Adoption and Foster Care Analysis and Reporting System (AFCARS), published in the Federal Register on March 15, 2018.

Utah agrees with the findings of the Regulatory Reform Task Force created by Presidential Executive Order 13777, that the AFCARS regulation is one in which the reporting burden imposes costs that exceed benefits. Although Utah is committed to the collection of quality data, after thorough review of the AFCARS elements, we have concluded that the volume and comprehensive nature of the new elements are excessively burdensome without providing measurable benefits.

The NPRM dated February 9, 2015 states that ACF estimates that the cost to states to implement the AFCARS regulations would not be significant. However, given the volume

of new data elements added to AFCARS under the regulations and the intricacy of many of the data elements, Utah does not believe this statement to be accurate for our system.

Utah has spent a significant amount of time reviewing the AFCARS final rule that was published on December 14, 2016 (81 FR 90524) and has thoroughly assessed the systemic changes that would need to be made in order to implement the requirements stipulated in the rule. Each element was analyzed in detail, and based on the analysis, we have determined that we cannot support the addition of any new data elements at this time. Our analysis included consideration of increased workload burden for frontline staff (which would result in reduction of quality of services to children and families and would place further strain on a struggling child welfare workforce); information technology system capacity as the State moves to CCWIS; timing in relation to competing capacity demands necessary for implementing the Family First Prevention Services Act; requirements for data outside of the Title IV-E agency, including ICWA data; and increasing overall administrative burden, including for quality assurance.

Increased Workload Burden for Frontline Staff

Workload burden for frontline staff is increased in multiple ways with the addition of numerous data elements to AFCARS. Many of the data elements require caseworkers to gather and report new information in ways that are not intuitive or beneficial in client engagement and are excessive in nature. It does not appear possible to have caseworkers gather and document all of the new AFCARS elements in a way that actually supports or enhances the objectives of improving outcomes for children and families. Caseworkers will be required to spend considerable time gathering information and entering data elements into a data system, which reduces time they are able to spend engaging with families and performing critical caseworker activities. We considered other options to minimize the burden on caseworkers, such as creating capacity for staff with technical expertise to help gather and input data for technical health care, ICWA , and education information; however, this also increases burden as it requires hiring additional staff for a purpose that does not improve family outcomes.

Other factors related to workload burden:

- Some of the data elements are ambiguous, unclear, and overlapping, which will cause confusion for caseworkers and lead to poor data quality. In addition, experience has demonstrated that the quality and reliability of the data declines as we increase the amount of information that caseworkers are required to gather and input.

- As is true for most states, Utah currently struggles with high turnover in the workforce and retention of qualified staff. Higher turnover in the child welfare workforce impacts ability to get quality data, as it takes time for workers to become skilled at understanding and completing data gathering and system entry requirements.

- Additional burden is incurred related to ensuring data quality through a data quality plan, as well as training and mentoring staff and partners. It will take time and resources to produce materials and provide training on 153 new items to agency staff and community partners successfully. Successful implementation requires us to be thorough and methodical, utilizing implementation science principles, to ensure that requirements are met. Even with an extended timeline for implementation, this will be very difficult to accomplish and unnecessarily burdensome.

Challenges For Information Technology (IT) System

Utah's child welfare IT application, called SAFE, is participating as a Comprehensive Child Welfare Information System (CCWIS). Utah's proposal to meet CCWIS regulations includes building 8 to 12 modular automated functions. In reviewing proposed AFCARS regulations, it appears that many of these automated functions will include data related to AFCARS. During the next year we are planning to complete an analysis, develop a data quality plan and an automated functional prototype. This information will be used to estimate the remaining timeline as well as ensure that our proposed framework will meet the needs of our child welfare system. Currently, we estimate it will take 5 - 7 years to build these automated functions.

The numerous new AFCARS elements require significant time and programming capacity in order to modify the existing data systems to capture and report data. With AFCARS reporting changes required to be made during the same period states are transitioning into CCWIS, inefficiencies will occur if AFCARS programming timeframes can only be met by changing legacy systems (and then have to be completed again as part of CCWIS development). The precise nature of the proposed elements would require us to rebuild portions of our legacy system to facilitate reporting these additional data points during a period when we are looking at moving away from that platform to move to a CCWIS system. It would also require time to modify programming to generate reports from the legacy system and then again from the CCWIS system.

Modifying the legacy SACWIS system to meet the AFCARS implementation timeline is an inefficient and costly burden for several reasons. First, the SACWIS system is built on aging technology. Due to limitations in the software, it has become more and more difficult

to meet business needs as well as address issues arising with changing technology. Since these AFCARS elements would be contained throughout the legacy application, it would require a significant investment in an our outdated legacy system as well as diverting resources needed for CCWIS development.

Additionally, these modifications in the legacy system will not address needed changes that better support case practice and agency goals. While the legacy system could be modified to support changes related to AFCARS, it would not address needed changes essential to support improved practice. Ultimately, we believe following CCWIS requirements are better for our child welfare agency, since it reduces the lifespan of the legacy system which in turn will allow us to better support agency needs.

As stated in Utah's response regarding the April 16 Notice of Proposed Rulemaking (NPRM) to delay reporting issued by the Children's Bureau, we support the delay of compliance and effective dates for changes in AFCARS elements, but are concerned that limiting the extension to two years will not provide sufficient time for states to take all steps needed to implement changes for reporting and to ensure data quality. This is particularly true if no additional changes are made to simplify reporting and to reduce the numerous required elements.

We recommend that any state electing to participate in the CCWIS system be given further time extensions to allow for incorporation of new AFCARS elements in the design and implementation of the CCWIS system, so it may be done in a logical and efficient way.

Family First Prevention Services Act

Recent changes to Federal law with the passage of the Family First Prevention Services Act (FFPSA) requires significant changes in practice that will also require IT system programming changes. It is critical for Title IV-E agencies to be able to focus resources on implementing these changes as they directly impact work with children and families, and to comply with provisions of the law. FFPSA also adds additional data elements that will have to be incorporated into Federal financial and data reporting. The timeframes for making practice changes for FFPSA implementation overlaps with the current proposed timeframe for AFCARS changes, making an undue burden for states.

Information Not Under the Authority of the IV-E Agency

A number of AFCARS elements must be obtained from data systems outside of the IV-E agency. Utah's child welfare agency does not have authority over the information overseen by non IV-E agencies, and as such is unable to compel these agencies to prioritize gathering and entering the required data for the new AFCARS elements or modifying or developing interfaces according to our timelines. This creates barriers to compliance and data quality.

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Additionally, CCWIS requires our system to interface with numerous other agencies to exchange relevant data, including data that may benefit IV-E agencies and data exchange partners in serving clients and improving outcomes. A goal of the data exchange requirement is to reduce duplicative work, promote comprehensive and coordinated services, and improve data quality. In order to achieve this goal, we will need to coordinate with our partner agencies and dedicate significant resources to analyze and develop system interfaces with these goals in mind. This is another example of inefficiencies and delays if AFCARS programming has to occur in the legacy system and then again as components under CCWIS.

Furthermore, Utah's child welfare agency is a separate entity from Juvenile Justice Services (JJS) that serves a small portion of the IV-E funded children that need to be included in the AFCARS reporting population. It would be a significant burden to JJS to incorporate the collection of the dramatically increased data under new AFCARS regulations into their separate IT system. This is a prime example of a data exchange process that would need to be implemented per CCWIS which does not currently exist, incurring additional burden and cost to our data system and potential duplication in the legacy system if this cannot be delayed until it can be included in CCWIS development.

ICWA

We agree that collection and reporting of meaningful data on Native American and Alaska Native children (AI/AN) is integral to ICWA implementation. However, data collection requested through AFCARS is excessive and requires significant data that falls under the jurisdiction of the juvenile courts and Attorney General's Office. Currently, juvenile courts are not collecting a majority of the ICWA data elements required under the new regulations. Child and Family Services does not have access to the data that is collected by the courts nor the authority to compel the courts to modify their data collection systems to add additional ICWA elements, and we cannot ensure the quality of data from the courts. Additionally, if the courts collected the information, we would need to build a data exchange system for these elements, which would be better built as CCWIS is developed, which needs a longer time frame. Noncompliance with these elements will put our funding at risk even though these elements are not within the control of the IV-E agency. We recommend that the ICWA data elements be reduced in number, simplified, and tied directly to the work that the IV-E agency has control over. We welcome the opportunity to work with other states, tribes, and relevant departments in the Federal government to identify those data elements.

Quality Assurance

Due to the increased number of data elements required for AFCARS compliance, the current capacity of our data quality assurance process is not sufficient. The new elements create additional burden to Utah's child welfare system due to the need to significantly expand the data quality assurance process.

<u>Specific Examples of Problematic Data Elements</u>

There are a number of specific data elements that would be very difficult and burdensome to collect. We also question whether the data elements provide significant value to the work we do, and if they would be accurate, valid, reliable, and worth taking staff away from performing other essential activities with families. Examples include, but are not limited to the following:

- *Data Elements: Child Sexual orientation 1355.43(B)(2)(iii), First foster parent sexual orientation 1355.44(e)(19), Second foster parent sexual orientation 1355.44(e)(25)*

  Utah has concerns about the data elements regarding sexual orientation. The stated purpose of the sexual orientation questions is to help meet the needs of LGBTQ youth in foster care; however, these data elements are highly sensitive and have the potential to engender fear and/or offense in youth and foster parents by asking the question.

  Furthermore, we have substantial concerns about youth feeling comfortable enough to disclose their sexual orientation to the caseworker, especially before they have had the ability to develop a trusting relationship. Caseworkers do engage with youth in conversations about sexual orientation when youth are comfortable to disclose this information voluntarily, but we do not feel that it should be mandatory to obtain and report this information. Utah is also concerned about asking this question at a time when youth are still developing their sexual identities.

  Utah also expects that requiring workers to gather and report information regarding these sensitive issues when it isn't voluntarily shared by youth or foster parents will create resistance among a workforce that has a very complex job and already high turnover rates.

  As a result, we suspect that the data gathered from these questions may actually be inaccurate and/or under-represent the needs of the LGBTQ population and the resources needed to serve them. We believe this is a question that may best be

answered in the NYTD survey.

- *Data Element: Child has ever fathered or bore a child.1355.44(b)(17)(ii)*

  Youth in foster care may be reluctant to truthfully report if they have ever fathered or bore a child. While we believe this information is valuable at an individual level in order to serve the needs of the child, we question the purpose of being required to report this data on an aggregate level. Furthermore, we believe this element would have more value if collected through the NYTD survey rather than adding this burden to caseworkers.

- *Data Element: Total number of siblings 1355.43(b)(23)*

  Total number of siblings: Whereas information about the total number of siblings in foster care would be easily obtained, requiring a report of the total number of siblings when that may include siblings not involved in the child welfare system is more complicated. It may not be possible for the caseworker to obtain information of whether other siblings exist when family composition may be complicated. This information is difficult to collect and we question the purpose of adding this burden to caseworkers. We question whether the data would be reliable and valid as it does not account for the complexity of family relationships.

- *Data Elements: 1355.44(b)(19)(ii) Prior adoption date and 1355.44(b)(19)(i) Prior adoption intercountry. 1355.44(b)(20)(i) Prior guardianship and 1355.44(b)(20)(ii) Prior guardianship date*

  Currently our data is not structured in a way that would allow us to easily obtain this information for reporting on prior adoption or prior guardianship. Our data structure would have to be reorganized significantly in order to aggregate this information for reporting. It would add significant amount of time for someone to research this data, and if the prior adoption or guardianship did not occur as a result of child welfare involvement, it may be difficult to obtain reliable and valid information.

- *Data Elements: 1355.44(b)(12) Health assessment and timely, 1355.44(b)(13) Health, behavioral or mental conditions*

  We are concerned with the difficulty of interpreting detailed and technical health information received from the qualified professional into the categories required for

AFCARS reporting. It will require us to build the capacity within our system in order to report this in an ongoing, aggregate fashion. Placing this responsibility on caseworkers without medical expertise would be difficult; other methods would require the support of additional specialized staff. There is not enough information in the definitions to distinguish between mental/emotional disorders and serious mental disorders to determine that one or the other applies. Further, the response options are conflicting when the youth have multiple health problems under the same health element name (such as 'other diagnosed conditions').

- *Data Elements: Caseworker visit dates and location 1355.44(f)(6)-(7)*

  Currently caseworker visitation information is not captured in a way that can be aggregated for reporting in the way requested. Caseworkers are currently entering this information through qualitative text entry on individual cases, and requiring them to capture this information in a quantitative way would be duplicative and would not capture the richness of the information that we need on a case-level. Therefore, this would create further burden on caseworkers and would be additional workload. We believe that requiring caseworkers to comply with data entry on this element would place unwanted emphasis on compliance rather than on meaningful activities that support the child and family.

- *Data Elements: Victim of sex trafficking prior to entering foster care 1355.44(d)(7), Report to law enforcement 1355.44(d)(7)(i), Date 1355.44(d)(7)(ii)*

  Currently, the data that is collected on sex trafficking is not structured in a way that can be easily aggregated and reported, and creating that structure would require significant alterations to our database, which is unnecessarily burdensome. It is difficult to collect valid and reliable information about whether the child has been a victim of sex trafficking, especially prior to entering foster care.

It is difficult to quantify the total burden for implementation of AFCARS changes as it applies to practice and system impact and costs; however, we believe that it is significant. Utah estimates that costs specific to increased time burden for caseworkers to gather and enter data needed for new AFCARS elements is at least $2.63 million in new funding (the majority being ongoing costs) in order to effectively gather the information for the new AFCARS data elements. The cost analysis includes expenditures associated with training and implementation, and is based on a conservative estimate that it will take caseworkers up to 3 minutes per element to gather each of the new data elements, and one minute per

element for caseworkers to enter it into the child welfare database. It also includes costs to the Juvenile Justice system, which serves a small number of youth that are included in the AFCARS population, and does not currently have a way to support collection of the new data elements.

That fiscal impact amount would be multiplied several times when also considering costs for system programming changes, report extract programming changes, and submission of data to the Children's Bureau in the required format. This estimate also does not include the costs of additional staff, which we believe would be necessary for quality data collection in a way that will allow us to sustain current levels of practice.

Not only do the new AFCARS regulations impose a financial strain, but Utah's extensive assessment of each new element also determined that they will be overly burdensome to our child welfare system in ways that may or may not be quantifiable.

In closing, Utah supports continuing to strive for a more efficient and valid process for collecting data in order to determine outcomes and improve child welfare practice for children and families. However, the expanded AFCARS requirements create extensive burden for Utah's child welfare system, which would redirect resources from work with families and does not result in a corresponding benefit. This is contrary to 42 U.S.C. §679(c)(1) which states any data collection system implemented must avoid unnecessary diversion of resources from agencies responsible for adoption and foster care. We would support further analysis of AFCARS elements in order to reduce and simplify additional requirements so they can be collected in an efficient and manageable way within existing organizational structures and resources.

Thank you for consideration of these comments.

Sincerely,

Diane Moore
Director

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

Document: ACF-2018-0003-0163
Tribal STAR/Academy for Professional Excellence

Submitter Information

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General Comment

See attached file(s)

Attachments

Tribal STAR/Academy for Professional Excellence

Behavioral Health Education & Training Academy

Leaders in Action

Multi-disciplinary Adult Services Training & Evaluation for Results

Public Child Welfare Training Academy

Southern Area Consortium of Human Services

Tribal STAR

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

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

Dear Ms. McHugh:

Tribal STAR 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). Tribal STAR (Successful Transitions for Adult Readiness) is a training and technical assistance program of the Academy for Professional Excellence within the San Diego State University School of Social Work. We provide training and technical assistance to child welfare social workers, court personnel, attorneys, judges, tribes, Indian services agencies, and ICWA advocates on ICWA implementation and compliance.Our 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). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

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 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.

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,

Jennifer Tucker-Tatlow, MSW
Director

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0164
National Congress of American Indians

Submitter Information

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General Comment

See attached

Attachments

National Congress of American Indians

NATIONAL CONGRESS OF AMERICAN INDIANS

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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

Via electronic correspondence at: 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,

On behalf of the National Congress of American Indians, the oldest and largest organization advocating the interests of American Indian and Alaska Native tribes and their citizens, we submit these comments on the Advance Notice of Proposed Rulemaking (ANPRM) 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. NCAI opposes any hindrance or stoppage of this important ICWA data point collection process for the following reasons.

I. General Comments:

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

Section 479 of the Social Security Act mandates the Department of Health and Human Services (HHS) collect national, uniform, and reliable information on children in state care. Further, section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary of HHS to develop regulations necessary to carry out the functions for which HHS is responsible under the Act.

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.

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

NCAI, along with tribes, other 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 tribes and others after reviewing the Administration of Children and Families' (ACF) February 9, 2015 proposed rule.

On April 2, 2015, ACF issued a Supplemental Notice of Proposed Rulemaking (SNPRM) changing certain data elements. Yet another SNPRM was issued on April 7, 2016. Specifically, ACF 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 it properly included the ICWA data elements.

The Final Rule thoroughly responded to comments on both the benefits and burdens of including the ICWA data elements. Given the multiple opportunities to comment throughout this time period, any additional consideration of the data collection requirements are unnecessary and duplicative. In addition, tribes, tribal organizations, and advocates received notice of all of these opportunities, and were accorded ample time to comment on this vital and important rule change. In fact, NCAI and the National Indian Child Welfare Association provided comments in support of the Final Rule in November 2016.

States also had ample opportunities 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 (see 81 Fed. Reg. 90524, 90565-66). States had at least six different opportunities to raise their concerns, which the ACF considered and fully addressed (see 81 Fed. Reg. 90524 at 90566).

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

Since these regulations have been effective for approximately 15 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, pursuant to 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.

d. 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.

Also, other federal reports have demonstrated the need for quality national data to assess states' efforts in implementing ICWA. See, for example, 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.

e. Tribes have relied on the final rule.

Tribes have long sought data points regarding the implementation of ICWA. This has driven 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.

f. 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 order fails to provide justification to deviate from the statutory requirement for regulations.

II. <u>The following are NCAI's responses to the Questions for Comment provided in the ANPRM:</u>

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 anew, 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 resources 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 is 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.

III. **Conclusion**

For the aforementioned 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 proven benefits of this data collection outweighs any supposed burden. Further, ICWA 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,

Jackie Pata
NCAI Executive Director

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0165
APHSA-NAPCWA

Submitter Information

Name: Jamie Sorenson
Address: 20036
Organization: APHSA-NAPCWA

General Comment

See attached

Attachments

APHSA-NAPCWA

National Association of Public Child Welfare Administrators

June 13, 3018

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

Re: Advance Notice of Proposed Rulemaking, Adoption and Foster Care Analysis and Reporting System - RIN 0970-AC72

Dear Ms. McHugh,

The American Public Human Services Association (APHSA) and its affinity group, the National Association of Public Child Welfare Administrators (NAPCWA), on behalf of the state child welfare administrators, respectfully submit these comments in response to the notice regarding the Adoption and Foster Care Analysis and Reporting System by the Children's Bureau within the Administration for Children and Families (ACF) on March 15, 2018 (83 FR 114560). The comments submitted reflect the perspective of state administrators, representing all ACF regions, charged with administering child welfare programs. The following comments were gathered through written and verbal feedback and compiled by NAPCWA's Executive Committee and APHSA staff.

NAPCWA strongly supports collection of data elements that inform child welfare practice, policy development, and resources utilization. This data offers critical context in developing individualized and population-level programming to meet unique needs of youth and families involved in the child welfare system. Specifically, NAPCWA supports inclusion of data elements associated with the Indian Child Welfare Act (ICWA). The ICWA provides critical protection for Indian children and families. If properly implemented, it can keep more children with their parents and connected with their extended families, communities, and cultures which is in their best interests. The new data requirements pertaining to ICWA are vitally important to understand how ICWA is being implemented and to identify more effective ways for tribes, states, and the federal government to work together to advance the well-being of Indian children and families.

Furthermore, it is the authority and responsibility of the Department of Health and Human Services to collect this data as State IV-B plans are required by 42 U.S.C. 622(b)(9) to include a description of how states will comply with ICWA, developed in consultation with tribes, and Program Instructions require states to identify sources of data to help them meet their obligations under ICWA and Title IV-B. If the Children's Bureau is considering reducing the number of ICWA elements, this should only occur if it is

the result of a collaborative process between tribes and states which results in an agreement about how data elements might be streamlined without losing essential information.

In fact, as many states have made substantial efforts to implement the ICWA data elements through their information systems, most notably all who are transitioning to a Comprehensive Child Welfare Information System (CCWIS), the cost to scope and develop new data collection and reporting based upon newly revised requirements that would result from a new federal rule would be unnecessary and burdensome.

Lastly, NAPCWA believes that all interested parties were provided with sufficient notice and ample opportunity to comment on the final rule. We are confident that the Children's Bureau thoroughly reviewed and considered prior comments. Determining the exact time and costs associated with the changes is difficult to forecast and quantify. What we do know, however, is that improved data collection can produce opportunities for child welfare practice improvement, enhance partnerships between tribal and state child welfare agencies, and enhance interoperability and innovation opportunities.

We thank you for the opportunity to comment on this important rule and will continue to work with you as the final rules are being developed and released.

For further information, please contact APHSA's staff liaison to NAPCWA, Ann Flagg, at aflagg@aphsa.org or 443-386-8759.

Sincerely,

Jaime Sorenson
Chair
National Association of Public Child Welfare Administrators

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0166
First Kids 1st Initiative_NICWA/NCAI/NIEA/NIHB

Submitter Information

Name: David Simmons
Organization: First Kids 1st Initiative_NICWA/NCAI/NIEA/NIHB

General Comment

The First Kids 1st Initiative submits the attached comments regarding the ANPRM published on March 15, 2018 (RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System; Advance Notice of Proposed Rulemaking). First Kids 1st is a collaborative of the National Indian Child Welfare Association, National Congress of American Indians, National Indian Education Association, and the National Indian Health Board.

Attachments

First Kids 1st Initiative_NICWA/NCAI/NIEA/NIHB

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

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

Dear Ms. McHugh:

First Kids 1st 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). Our 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). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

The First Kids 1st initiative is a national collaborative effort and is comprised of leading Native American organizations, allies, and partners from all backgrounds, focused on changing national, tribal, and state policy to create conditions in which AI/AN children can thrive. We are working to build strategies and policies that strengthen local supports for vulnerable AI/AN children in their communities. The core partners include National Indian Child Welfare Association, National Congress of American Indians, National Indian Health Board, and National Indian Education Association and these comments are submitted on their behalf.

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 announced by publication in the Federal Register an Intent to Publish a Supplemental Notice of Proposed Rulemaking 80 FR 17713. A year later 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.

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.

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 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. The experience of having little to no data collected for AI/AN children through AFCARS over the last two decades has been a clear barrier to meaningful improvements in the safety and well-being for AI/AN children and could be argued as having contributed to worsening conditions for this population. Policymakers and government agencies all need quality data to effectively perform their roles and every other federal child welfare law we are aware of contains basic data collection to inform these leaders and improve responses to target populations over time except ICWA. 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,

National Congress of American Indians

Ahniwake Rose	Jacqueline Pata	Stacey Bolen	Sarah Kastelic
Executive Director	Executive Director	CEO	Executive Director
NIEA	NCAI	NIHB	NICWA

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New York State Office of Children and Family Services

Submitter Information

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General Comment

See attached file(s)

Attachments

New York State Office of Children and Family Services

Office of Children and Family Services

ANDREW M. CUOMO
Governor

SHEILA J. POOLE
Acting Commissioner

June 13, 2018

Kathleen McHugh, Director
Division of Policy – Children's Bureau
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Washington, D.C. 20024

Submitted via Federal eRulemaking Portal: https://www.regulations.gov

Re: March 15, 2018 Advance Notice of Proposed Rulemaking concerning the Adoption and Foster Care Analysis and Reporting System ("AFCARS") **FR Doc. 2018-05042**

Dear Ms. McHugh:

The New York State (NYS) Office of Children and Family Services (OCFS) respectfully submits these comments regarding the Advance Notice of Proposed Rulemaking (ANPRM) on the Adoption and Foster Care Analysis and Reporting System ("AFCARS") that was published in the Federal Register, 83 FR 11449 on Thursday, March 15, 2018.

OCFS commends the Administration for Children and Families (ACF) for identifying the December 2016 final AFCARS regulation as a potential area of regulatory reform under the President's February 24, 2017 Executive Order aimed at alleviating unnecessary regulatory burdens. OCFS responded to prior requests for comments about the AFCARS regulations and submitted comments in 2008, 2015 and 2016 that raised concerns about the costs, utility, and redundancy of many of the AFCARS data elements. We appreciate this opportunity to provide additional comments and specificity related to the costs and burden estimates of the December 2016 final AFCARS regulations (AFCARS 2.0) and strongly support ACF revisiting and revising the AFCARS rule.

Child welfare programs in New York State are generally state supervised and locally administered. OCFS is the state agency that oversees the local departments of social services' (LDSS) delivery of child welfare services. While OCFS shares ACF's commitment for a Federal reporting system

that contains comprehensive case level data on all children in foster care, we respectfully submit that the AFCARS 2.0 regulations impose significant burdens on OCFS, LDSS, and private not-for-profit voluntary agencies (VA) that administer child welfare programs. Many of the data elements that are required to be collected by AFCARS 2.0 involve overly intrusive data collection which is difficult to verify and of questionable value. The number of additional elements and significant revisions to existing requirements also create burdens on our caseworkers and likely diverts them from critically important contact with children and families. OCFS has already incurred significant costs and devoted considerable resources in time and workload to assess the system, reporting, and develop changes needed to comply with the AFCARS 2.0 requirements.

As part of these ongoing implementation activities, an OCFS team composed of personnel from administration, case management, policy, research, legal and information technology conducted gap analysis work and reviewed each AFCARS 2.0 requirement to assess the changes that are needed based on New York State's current data collection and reporting status. Based on this review, each AFCARS 2.0 item was classified into one of three groups: an existing item, an item requiring revision, or a new item. Existing items refer to those AFCARS 2.0 items for which New York State already has a data collection and reporting infrastructure in place and minimal or no modifications are needed to meet the new federal reporting requirements. Items requiring revision include those items for which New York State would need to substantially modify its data collection screens, rules and/or reporting programming to conform to AFCARS 2.0 requirements. New items indicate those AFCARS 2.0 requirements that are not currently captured within the New York State child welfare information system and therefore would require considerable time and expense to develop. To meet associated reporting requirements, OCFS must develop field guidance, policies and/or training, create new data collection and/or data exchange mechanisms, and develop extraction and reporting programming as well as additional mechanisms for data quality assurance.

As reflected in the summary charts below, in the foster care file, there are 151 new items and 68 items that will require substantial revisions to meet AFCARS 2.0 requirements in New York State. Of these, 72 items are related to the Indian Child Welfare Act (ICWA) and 16 are financial items. In the AFCARS 2.0 adoption file, there is 1 new item and 6 items that will require substantial revision. The new data collection requirements in AFCARS 2.0 impose significant burdens on New York State and we therefore support the rescission of the AFCARS 2.0 rule in its entirety. Besides the increased costs and burdens on caseworkers in collecting the AFCARS 2.0 data elements, many of the elements are redundant and unnecessary, and for some cases such as casework contacts, there are other mechanisms in place for Federal reporting.

AFCARS 2.0: Foster Care File	**Total # of Items**	**# ICWA Items**	**# Financial Items**
Existing Items (with minor modifications, if any)	51	0	0
Item Revision (practice/code and/or infrastructure exists but must be modified/expanded to meet need)	68	1	8
New Item (no current reporting practice or system infrastructure)	151	71	8
Total	270	72	16

AFCARS 2.0: Adoption File	**Total # of Items**
Existing Items (with minor modifications, if any)	4
Item Revision (practice/code and/or infrastructure exists but must be modified/expanded to meet need)	6
New Item (no current reporting practice or system infrastructure)	1
Total	11

In particular, we highlight the **ICWA, adoption and financial data elements in AFCARS 2.0** as areas where the reporting and collection requirements impose burdens and costs on New York State that far outweigh the benefits. Together these additional data elements impose implementation costs associated with system upgrades and training as well as increased burdens on the workforce. Given these costs and burdens, we respectfully recommend the removal of all the ICWA-related data elements, the additional financial items, and the new adoption file format. We also request that consideration be given to the removal of the AFCARS 2.0 requirement that a longitudinal file be provided with each submission. OCFS was unable to evaluate the associated burdens and costs with providing a longitudinal file as the file requirements have not yet been released as of this time, but we project that complying with this requirement will impose substantial burdens on the state.

Our suggestion for the removal of all the ICWA-related items is based on our contention that the burdens outweigh the benefits. While the intention behind many of these ICWA-related items, such as reason to believe and active efforts questions, appears to be monitoring adherence to policies and good practice standards, we question the ability of the actual items to accomplish those goals in a useful way. For example, knowing that a worker inquired with the biological mother as to whether the child is an "Indian Child" as defined in ICWA, simply documents that

something was asked. It does not tell us when or how the question was asked, if an inquiry was attempted but could not be completed, if a response was received, or the nature of the response. As such, these items cannot replace a comprehensive case note, but rather increase the burdens imposed on caseworkers by requiring that both a progress note and checklist be completed. Similarly, building new system screens to capture active efforts in a quantitative format is time consuming and expensive and is relevant for only a small percentage of cases. Value-add is also an issue. Good case work practice requires that caseworkers monitor "progress and participation in services." It is hard to conceive of cases where this would not "apply," so we also question the necessity of these active efforts items. We further respectfully question the Department of Health and Human Services' (DHHS) authority and interest in collecting the ICWA-related data elements as they do not directly relate to statutory or regulatory standards set forth in CAPTA, Title IV-B or Title IV-E of the Social Security Act under the purview of DHHS and instead involve a statute and regulations that are under the direct purview and oversight of the Department of Interior.

In calculating the burden and cost estimates requested by this ANPRM, OCFS referred to its current AFCARS 2.0 implementation activities and prior system development efforts as well as experience in activities associated with AFCARS 1.0. OCFS identified the major steps and activities that must be undertaken for AFCARS 2.0 implementation and compliance, and divided our burden and cost analysis into two core phases. Phase one includes one-time costs, such as initial system development and training costs; phase two captures annual burden and cost estimates, including caseworker time spent on data collection, and on-going continuous quality improvement (CQI) and reporting activities. We estimated the total time burden by multiplying the number of staff involved, by the time per item, and the number of items. Fiscal burden was calculated by multiplying the total time burden by the estimated hourly wage. Given that the various process steps outlined in our burden model engage multiple types of workers, hourly wage is estimated for three district groups: OCFS central administrative staff (child welfare program administrators, policy, research, training and legal staff), case workers (field staff responsible for data collection and entry), and information technology staff (ITS) (staff responsible for business analysts, systems design, and report development).

As reflected in the summary chart below, the estimated hourly time burden for phase one is a total of 70,648 hours for the foster care file. The estimated time costs for the ICWA component is 24,063 hours and financial is 4,725 hours. The associated total time burden for the adoption file is 21,436 hours. The fiscal burden for phase one is estimated to be $13,665,184. For phase two, OCFS estimates the annual time burden to be 211,216 hours for the foster care file, 52,255 hours for ICWA, 11,459 hours for financial and 17,436 hours for the adoption file. The fiscal burden for phase two is estimated to be $11,736,744 annually.

New York State Burden Estimates for AFCARS 2.0 in Hours

	Foster Care File				Adoption	Total		
	ICWA	Financial	Other	Total	File	Burden (Foster	Cost per Hour	Total Burden Cost
Phase One: Initial Start-up/ System Review and Adaptation								
1. Initial Reivew (e.g., compare each 2.0 requirement to existing system, classify as existing, revision, or new)	144	32	364	540	22	562	$ 90	$ 50,580
2. Gap Assessment (Program, ITS, Research, Policy, Counsel, Field)- identify potential locations for system change, formatting options,	2,296	448	3,720	6,464	176	6,640	$ 90	$ 597,600
Research)- finalize screen location, detail system edits & restrictions, schedule	3,432	576	4,872	8,880	192	9,072	$ 90	$ 816,480
4. Development (ITS- code changes)	1,724	352	2,908	4,984	144	5,128	$ 86	$ 441,008
5. Test System Changes - ITS	2,280	320	2,776	5,376	80	5,456	$ 86	$ 469,216
6. Development of Training/Guidance/Policy (Program, Policy, Counsel, Research)	864	192	1,572	2,628	84	2,712	$ 90	$ 244,080
7. Worker initial training (2 staff per county, trainers, HO staff)	6,575	1,461	11,963	20,000	20,000	40,000	$ 71	$ 2,840,000
8. CQI: Report development and monitoring (Data Warehouse Staff)	2,860	480	4,570	7,910	200	8,110	$ 86	$ 697,460
9. CQI: Report training (CONX implementation and regional staff)	2,880	640	38,480	42,000	42,000	84,000	$ 86	$ 7,224,000
10. Initial programming to process the file (Performance Analytics Staff)	1,008	224	1,834	3,066	98	3,164	$ 90	$ 284,760
Total	**24,063**	**4,725**	**41,859**	**70,648**	**21,436**	92,084		$ 13,665,184
Phase Two: Annual Tasks								
1. Searching data sources, gathering information and entering information	47,520	10,560	120,120	178,200	7,260	185,460	$ 52	$ 9,643,920
2. Developing or modifying procedures and systems to collect, validate and verify and training and administrative tasks	3,243	721	6,613	10,576	10,088	20,664	$ 86	$ 1,777,104
3. Data extraction and monitoring (Performance analytics staff)	1,492	178	1,749	3,420	88	3,508	$ 90	$ 315,720
Total Annual	**52,255**	**11,459**	**130,066**	**193,780**	**17,436**	211,216		$ 11,736,744

For phase two annual tasks, OCFS calculated specific cost and burden estimates as requested by the ANPRM. Our methodology and conclusions are explained below.

Searching data sources, gathering information, and entering the information: The number of children who are served in foster care in New York State annually is about 30,000 children. This number includes the total number of children remaining in foster care throughout the year, as well as children who enter and/or exit during the 12-month period. OCFS therefore used 30,000 in calculating the burden associated with data gathering and entry for the foster care file calculations. It is estimated that it takes a worker about 6 hours per child in a year to enter the new and/or modified items associated with AFCARS 2.0. Six hours divided by 30,000 children (6/30,000) is 0.022 hours per child and was used to calculate the burden associated with searching data sources, gathering information, and entering the information. Based on these calculations, OCFS estimated a total burden for data gathering and entry per foster child to be about 178,200 hours per year for the foster care file, 47,520 hours per year for the ICWA-related data elements, and 10,560 hours per year for the financial data elements. The annual fiscal cost was estimated to be $9,643,920.

Developing or modifying procedures and systems to collect, validate, and verify the information; training and administrative tasks: In calculating the burden associated with report modification and monitoring, OCFS assumed that 4 staff assigned to the State's data

warehouse will have to spend on the average 2 hours per data item to modify reports every year based on our experience with AFCARS 1.0. It is further anticipated that about 10 CONNECTIONS (New York State's child welfare management system) implementation and OCFS regional staff will be involved every year in monitoring reports developed by data warehouse staff. The estimate provided for CONNECTIONS implementation staff was a total of 10,000 hours. It is assumed that each hour of a CONNECTIONS implementation staff involves 2 LDSS/VA staff, which results in a total of 30,000 staff hours. However, since quite a bit of training is required for the annual work, it is assumed that that 2/3rd (20,000 hours) is required for phase 1 initial and 1/3rd (10,000 hours) annually. This 10,000 hours was divided equally among the 270 items for the 10 staff involved and resulted in an estimate of 4 hours per item (10,000/(10*270)) is 4).

OCFS estimated the hourly burden for developing or modifying procedures, training and administrative tasks to be 10,576 annual hours for the foster care file, 3,243 annual hours for the ICWA-related data elements, and 721 annual hours for the financial data elements. The total annual fiscal cost was estimated to be $1,777,104.

Data extraction and monitoring: To compute the burden associated with data extraction and monitoring, OCFS estimated the total annual time for one staff doing the primary programming and another staff member doing backup and/or oversight. On the average, it is estimated that 7 hours per item will be spent based on past experience. It is estimated that there will be 3,420 annual hours for the foster care file, 1,492 annual hours for the ICWA-related data elements, and 178 annual hours for the financial data elements. The annual fiscal cost for data extraction and monitoring was estimated to be $315,720.

In conclusion, OCFS supports the collection and reporting of information on children and families in the child welfare system, but is concerned that the burdens may outweigh the benefits. There is the likelihood under the AFCARS 2.0 requirements that more time will be spent on data entry and related tasks, and less time will be allocated for providing direct services to vulnerable children and families. The additional costs and burdens that are borne by AFCARS 2.0 come at a time when New York State is still deciding whether to develop a Comprehensive Child Welfare Information System (CCWIS). Should New York decide to develop a CCWIS, that effort will require a significant dedication of resources. In addition, New York is dedicating resources to implement the extensive data changes that are anticipated to be necessary as a result of the recent enactment of the Family First Prevention Services Act. Therefore, OCFS commends ACF for identifying AFCARS 2.0 as a rule ripe for regulatory reform. We recommend the rescission of the AFCARS 2.0 rule in its entirety, and if a complete rescission of the AFCARS 2.0 rule is not possible, we urge the removal of all the ICWA-related data elements, the additional financial items, the new adoption file format, and the AFCARS 2.0 requirement that a longitudinal file be provided with each submission.

Thank you again for this opportunity to submit additional comments on the AFCARS 2.0 regulations and consideration of our recommendations. Should you have any questions or need further clarification, we would be pleased to provide additional information.

Sincerely,

Sheila J. Poole
Acting Commissioner

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

Document: ACF-2018-0003-0168
Comment on FR Doc # 2018-05042

Submitter Information

Name: Susan Dieterlen

General Comment

HHS must continue asking if children's removal from their home was due to family conflict related to the child's sexual orientation, gender expression, or gender identity. The voluntary sexual orientation questions for foster youth and foster/adoptive parents must also continue to be retained. This is essential data that must not be discarded under the guise of "streamlining."

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

Document: ACF-2018-0003-0169
Alliance for Children's Rights

Submitter Information

Name: Kristin Power
Address: 90010
Organization: Alliance for Children's Rights

General Comment

See attached

Attachments

Alliance for Children's Rights

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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 email at: *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 Alliance for Children's Rights 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.

The Alliance for Children's Rights protects the rights of impoverished, abused and neglected children and youth. By providing free legal services, advocacy, and programs that create pathways to jobs and education, the Alliance levels the playing field and ensures that children who have experienced foster care are able to fulfill their potential.

General Comments:

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)[1].

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.

Maximizing Vital Resources.

Data collection and analysis provides a basis for examining progress and outcome measures related to children and youth in foster care impacted by ICWA. The Federal government, States, local governments, tribes and child welfare advocates can gain insight into the number and types of ICWA cases and use the data to inform policy changes and implementation and maximize invaluable resources to support Indian children and their families.

Tribes rely 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 order fails to provide justification to deviate from the statutory requirement for regulations.

Responses to the Questions for Comment provided in the ANPRM:

[1] http://www.gao.gov/products/GAO-05-290.

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 provides 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.

Support ICWA-related data collection.
For the reasons stated above, the Alliance for Children's Rights supports 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,

Kristin Power
Senior Policy Associate

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

Document: ACF-2018-0003-0170
Northwest Resource Associates

Submitter Information

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Organization: Northwest Resource Associates

General Comment

See attached

Attachments

Northwest Resource Associates

Northwest RESOURCE associates
Enhancing the health and safety of children, families, and communities

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, 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.

Dear Ms. McHugh,

Northwest Resource Associates (NWRA) 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. NWRA 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, NWRA 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 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

NWRA 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.

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.

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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 or 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.

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."[1] 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."[2] 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 [3]. 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

1 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
2 same as 1
3 ECDF Act Facts, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/)

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.

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 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 disincentives 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 "information 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.

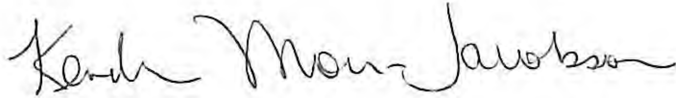
To address those whom have not yet implemented AFCARS a means of offsetting the difference in resources between organizations includes data sharing between child welfare and education. Even more so, all states have, and will continue to, update their data systems to meet the increasing demands of serving 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 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.

Northwest RESOURCE associates

Enhancing the health and safety of children, families, and communities

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 to 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,



Kendra Morris-Jacobson
Director of Oregon Programs – Northwest Resource Associates

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University of Montana School of Law

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General Comment

See attached

Attachments

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United States Department of Health and Human Services
Administration for Children and Families, Director, Policy Division
330 C Street SW, Washington, DC 20024
VIA EMAIL ONLY: CBComments@acf.hhs.gov

Re: Advance Notice of Proposed Rulemaking – Adoption and Foster Care Analysis and Reporting System: Docket No. ACF-2018-0003; RIN: 0970-AC72.

Dear Director McHugh,

The Margery Hunter Brown Indian Law Clinic (MHBILC) at the Alexander Blewett III School of Law at the University of Montana respectfully submits these comments in response to the Advance Notice of Proposed Rulemaking (ANPRM) regarding the potential "streamlining" of the Adoption and Foster Car Analysis and Reporting System (AFCARS) data elements, which was published in the Federal Register on March 15, 2018.[1] As part of the MHBILC's mission to "promote the study and understanding of tribal sovereignty, culture, and history in a culturally-appropriate manner; and support the enrollment and success of Native and all law students interested in the study of Federal Indian, Indigenous Peoples' and Tribal Law," we often assist or represent Indian tribes and individuals in Indian Child Welfare Act (ICWA) cases.[2] Therefore, we submit these comments in furtherance of our mission to promote understanding of the importance of ICWA and in light of our experience in working with ICWA cases.

Prior to ICWA's 1978 enactment, one-third of all Indian children were being placed in non-Indian homes, foster care, and federal or state facilities.[3] The widespread removal of Indian children from tribal homes and communities effectively continued the failed federal assimilation policies of the late 1800s and significantly impacted the wellbeing of both Indian children and their tribes. In recognition of that ongoing travesty, Congress specifically identified tribal children as one of the most precious tribal resources and committed the United States, as part of its trust responsibilities to Indian Country, to their protection.[4] Thus, ICWA seeks to ensure that "the best interests of Indian children," are met by promoting "the stability and security of Indian tribes and families." [5]

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[1] Adoption and Foster Care System Analysis and Reporting System, 83 Fed. Reg. 11,449 (March 15, 2018).
[2] *American Indian Law*, ALEXANDER BLEWETT III SCHOOL OF LAW, http://www.umt.edu/law/academics/programs/ail/default.php (last visited June 13, 2018).
[3] Lorie M. Graham, *"The Past Never Vanishes": A Contextual Critique of the Existing Indian Family Doctrine*, 23 AM. INDIAN L. REV. 1, 2 (1998).
[4] 25 U.S.C.A. § 1901(3) (West 2018).
[5] *Id.* § 1901.

The lack of available data on which children fall under ICWA's protections and how those children are being treated within the child welfare system makes assessing whether States are meeting Congress' mandate and complying with ICWA much more challenging. For example, the lack of statistical data on Indian children in state foster care and social work systems largely prohibits any comprehensive analysis of whether and how closely ICWA is being followed. Without maintaining a federal database containing collective information from across the nation it is nearly impossible to monitor when, how, and even if ICWA is being appropriately applied. The lack of available data on Indian children within the child welfare system is a huge obstacle. Statistical data is needed to monitor ICWA standards and their application.

Using the AFCARS to collect data on the children that go through the adoption and foster care process is one way to help eliminate barriers. In the past, the information gathered using this system was minimal and only mildly informative, but with the regulations adopted in late 2016, AFCARS became much more useful by adopting certain ICWA-related data elements.[6]

Despite the obvious benefits of these new ICWA-related data elements, the ANPRM and prior statements from the Department of Health and Human Services (HHS) suggest that the agency is considering removing or reducing them.[7] In contrast to these recent concerns, however, an earlier HHS report identified state child welfare information systems as a key data source for assessing ICWA compliance and noted that "[k]ey [l]imitations in data systems, including challenges related to adding or revising data fields and limited options for running reports related to ICWA," was a "common challenge' reported by states "related to complying with ICWA, assessing their compliance with ICWA, and consulting and collaborating with tribes on state CFSPs."[8]

Beyond that recognition, HHS also engages with ICWA by providing training specifically relating to infant adoptions that may be governed by ICWA.[9] Therefore, although HHS claims it is not the appropriate agency to handle ICWA-related matters, it has already been doing so for the last several years.

Finally, while it appears that the ANPRM's primary goal is to "streamline … data elements and remov[e] any undue burden," the agency should consider the significant potential for additional data, collected pursuant to the 2016 Final Rule, to streamline and reduce long-term burdens on state and tribal agencies. As the December 2016 Final Rule noted, improving ICWA "implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems."[10] These improved outcomes, and associated reductions in administrative and agency burdens, can only be accomplished by understanding the existing scope of ICWA challenges and successes. That understanding can only be achieved through collecting data – precisely the goal of the 2016 Final Rule.

Therefore, more data and more work is needed to improve outcomes for state and tribal child welfare agencies and, most importantly, to meet Congress' mandate to serve the best interests of Indian children and overcome a long history of federal and state interference in their wellbeing. These benefits clearly outweigh any potential

[6] Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90,524, 90,527 (Dec. 14, 2016).
[7] *Id.*
[8] 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, Report No. HHSP23320110015YC, 4,5 *available at* https://www.acf.hhs.gov/sites/default/files/cb/state_tribal_cfsp_2015_2019.pdf, 8 (ACYF, ACF Dec. 17, 2015).
[9] Children's Bureau: An Office of the Administration for Children & Families, *Infant Adoption Awareness Training Program*, May 17, 2012, *available at* https://www.acf.hhs.gov/cb/resource/adoption-awareness-traning.
[10] Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. at 90,527.

administrative burdens associated with additional data elements under AFCARS, as was determined when the Final Rule was promulgated.[11] ICWA is the "gold standard" of child protection and the Administration for Children and Families should demand the data necessary to meet that standard, improve ICWA compliance, and leave in place the data collection elements of the December 2016 Final Rule.[12]

[11] *Id.* at 90,528.
[12] *Id.* at 90,527.

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Louisiana

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General Comment

See attached

Attachments

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June 13, 2018

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Via the Internet: http://www.regulations.gov/

RE: Notice of Proposed Rule Making
Adoption and Foster Care Analysis and Reporting System (AFCARS)
Posted on: Federal Register/Vol. 80, No. 240/Wednesday, December 14, 2016

Dear Ms. McHugh:

The State of Louisiana, Department of Children and Family Services respectfully submits these comments in response to the Notice of Proposed Rulemaking (NPRM) on the Adoption and Foster Care Analysis and Reporting System, issued by the Administration on Children Youth and Families earlier this year.

One of the primary concerns in reviewing the recommended changes is the quantity of changes and the depth of required information in data reporting elements. While we acknowledge that most of the data elements are already being discussed with the client or are otherwise known to the caseworker, the additional time to enter yet more data elements, many of which have a great deal of subjectivity, reflect differences in state/local policies, and are often just a self-reported, point in time measure; so that, on face value, it does not seem to justify the extra time. More specifically, additional time required of case workers in documenting more data from clients and stakeholders, resulting in less time for actual engagement of and service provision to clients; the time required by supervisory staff to ensure accuracy of information entered in the data system; the time required of technical staff to develop the changes in data systems to capture and report the additional data elements; and, the costs associated with system upgrades.

We believe the implementation cost estimates are grossly under-estimated. Costs associated with systems changes and ongoing management of the data for AFCARS reporting are expected to cost Louisiana substantially more than the amount considered in the NPRM. In addition, Louisiana would have to be able to fund additional staff positions to sustain the same level of service delivery in order for staff time to be re-allocated to more data collection and data entry. The estimates do not fully account for all the costs associated with such an extensive change in reporting.

Additionally, there are concerns regarding the specific data elements. Please see details related to those concerns in the table below:

ELEMENT	COMMENT
Gender	Eliminate this item. A person's gender identification can be noted however should not be required as a data element for reporting purposes and can cause confusion of accuracy when based upon client self-report as opposed to medical documentation.
Sexual Orientation	Eliminate this item. The child's sexual orientation probes into a child's personal issues that the child may not feel comfortable or safe disclosing to the agency. Additionally, children may not be at a developmental stage to truly understand the meaning of sexual orientation or even to interpret their own preferences. This documented identification could follow a child and cause unnecessary issues later in life.
Race – Abandoned	Eliminate this option. If race is unknown for any reason, it should be reported as unknown.
Race - Declined	Eliminate this option. If race is not identified it should be reported as unknown.
Ethnicity – Abandoned	Eliminate this option. If ethnicity is unknown for any reason, it should be reported as unknown.
Ethnicity – Declined	Eliminate this option. If child was abandoned this is captured elsewhere. If ethnicity is unknown for any reason, it should be reported as unknown.
Timely health assessment	Eliminate this item unless the only purpose is to assess a state's compliance with its own policy. States have different policies on frequency of health assessments. The need for health assessments and follow up is driven by child's age and physical condition. Responses on this item could not be compared across states since there is no standardization.
Health, behavioral or mental health conditions.	Eliminate this item. It will take a great deal of time and effort to review medical records to determine the exact date of onset. The elements of "existing condition, previous condition and does not apply" should be removed as the diversity of each child's individual condition cannot be captured within the limited list of diagnoses. There is no capacity for explanation of unusual circumstances or errors.
Educational stability	Eliminate. This will be extremely subjective and data will not be reliable. Educational stability is assumed to be sustaining a child in the same school placement. However, many factors could determine educational stability even when moving schools. The reasons for educational stability are specific to the child and should not be limited to 5 options such as proximity, district rules, residential facility services, child or parent request. States should be able to determine the individual need of a child and make the decisions which best serve the needs of the individual child to achieve the child's best possible personal educational outcomes.
Prior Adoption	Eliminate requirement to report multiple adoptions as this will be difficult to assure accurate information. Leave as is where the most recent prior adoption is reported. If there is more than one prior adoption, it is unclear how reliable the information would be.
Prior Adoption Date(s)	Same as above -Leave as is where the most recent adoption date, if known, is reported if there is a prior adoption
Prior adoption type	Same as above - Limit to the most recent prior adoption only. This information may be unknown or the adoptive family may refuse to provide the information. If there is more than one prior adoption, it is unclear how reliable the informants would be.
Prior Guardianship Date(s)	Same as above - Limit to the most recent previous guardianship, if date is known
Environment at removal	Clarification of the purpose of data collection and meaning of the term environment would be beneficial in determining the viability of investing staff time in data collection, data entry and data reporting.
Child and family circumstances at removal	This has been 'Reasons for Removal'. There is concern about using this field and assigning it a different definition and purpose. 'Circumstances' are not equivalent to 'Reason for Removal'. Several items can be chosen however many of these could be circumstances within the home or geographic area, not actual reasons for removal such as "inadequate access to mental health services" and could be subjective depending on the case worker or the state policy or a variety of other considerations. Also not sure how this differs significantly from the field "environment".
Victim of sex trafficking prior to entering foster care	This information is not readily available and the child may not disclose this information if a parent may get into legal trouble. This needs to have an option for selecting unknown, as well as being something which can change if additional information is revealed.
Dates of each report (references reports to	If the Child Welfare agency was not the reporter and was not involved with the victim at the time it may be difficult to obtain the dates of the reports from anyone. Additionally, it is

law enforcement on sex trafficking)	unclear the purpose of collecting dates reports were made, when we are already collecting whether or not previous incidents were reported. It would seem that knowing reports had been made would be the critical issue, not the dates on which the reports were made. This will require a great deal of staff time to track down if an agency is even able to determine a child was a previous trafficking victim.
Living arrangement and provider information	Response options for living arrangements are confusing and some could potentially have overlap, which may lead to inconsistencies in data recording.
Good Cause under ICWA	States need more detailed information regarding reporting expectations to ensure consistency in decision making and reporting. To state it should be based upon whatever the court in the case rules leaves this element open for great diversity in circumstances across courts, tribes and states.
Child's relationship to the foster parents	This is extremely complex for data entry purposes. The purpose is not clear for reporting the relationship of the child to the foster parents to the degree indicated in the description of the elements.
Gender of foster parent	Eliminate this item. A person's gender identification can be noted however should not be required as a data element and can cause confusion of accuracy as gender identify may change and is not crucial to capacity to care for a child.
Sexual Orientation	Eliminate this item. The foster parent's sexual orientation should not be a factor in determining eligibility to foster children. Additionally, collection of this very personal information may be offensive to potential caretakers. As sexual orientation may change over time this could cause confusion of accuracy in data collection and is not crucial to capacity to care for a child.
Active Efforts	We recommend much more consideration prior to establishing such a lengthy and detailed list of data reporting elements which may not be sufficient to actually indicate active efforts. These elements appear to be more case planning elements as opposed o data collection elements. Onerous data collection for states. Benefit of data collection unclear.
Child's relationship to adoptive or guardian parents.	This is extremely complex for data entry purposes. It does not appear to serve a purpose to clarify the relationship of the child to the foster parents to the degree indicated in the description of the elements.

This state is currently involved in an AFCARS Improvement Plan (AIP) and CCWIS system development. While we do appreciate the opportunity to provide feedback regarding the proposed changes to the AFCARS process, we are very concerned about how these major changes would impact progress to our already arduous and extensive technical and programmatic work.

Sincerely,

Rhenda Hodnett, Ph.D, LCSW
Assistant Secretary, Child Welfare Division
Louisiana Department of Children and Family Services

RH/LL

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General Comment

See attached

Attachments

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June 13, 2018

Attn: Kathleen McHugh, Director
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Via electronic correspondence at CBComments@acf.hhs.gov

Re: RIN 0970–AC72, Adoption and Foster Care Analysis and Reporting System; Advance Notice of Proposed Rulemaking, 83 Fed. Reg. 11,449 (Mar. 15, 2018)

Dear Director McHugh,

Thank you for the opportunity to submit 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). We recommend that the Administration for Children and Families (ACF) continue to implement the AFCARS data collection system, which is necessary to fulfill the administration's statutory obligations and to protect American Indian and Alaska Native (AI/AN) children.

We are a group of law professors with longstanding academic expertise in federal Indian law, family law, and administrative law.[1] Our experience includes litigating ICWA cases in state and Tribal court; researching the nationwide application of ICWA, and the data collection, or lack thereof, about AI/AN children in state child welfare systems; and researching and litigating administrative law cases. Given our academic expertise and practical interests in ICWA, we submit these comments to highlight the significant problems that revision of the AFCARS regulations could pose for Indian children, families, and Tribes.

Put simply, the lack of consistent data about AI/AN children in the child welfare system has been one of the biggest threats to ICWA compliance. Recognizing this problem, ACF promulgated a final rule revising the AFCARS regulations in 2016. *See* Adoption and Foster Care Analysis and Reporting System, 81 Fed. Reg. 90,524 (Dec. 14, 2016) [hereinafter, "Final Rule"]. In promulgating the Final Rule, ACF recognized that "some states, tribes, national organizations, and federal agencies [had] stated that ICWA is the 'gold standard' of child welfare practice and its implementation and associated data collection will likely help inform efforts to improve outcomes for all children and families in state child welfare systems." *Id.* at 90,527. ACF therefore concluded that the "benefits [of data collection] outweigh the burden associated with collecting and reporting the additional data." *Id.* at 90,528.

[1] The Appendix identifies the signatories to this comment. We submit this comment in our individual capacities, not on behalf of our institutions.

There have been no material changes since 2016 in the facts or circumstances that supported ACF's conclusion to adopt data elements related to ICWA. Therefore, under well-established principles of administrative law, there is no reasonable basis for ACF to revisit this conclusion, much less to revise the AFCARS regulations to eliminate the ICWA-related data elements. To eliminate or to reduce the ICWA-related data elements would be to undermine the "gold standard" of child welfare practices and to undermine outcomes for all children and families in state welfare systems. We therefore urge ACF to retain the ICWA-related data elements of the AFCARS regulations.

I. The AFCARS Data Elements Are Crucial To Implementation Of ICWA

Congress enacted ICWA in 1978 to address the practice of state entities removing a large number of AI/AN children from their homes without an understanding of traditional American Indian child-rearing practices. In adopting ICWA, Congress created a "'gold standard' of child welfare practices," one that is a model for improving outcomes for all children and families in state welfare systems. Final Rule, 81 Fed. Reg. at 90,527. ACF's Final Rule adopted ICWA-related data elements that are crucial to implementing this "gold standard" for child welfare systems.

Throughout the 1960s and 1970s, AI/AN children were six times more likely to be placed in foster care than other children. *See* H.R. Rep. No. 95-1386, at 9 (1978). Surveys conducted at the time found that in states with large Native American populations, 25 to 35 percent of all Native American children were removed from their homes and placed in foster care or adoptive homes at one time during their lives. *Id.*

This pattern has continued to the present day. As of 2003, for example, in both Alaska and South Dakota, over 60 percent of the children placed in foster care were AI/AN children. *See* U.S. Gov't Accountability Office, GAO-05-290, Indian Child Welfare Act: Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States 13 (2005).

Congress has recognized that the United States must do better by AI/AN children if it is to fulfill its responsibilities towards Indians. As Congress has found, "the States, [in] exercising their recognized jurisdiction over Indian child custody proceedings . . ., have often failed to recognize the essential tribal relations of Indian people and cultural and social standards prevailing in Indian communities and families." 25 U.S.C. § 1901(5). Based upon this finding, Congress has made it "the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families." *Id.* § 1902. ICWA represents Congress's effort to fulfill the "[f]ederal responsibility to Indian people," also known as the federal trust responsibility, by creating procedures and practices to keep Indian families together when possible. *Id.* § 1901. In implementing ICWA, the Executive Branch must similarly fulfill this trust responsibility. *See Cohen's Handbook of Federal Indian Law*, § 5.04[3][a] (Nell Jessup Newton ed., 2012) (explaining that "courts have applied the trust responsibility to limit federal administrative action").

To fulfill the United States' responsibilities to Indian children, families, and Tribes, the federal government and states need adequate data on the adoption and foster care of AI/AN children. Lack of adequate data was a challenge when Congress enacted ICWA and remains a fundamental stumbling block today. Gathering data to demonstrate the need for ICWA's enactment was "an 'ordeal,' as [Bertram] Hirsch put it in 1974. . . . Hirsch first requested that the BIA provide data about the numbers of fostered and adopted Indian children for the last five to ten years. . . . The BIA had not compiled this information. . . . Some state agencies claimed they did not keep statistics

on Indian children." Margaret Jacobs, *A Generation Removed* 103 (2014). Today, the lack of adequate data remains a barrier to ICWA's implementation. Individual state court judges make decisions case-by-case, as if their decisions affect only one Indian child, when in truth Indian children continue to be removed at numbers disproportional to their representation in the population. *Disproportionality Rates for Children of Color in Foster Care — June 2015 Technical Assistance Bulletin*, Nat'l Council of Juv. and Family Court Judges 9-10 (2015), *at* http://www.ncjfcj.org/sites/default/files/NCJFCJ%202013%20Dispro%20TAB%20Final.pdf. Without data collection and reporting on AI/AN children, there is no way to tell how changes in federal policies are helping or hurting AI/AN children.

In 2016, ACF recognized the need for ICWA-related data elements to implement federal statutory law. It recognized first that Section 479 of the Social Security Act (SSA) authorized the revision of the AFCARS regulations to include data elements on AI/AN children. Section 479 *mandates* that the Department of Health and Human Services (HHS) adopt a system that "shall . . . (i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and (ii) develop appropriate national policies with respect to adoption and foster care." 42 U.S.C. § 679(a)(1). In addition, HHS provides direct Title IV-E funding to Tribes and Tribal child and family service programs under the Fostering Connections to Success and Increasing Adoption Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (codified as amended in scattered sections of 42 U.S.C.). Together, these statutory provisions require a data collection system that is "national" and "continuing" in scope, including with respect to AI/AN children. This system must help track the demographics, status, and characteristics of all children in foster care and adoption populations. As ACF recognized in 2016, leaving ICWA-related data out of AFCARS would continue to undermine implementation of title IV-E and ICWA. *See, e.g.*, Final Rule, 81 Fed. Reg. at 90,536 (concluding that "data elements related to whether ICWA applies *are essential* because application of ICWA triggers procedural and substantive protections and this data will provide a *national* number of children in the out-of-home care reporting population to whom ICWA applies") (emphases added).

In particular, ACF agreed with commentators 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 policy development, technical assistance, training and resource allocation as a result of having reliable data available."

Final Rule, 81 Fed. Reg. at 90,527. ACF reached these conclusions after a comprehensive notice and comment process, one in which Indian Tribes, child welfare organizations, and several states supported the ICWA-related data elements. *Id.*

When promulgating the AFCARS revisions, ACF did not consider the benefits of ICWA-related data elements in a vacuum. Far from it. Instead, the agency comprehensively

considered the benefits *and* the burdens of including ICWA-related data elements in AFCARS. It concluded that the benefits outweighed the burdens, finding, among other things, that (i) there "may be confusion" among the states in how and when ICWA applies, which ICWA-related data elements would help resolve; (ii) it was "unclear" whether states are complying with ICWA because of lack of ICWA-related data elements, which, of course, ICWA-related data elements would help address; and (iii) the majority of states that commented supported the ICWA-related data elements. Final Rule, 81 Fed. Reg. at 90,528. In other words, ACF found that ICWA-related data elements were necessary to implement federal statutory law and the United States' trust responsibility towards Indians.

ACF did not, however, ignore concerns about regulatory burdens in revising AFCARS in 2016. Indeed, the agency modified its proposed ICWA-related data elements in several respects. Final Rule, 81 Fed. Reg. at 90,528. And in response to comments from states and Indian Tribes, ACF coordinated its AFCARS revisions with the Bureau of Indian Affairs' 2016 rulemaking implementing ICWA. *See id.* These changes, the agency concluded, would "allow the state title IV-E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance . . ., and improve practice and national data on all children who are in foster care." *Id.*

ACF's ICWA-related data elements are consistent with Congress's mandate to create a *national* and *continuing* data collection system that ensures that the best interests of all children, including AI/AN children, are protected by adoption and foster care systems. Collecting this data, as ACF concluded, will allow an assessment of the current state and adoption of AI/AN children and thus aid in the development of future national policies concerning ACF programs.

In short, less than two years ago ACF carefully considered the benefits and burdens and adopted a tailored set of ICWA-related data elements in order to fulfill its statutory responsibilities. Its reasonable and well-reasoned revisions to AFCARS were based upon up-to-date data and a comprehensive rulemaking process in which all interested parties, including states, fully aired their concerns. Its "streamlined" approach thus addressed concerns about regulatory burdens while still achieving benefits for AI/AN children. Final Rule, 81 Fed. Reg. at 90,566 (explaining how agency addressed concerns of states about regulatory burdens).

II. There Is No Reasonable Basis For ACF To Eliminate Or To Reduce The ICWA-Related Data Elements It Just Adopted In 2016

Nothing material has changed in the facts or circumstances underlying ACF's adoption of the ICWA-related data elements in its revisions to AFCARS in 2016. Accordingly, there would be no reasonable basis for the agency to reverse course by eliminating or reducing those elements.

ACF has requested comment on "the [AFCARS] data elements and their associated burden." 83 Fed. Reg. at 11,450. This request for comment, ACF has explained, is based upon the President's Executive Order 13,777, which directs agencies to establish Regulatory Reform Task Forces to review regulatory burdens and to recommend modification or elimination of existing regulations. *See id.*

Neither Executive Order 13,777 nor anything else in federal law authorizes ACF to make an about-face from its prior policy without a reasonable basis for the reversal of course. Rather, ACF has well-established obligations under federal administrative law to stay the course unless it can provide a reasoned and reasonable basis for a change in policy.

The Administrative Procedure Act (APA) directs reviewing courts to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Under this long-standing requirement, an agency must consider all relevant aspects of a problem, including both the benefits and costs of regulation, when altering its policy. An agency, in other words, "is correct to look at the costs as well as the benefits" of its regulations. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 54 (1983). But an agency's assessment of costs and benefits must not be arbitrary. *See id.* at 55. While political elections have consequences, it is not enough for an agency changing course to cite the policy preferences of a new presidential administration. *See id.* at 55-56 (concluding agency had acted arbitrarily in adopting policy change following presidential election without reasoned explanation for its change).

The Supreme Court has made clear its concern with agencies that make an about-face from their prior policies. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); *id.* at 537 (Kennedy, J., concurring); *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1209 (2015); *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016). In particular, as Justice Anthony Kennedy recently made clear in an opinion for the Court, an agency may not change course without (i) "'show[ing] that there are good reasons for the new policy,'" (ii) explaining why it is "'disregarding facts and circumstances that underlay or were engendered by the prior policy,'" and (iii) addressing "'serious reliance interests'" that have come to rest on its prior policy. *Encino Motorcars*, 136 S. Ct. at 2126 (quoting *Fox Television*, 556 U.S. at 515-16).

By engaging in a one-sided assessment of the burdens of the ICWA-related data elements, ACF would violate this basic requirement of the APA. The request for comment addresses only regulatory burdens, without any apparent consideration of the regulatory benefits that ACF has already found will result from the AFCARS revisions. Such a one-sided approach is not consistent with the agency's obligation to act reasonably when changing regulatory policy.

It is not enough, in other words, for the agency to revisit the regulatory burdens it already considered when promulgating the AFCARS regulations in 2016. ACF specifically found that the "benefits [of data collection] outweigh the burden associated with collecting and reporting the additional data." Final Rule, 81 Fed. Reg. at 90,528. Now ACF apparently intends to reconsider the sorts of comments on regulatory burdens that it already received and considered. *See* 83 Fed. Reg. at 11,450. But a one-sided reconsideration of regulatory burdens would be unreasonable, particularly because there has been no material change in the underlying facts and circumstances.

It is still true, as it was in 2016, that there "may be confusion" among the states about how and when ICWA applies. Final Rule, 81 Fed. Reg. at 90,527. It is still true, as it was in 2016, that it is unclear whether states are fulfilling their obligations under ICWA, due to a lack of ICWA-related data. *Id.* It is still true, as it was in 2016, that ICWA-related data elements will address these problems. *Id.* Moreover, it is still true, as it was in 2016, that the federal government has a statutory obligation to ensure that there is a national and continuing data collection system that protects the

best interests of all children, including AI/AN children, who are in foster care or adoptive placements.

It is *also* still true that the AFCARS regulation reflects ACF's careful balancing of benefits and burdens through a tailored set of data collection and reporting requirements. Apparently, all that has changed is the President's direction to review regulatory burdens. And while the agency may review regulatory burdens under Executive Order 13,777, it may not reverse course under the APA unless there is a reasonable basis for doing so based upon consideration of all aspects of the problem, including regulatory benefits.

To reverse course now by eliminating the ICWA-related data elements would single out AI/AN children and families for special disfavor in the AFCARS scheme. Doing so would not only violate the APA's requirement of reasoned decision-making; it would also violate the federal government's trust responsibility. The trust responsibility, which arises from treaties and the government-to-government relationships between Indian Tribes and the United States, requires the United States to treat Indians with the care and faithfulness of a fiduciary. *See, e.g.*, *Seminole Nation v. United States*, 316 U.S. 296, 297 (1942) (explaining that the federal government "has charged itself with moral obligations of the highest responsibility and trust [towards Indian Tribes, and its] conduct . . . should therefore be judged by the most exacting fiduciary standards"). This responsibility is enforceable against federal administrative agencies. *See Cohen's Handbook*, *supra*, § 5.04[3][a]. Under elementary trust law, a fiduciary cannot single out the beneficiaries of a trust for special disfavor, but rather must loyally and carefully pursue their interests. *See, e.g.*, *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928); Robert H. Sitkoff, *An Agency Costs Theory of Trust Law*, 89 Cornell L. Rev. 621, 657-58 (2004) (discussing trustee's duty of impartiality). Having concluded that the ICWA-related data elements are necessary to ensure protection of the best interests of AI/AN children, it would now be an arbitrary and capricious violation of the United States' trust responsibility to single out AI/AN children for special disfavor by eliminating those elements.

In fact, there is no basis for reversing course by eliminating the ICWA-related data elements. If anything, the only changes since 2016 require ACF to stay the course. Since 2016, states have relied upon the 2016 AFCARS regulations by beginning to implement them. California, for example, has already proceeded far down the path of implementing ACF's data collection requirements. In addition, Indian Tribes have relied upon the 2016 regulations by working with local and state governments to implement the data elements. For example, some Tribes have developed and updated intergovernmental agreements based upon the ICWA-related data elements and the 2016 BIA regulations.

ACF should not, therefore, reconsider regulatory burdens in a vacuum. A one-sided consideration of regulatory burdens is not a "good reason[]" for reversing course. *See Encino Motorcars*, 136 S. Ct. at 2126 (internal quotation marks omitted). And such a one-sided consideration would ignore ACF's findings and conclusions in 2016. *See id.* It would be particularly unreasonable for ACF to reverse course based upon reconsideration of regulatory burdens, given that states and Indian Tribes have relied upon the well-reasoned, carefully-tailored 2016 Final Rule. *See id.*

III. ACF's Request For Comments Does Not Address Important Aspects Of The Problem Of Protecting AI/AN Children

ACF has requested comment specifically on five questions. Yet none of these questions addresses important aspects of the problem of protecting AI/AN children or provides a basis for reversing course by changing the 2016 Final Rule.

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 comment.

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 costs 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. . . .

This request for comment underscores the necessity for the ICWA-related data elements. States are still in the process of implementing ACF's 2016 Final Rule. Because there has not been a national data reporting requirement until recently, states are not in a position to respond to this question with accurate data. Many states simply have not been accurately collecting data on AI/AN children in their foster care and adoptive placement systems. Nor have they been collecting accurate data on the individual ICWA-related data points. As a result, this request for comment invites inaccurate data and thus will lead to arbitrary decision-making if ACF responds by eliminating or reducing the ICWA-related data elements based upon it.

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 is no reasonable basis for the agency to reconsider the conclusions it already reached regarding these comments. In 2016, ACF considered this concern. *See* Final Rule, 81 Fed. Reg. at 90,526. And it concluded that this concern did not provide a basis for revising the Final Rule because doing so would undermine a "vital part of ICWA's requirements." *Id.* at 90,556. Nothing has changed about ICWA's requirements. Therefore, reconsidering the same comments about case review would not provide a reasonable basis for changing the AFCARS regulation.

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.

Here too, the request for comment underscores the necessity for staying the course by implementing the Final Rule. ACF adopted the Final Rule in part to *establish* uniformity of application nationally. ACF considered concerns about variability across jurisdictions and made appropriate modifications to the rule to address these concerns. *See, e.g.*, Final Rule, 81 Fed. Reg. at 90,542. There is no reasonable reason to revisit that carefully tailored approach.

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.

This request for comment similarly reflects a one-sided approach to the problem. Collection of ICWA-related data points is tied to existing federal statutory law. The 2016 Final Rule's ICWA-related data elements do not, therefore, create any additional burden beyond what federal statutes already require. That is their fundamental utility and purpose.

The SSA requires AFCARS to "provide comprehensive national information" regarding "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." 42 U.S.C. § 679(c)(3)(d). Not only does this encompass Title IV–B agencies, but also Title IV–E agencies, through which HHS provides direct Title IV–E funding to Tribes and Tribal child and family service programs under the Pub. L. 110-351.

ACF's 2016 Final Rule supports the requirements for Title IV-B agencies in ICWA data reporting, as seen in the Program Instruction (PI) documents issued by HHS. HHS has defined "Title IV–E Agency" as "the State or Tribal agency administering or supervising the administration of the title IV–B and title IV–E plans." Tribal Child Welfare, 77 Fed. Reg. 896, 926 (Jan. 6, 2012). Under this definition, Title IV–B agencies may also be Title IV–E agencies. In addition, the data elements include information that is already readily available through the case files of the Title IV-E agencies.

HHS has required states to address certain ICWA-related issues under their Title IV-B state plans for ICWA through a PI document. *See Program Instruction*, Admin. For Children and Families, U.S. Dep't of Health and Human Servs., ACYF-CB-PI-14-03 (2014). In this PI, HHS required states to include in their Child and Family Services Plans (CFSP) "a description, developed in consultation with Indian tribes in the state, of the specific measures taken by the state to comply with the [ICWA]." *Id.* at 6. HHS also required "[s]tates without federally recognized tribes within their borders . . . [to] still consult with tribal representatives." *Id.*

Requiring states to collect data on the numbers of AI/AN children in care will provide the needed data set for states to base their assertions in the CFSPs. Under section 479 of the SSA, the ACF possesses the requisite authority to collect ICWA-related data. 42 U.S.C. § 679. ACF's 2016 Final Rule is the first federal data elements requirement designed to provide detailed information on ICWA implementation. Comprehensive collection of these data elements tied to ICWA's requirements will grant Tribes, states, and federal agencies the ability to develop a more detailed understanding of the trends in out-of-home placement and barriers to permanency for AI/AN children. Establishing these data elements will provide AI/AN children the same opportunities to benefit from the data that other

children currently have, and will better inform responses addressing the unique issues facing Tribal children in both policy and practice.

Thank you for the opportunity to comment on ACF's proposed reconsideration of the 2016 Final Rule. We hope that our comments are helpful to ensure that ACF does not revisit, much less reverse, that Rule based upon a one-sided reexamination of the regulatory burdens that it has already considered and addressed through its carefully tailored Final Rule.

Appendix*

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* We submit this comment in our individual capacities, not on behalf of our institutions. Institutional affiliations are listed for identification purposes only.

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General Comment

See attached

Attachments

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June 13, 2018

Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
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330 C Street SW
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RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72] [Docket No. ACF-2018-0003]

Submitted via email to CBComments@acf.hhs.gov.

Dear Ms. McHugh:

On behalf of the Center for American Progress (CAP) 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. The Center for American Progress requests that U.S. Department of Health and Human Services (HHS), 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 additions in the final rule were already long overdue, and the new data points are desperately needed to improve our child welfare system. CAP is a nonprofit think tank dedicated to evidence-based public policy that serves the needs of all communities. As a leading expert on LGBTQ data collection and the disparities this population faces, CAP is well-suited to address the need for increased LGBTQ data collection. Developing high-quality data that more fully explore and facilitate understanding of the circumstances of being LGBTQ in the child welfare systems of the United States today is essential if federal, state, local, and nongovernmental entities are to adequately and efficiently serve LGBTQ foster youth. Removing questions relating to sexual orientation in AFCARS would keep invisible the experiences of the LGBTQ community and leave the Federal government blind to its unique needs. More of these data on the experiences and needs of LGBTQ youth are needed – not less. This is especially true given the increasing population of people who identify as LGBTQ.[1]

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

CAP recommends that the data elements in the Final Rule be retained and not further streamlined, especially those related to sexual orientation and gender identity and expression (SOGIE). 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) Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Foster Youth 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 LGBTQ foster children. LGBTQ youth are overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers.[2] Data on these youth at the state level are urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level are 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 from and allow 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 to help achieve those objectives.[3] 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."[4] 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.[5] LGBTQ youth are an already vulnerable population. For example, according to the 2015 Youth Risk Behavior Surveillance System, LGB youth are roughly 4.5 times more likely to attempt suicide than their non-LGB peers.[6] LGBTQ youth will be inadequately served until states and tribes have more information about them and their experiences and outcomes, and how institutions can better respond to their individual needs.

Disproportionate representation of LGBTQ youth in foster 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.[7] 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, with 13.6% identifying as LGBQ and 5.6% identifying as transgender.[8] This is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care.[9] Other studies have estimated even higher numbers of LGBTQ youth in foster care, including a forthcoming study by Dr. Brandon Andrew Robinson which estimates that 22.8% of youth in out of home care identify as not heterosexual.[10] 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" is 14,300 to 24,000.[11]

In addition to being disproportionately represented in the child welfare 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.[12] 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.[13] They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[14] These results helped to inform the care and coordination service interventions undertaken by the R.I.S.E. study. Permanency for LGBTQ foster youth will not improve until we better understand all of the factors that may contribute to poor outcomes. States and tribes will continue to be stymied in their ability to improve outcomes for LGBTQ foster youth and reduce costs to the state until sexual orientation and gender identity data are available.

CAP also opposes 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, 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 the negative 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.[15] 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. CAP therefore urges 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.[16] 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.[17] 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.[18] Based on average annual foster care maintenance payments per child of $19,107 in FY2010,[19] 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 positive impact of receiving affirming care on a youth's health and wellbeing, 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.[20] 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[21], 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.[22] All of these negative 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 the provision of appropriate 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.[23] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[24] 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."[25] 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.[26] 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 Needed to Effectively Meet the Needs of The Transgender Community.

A forthcoming study by Dr. Brandon Andrew Robinson 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."[27] 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 SOGIE 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 SOGIE information in child welfare systems.[28] The guidelines address the need to collect SOGIE 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 SOGIE 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 SOGIE 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.[29] 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.[30] 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 SOGIE data as part of the initial intake and assessment.[31]

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, CAP urges 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. Thank you for the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

Center for American Progress

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[1] Kellan Baker and Laura Durso, "Filling in the Map: The Need for LGBT Data Collection" (Washington: Center for American Progress, 2015) available at https://www.americanprogress.org/issues/lgbt/news/2015/09/16/121128/filling-in-the-map-the-need-for-lgbt-data-collection/. *See also* Newport, F., *In U.S. Estimate of LGBT Population Rises to 4.5%*, Gallup, May 22, 2018, available at http://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx.

[2] Human Rights Campaign, "LGBTQ Youth in the Foster Care System," available at https://www.hrc.org/resources/lgbt-youth-in-the-foster-care-system (last accessed April 2018). *See also* Amanda Fixsen, "Children in Foster Care: Societal and Financial Costs" (Portland, Oregon: A Family for Every Child, 2011), available at http://www.afamilyforeverychild.org/Adoption/AFFECreportonchildreninfostercare.pdf.

[3] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

[4]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

[5] *Ibid.*

[6] Centers for Disease Control and Prevention, "High School YRBS, Youth Online," available online https://nccd.cdc.gov/Youthonline/App/Default.aspx (last accessed April 2018).
[7] 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
[8] 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
[9] 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
[10] Robinson, Brandon Andrew. Forthcoming. "Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality." *Child Welfare*.
[11] 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 in notes 9 and 10 above.
[12] 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
[13] 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
[14] 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
[15] 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
[16] 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
[17] *Ibid.*
[18] 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
[19] 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
[20] Beauregard Blazavier and others, "Examining Homeless Outcomes Among Foster Care Youth in Wisconsin" (Madison, WI: University of Wisconsin-Madison, 2014), available at https://www.lafollette.wisc.edu/images/publications/workshops/2014-homeless.pdf. *See also* "Sex Trafficking," National Foster Youth Institute, available at https://www.nfyi.org/issues/sex-trafficking/ (last accessed June 11, 2018).
[21] 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
[22] *See, e.g.*, Sheets RL, Mohr JJ. Perceived social support from friends and family and psychosocial functioning in bisexual young adult college students. J. Couns. Psychol. 2009;56:152–63. *See also* Shilo G, Savaya R. Effects of family and friend support on LGB youths' mental health and sexual orientation milestones. Fam. Relat. 2011;60:318–30. Ryan C, Huebner D, Diaz RM, Sanchez J. Family rejection as a predictor of negative health outcomes in white and Latino lesbian, gay, and bisexual young adults. Pediatrics. 2009;123:346–52.
[23] 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/
[24] 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/
[25] 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
[26] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/
[27] 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)."
[28] 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

[29] 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).
[30] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).
[31] *See, e.g.*, "Respectfully Asking Sexual Orientation and Gender Identity (SOGI) Questions," City of New York, available at https://www1.nyc.gov/assets/acs/pdf/lgbtq/Respectfully_Asking_SOGI_Questions.pdf (last accessed June 12, 2018). *See also* "CONTRA COSTA YOUTH CONTINUUM OF SERVICES FOR RUNAWAY AND HOMELESS YOUTH," Countra Costa County, available at https://cchealth.org/h3/coc/pdf/hmis-youth-intake-form.pdf (last accessed June 12, 2018). "New Jersey Department of Children and Families Policy Manual," New Jersey Department of Children and Families, available at http://www.state.nj.us/dcf/policy_manuals/CPP-VI-B-1-500_issuance.shtml (last accessed June 12, 2018).

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Document: ACF-2018-0003-0175
The Williams Institute On Sexual Orientation and Gender Identity

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General Comment

See attached

Attachments

The Williams Institute

the Williams INSTITUTE

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June 13, 2018

Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
Director, Policy Division
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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.

Dear Ms. McHugh:

On behalf of scholars from various disciplines—social work, community psychology, demography, economics, law, medicine, public health, political science, public policy, psychology, social epidemiology, among others—who have extensive experience studying the experiences and outcomes of youth in foster care and/or sexual and gender minorities (SGM) in the United States, we write to strongly request that the 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 undersigned have published extensively on issues related to youth in out-of-home care, permanency risks and outcomes, and SGM youth and adults. Many of the undersigned are scholars at or affiliated with the Williams Institute, an academic research center at UCLA School of Law dedicated to conducting rigorous and independent research on sexual orientation and gender identity. Scholars at the Williams Institute were the first to publish a study documenting the high levels of overrepresentation of LGBT foster youth in child welfare, using data collected through traditional survey research methods. The absence of administrative data at a national level make it impossible to track whether the system is making improvements in the treatment and care of this very vulnerable, but significant proportion, of the population of youth in out-of-home care. 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. For these reasons and those explained in more detail below, we strongly recommend that the current data elements in the Final Rule are maintained.

A. 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

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.[1] 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."[2] 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.[3] 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 by the Williams Institute under the Administration of Children & Families Permanency Innovations Initiative.[4,5] 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 (an indicator related to gender expression), and 5.6% were

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[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

[2] 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

[3] *Ibid.*

[4] 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

[5] Wilson BDM, Kastanis AA. (2015). Sexual and gender minority disproportionality and disparities in child welfare: A population-based study. Child Youth Services Review, 58, doi:10.1016/j.childyouth.2015.08.016.

transgender. Other studies have estimated similarly high numbers of sexual minority youth using national data.[6]

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded Los Angeles foster youth study showed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home, both risks to lower rates of permanency.[7] Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and they were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[8] Further, both the Los Angeles study and the study using nationally representative data showed that LGB youth were more likely to experience psychological distress than non-LGB youth.[9] 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.

B. 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. Over the years, 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*

[6] *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

[7] Same as 4 above.
[8] *Ibid.*
[9] *Ibid.*

The Williams Institute *Advancing critical thought in the field of sexual orientation and gender identity law and public policy.*

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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.

C. The Data Elements in the Final Rule are Not Overly Burdensome as They Reflect a Now Longstanding History of Collecting Data in Sexual Orientation, Gender Identity and Gender Expression

The proposed data elements specific to sexual orientation, gender identity, and gender expression also represent advances in science over the last 25 years in which the feasibility and accuracy of data collection on these topics has been consistently demonstrated. Indeed, as the SMART report explained, "[s]exual orientation questions have been asked on large-scale school-based surveys of adolescents around the world since the mid-1980's."[10] For example, the Bureau of Justice Statistics' National Survey of Youth in Custody (NSYC) includes a measure of sexual orientation and has provided a wealth of important information about disproportionate incarceration and victimization of sexual minority youth in custody.[11] The CDC's National Youth Risk Behavior Risk Survey successfully includes respondents as young as 13 and has included sexual orientation measures since 2015. In 2015, more than 15,500 youth from across the country filled out the YRBS survey on their own, anonymously at school.[12] Even before that, an increasing number of jurisdictions included sexual orientation measures on their YRBSs since the mid-1990s.[13] The National Longitudinal Study of Adolescent to Adult Health (Add Health), a longitudinal study of a nationally representative sample of adolescents in grades 7-12 in the United States during the 1994-1995 school year, included sexual orientation attraction and partner gender questions in both the baseline wave and Wave II (1996), when respondents were largely below the age of 18. Analysis of Add Health data has indicated, for example, disparities in experiences of violence among adolescents reporting same-sex, both-sex, and other-sex romantic attraction.[14] The National Survey

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[10] SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INSTITUTE, BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf [hereinafter SMART report]; GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INSTITUTE, BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf [hereinafter GenIUSS Report].

[11] 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), https://www.bjs.gov/content/pub/pdf/flilcsvjf12.pdf.

[12] 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 (Mar. 3, 2011), https://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf.

[13] Bianca D.M. Wilson et al., Williams Institute & UCLA Center for Health Policy Research, Characteristics and Mental Health of Gender Nonconforming Adolescents in California (2017), http://healthpolicy.ucla.edu/publications/Documents/PDF/2017/gncadolescents-factsheet-dec2017.pdf.

[14] Bianca D.M. Wilson et al., Williams Institute, Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.

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of Family Growth (NSFG), which includes respondents as young as 15, has included a sexual orientation behavior measure for many years.[15] The California Health Interview Survey has asked youth about their gender expression since 2015.[16] There are many more examples of surveys and studies that have successfully collected sexual orientation and gender identity data from youth, including the L.A. Foster Youth Study (which included adolescents as young as 12).[17] Each of the surveys and studies provides invaluable information about SGM youth that have impacted policy making and programming in a variety of settings.

And while the feasibility to do this has been demonstrated, numerous scholars and state and federal data science representatives still see a need to call for the increase in representative data of sexual and gender minorities because there is too little available. For this reason, the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys has cogently explained that "there remains a lack of data on the characteristics and well-being" of SGM populations, and that "[i]n order to understand the diverse need of SGM populations, *more representative and better quality data need to be collected.*"[18] Without such data, public policymakers, law enforcement agencies, and service providers—including federal agencies tasked with promoting the security and well-being of our nation's people—are hindered in their efforts to adequately serve SGM populations, including LGBT youth. This is no less the case for the child welfare system and the administrative data collected to better understand their demographics, needs, and outcomes.

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

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."[19] 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.[20] Recruitment of LGBTQ families could provide a source of affirming and supportive homes for LGBTQ foster youth.

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

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[15] GARY J. GATES, GALLUP, IN US, MODE ADULTS IDENTIFYING AS LGBT (2017), http://www.gallup.com/poll/201731/lgbt-identification-rises.aspx.

[16] *See also* SMART Report, *supra* note **Error! Bookmark not defined.**0, at 9.

[17] *See generally id.* at 17-23, 26-27 (discussing privacy and other administration considerations when asking sexual orientation questions); GenIUSS Report, *supra* note **Error! Bookmark not defined.**0, at 19-26 (discussing privacy and other administration considerations when asking gender identity questions).

[18] FEDERAL INTERAGENCY WORKING GROUP ON IMPROVING MEASUREMENT OF SEXUAL ORIENTATION AND GENDER IDENTITY IN FEDERAL SURVEYS, TOWARD A RESEARCH AGENDA FOR MEASURING SEXUAL ORIENTATION AND GENDER IDENTITY IN FEDERAL SURVEYS: FINDINGS, RECOMMENDATIONS, AND NEXT STEPS, 2 (2016), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/SOGI_Research_Agenda_Final_Report_20161020.pdf

[19] Same as 2 above.

[20] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/

parents than their different-sex counterparts.[21] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[22] Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will likely 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.

E. 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.

Youth who are transgender and or gender nonconforming specifically have a difficult time in child welfare systems.[23,24] 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 adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

F. 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.[25] 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

[21] 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/

[22] 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/

[23] Robinson, B. A. (2018). Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality. CHILD WELFARE, 96(2), 29-45.

[24] Choi, S. K., & Wilson, B. D. (2018). Gender Diversity and Child Welfare Research: Empirical Report and Implications of the Los Angeles County Foster Youth Study. CHILD WELFARE, 96(1), 79-101.

[25] 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

numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.[26] 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.[27] 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."

G. 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 and feasibility of these data elements outlined in the Final Rule.

Sincerely,

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I am lending my support to this letter my adding my name and affiliation (for identification purposes). *Listed by order of time of endorsement:*

[26] 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).
[27] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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

Document: ACF-2018-0003-0176
Pechanga Indian Reservation

Submitter Information

Name: Steve Bodmer
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General Comment

See attached

Attachments

Pechanga Indian Reservation

PECHANGA INDIAN RESERVATION
Temecula Band of Luiseño Mission Indians

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June 13, 2018

Via electronic correspondence *at: CBComments@acf.hhs.gov*

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 Sir or Madam,

The Pechanga Band of Luiseño 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. In fact, this Tribe provided comments in response to the SNPRM (please see attached letter dated May 9, 2016), as well as the June 30, 2017, Proposed Information Collection Activity (please see attached letter dated August 29, 2017).

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 seven 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. Any delay of the implementation of the ICWA-related data points would be contrary to the best interest of tribal children and families, a waste of finite state child welfare resources, and creates confusion over whether to continue implementation.

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 order fails to provide justification to deviate from the statutory requirement for regulations.

For the foregoing reasons, we request this proposed information collection activity be withdrawn by the agency.

Specific Comments:

The Department specifically requests comments on the following questions:

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,

Steve Bodmer
General Counsel

Enclosures

PECHANGA INDIAN RESERVATION
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May 9, 2016

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 220024

Re: Supplemental Notice of Public Rulemaking—Proposed AFCARS data elements related to the Indian Child Welfare Act of 1978 (*Federal Register*, Volume 81, No. 67, published April 7, 2016, pages 20283–20301)

Dear Ms. McHugh:

On behalf of the Pechanga Band of Luiseño Indians, we welcome the opportunity to provide comments on the Supplemental Notice of Public Rulemaking (SNPRM) regarding proposed Adoption and Foster Care Automated Reporting System (AFCARS) data elements related to the Indian Child Welfare Act of 1978 (ICWA). American Indian and Alaska Native (AI/AN) children have a unique legal status as citizens of tribal governments with federal laws, like ICWA, that provide important safeguards to help them maintain their tribal and family relationships.

Since its passage, the unique legal status and the requirements of federal laws like ICWA have not been addressed in current federal reporting requirements for state child welfare systems that serve AI/AN children and families. This has contributed to states feeling less comfortable in examining their implementation of ICWA, and difficulty in developing responses that can effectively address disproportionality and other areas for improvement. Tribes also suffer under the current data limitations, as they experience significant limitations in their ability to track the progress of their tribal members' children and families effectively across multiple states and collaborate successfully with partner states. As states and tribes together try to understand the best approaches to address these issues, access to reliable data is critical if effective solutions are going to be developed. With AI/AN children nationally facing disproportionate placement in state foster care at a rate over two times their population, the need for ongoing, reliable, and accessible data has never been greater.

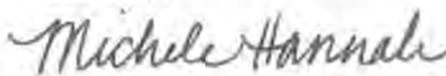
The SNPRM proposes the first federal data elements that can provide detailed information on ICWA implementation. It proposes a series of data elements tied to ICWA requirements that will allow tribes, states, and federal agencies the ability to develop a more detailed understanding of the trends in out-of- home placement and barriers to permanency for AI/AN children. Improved policy development, technical assistance, training, and resource allocation can flow from having reliable data available. Establishing the data elements proposed in the SNPRM will provide AI/AN children the same opportunities to benefit from data that other children currently have, and will better inform responses that address the unique issues in both policy and practice.

Data elements proposed in the SNRPM include data that is easily obtained in the case files of Title IV-E managing agencies. This includes common case management data that details the activities of the Title IV-E agency and related activities of the court in particular cases. The full AFCARS NPRM, like the SNPRM, also proposes data from Title IV-E agencies and courts. Examples of similar AFCARS data elements include Transfer to Another Agency (1355.43(g)(4)), Living Arrangement and Provider information (1355.43(e)(1-16), Authority for Placement and Care court order (1355.43(d)(4)), Termination of Parental Rights date (1355.43(c)(3)(ii)), and Date of Judicial Finding of Abuse or Neglect date (1355.43(c)(4). The integration of ICWA-related data provides for the unique legal issues for AI/AN children, while following a very similar framework and sources of data that have been a part of AFCARS requirements for many years and proposed in the current full AFCARS NPRM.

We would also note that Title IV-E of the Social Security Act provides authority for the Secretary of the Department of Health and Human Services (DHHS) to regulate the collection and reporting of data regarding children who are in the care of a Title IV-E agency (42 U.S.C. 679). This has more recently been interpreted by DHHS to include the collection and reporting of data related to implementation of ICWA involving AI/AN children in state child welfare systems. For many years, tribal advocates, and in some cases states, have argued for this interpretation, and we are pleased to see the current Administration adopt this common sense clarification of current authority.

We want to thank DHHS for their efforts to correct significant data gaps in federal data collection concerning AI/AN children and families, and express our support for the establishment of the proposed data elements contained in the SNPRM. It has been over 36 years since the enactment of ICWA, and while conditions and outcomes for AI/AN children have improved since that time, there are still substantial issues that need attention in order to reduce AI/AN disproportionality and improve tribal, state, and federal responses. We look forward to working with DHHS in the future to strategize on how to use the new data proposed in this SNPRM. Our more specific comments on the SNPRM are attached to this letter.

Sincerely,



Michele Hannah
Associate General Counsel

SPECIFIC COMMENTS ON SNPRM

Identifying an "Indian Child" under ICWA – The data elements proposed under this category provide information about efforts and sources to identify an Indian child. While asking the birth or adoptive mother and father and/or Indian custodian are good sources, it would also be highly beneficial to include whether extended family members have been questioned as well, since many times they will have critical information that a particular birth parent may not. This also fits well with Title IV-E requirements to notice all adult relatives when a child in their family has been removed (42 U.S.C. 671(29)).

We would also suggest improving the language regarding whether a child is domiciled or resident on an Indian reservation to "on an Indian reservation or in a predominately Indian community." This tracks the language in the revised federal guidelines that is intended to address whether a state agency or court has a reason to believe a child is an Indian child for ICWA purposes, not to address jurisdictional issues. In addition, adding the recommended language is in alignment with recognizes that many tribal members live off tribal lands in nearby areas, especially in Public Law 280 states (i.e., California), where tribal lands can be much smaller in size.

Transfer to tribal court – These data elements capture the request from eligible parties to transfer jurisdiction from state to tribal court. The data is critical to understanding changes in the case that can impact future agency and court decisions. We would recommend that one additional data element be included that provides a date on when the transfer of jurisdiction petition was approved.

Active efforts to prevent removal and reunify with Indian family – The data elements under this category provide important information that impacts the ability to prevent removal in the first place and help reunify after removal. These are tied to the efforts by the state agency and court in these areas. While the data elements track many of the federal guidelines, there are some important missing elements that characterize active efforts and support our recommendations. First, we recommend adding language to the third bulleted data element "Invite representatives of the Indian child's tribe to participate in the proceedings." We recommend adding language so it will read, "~~Invite~~ **Engage** representatives of the Indian child's tribe to participate in the **legal** proceedings **and planning for and providing rehabilitative services to the child's family**."

ICWA and the accompanying federal guidelines direct state agencies to make active efforts that are appropriate to the Indian child and family's unique needs. Under A.2 of the revised federal guidelines the language specifies active efforts as "Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;." We recommend that the first bullet under this category be amended to include this language so it would read "Identify appropriate services to help the parent that take into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and request the assistance of the representatives designated by the Indian child's tribe."

Removals – The data elements in this category follow the ICWA requirements for involuntary placements, but do not address ICWA requirements for voluntary placements. These include parental

consent provisions regarding voluntary foster care placement that are not addressed elsewhere in the SNPRM or the full AFCARS NPRM section which addresses voluntary placements. Since the voluntary consent requirements of ICWA are the same for foster care as they are for termination of parental rights (25 U.S.C. 1913(a), we recommend that the three SNPRM data elements addressing voluntary consent in the termination of parental rights category be added to the removal category with language adjusted to reflect consent to a voluntary foster care placement (see 1355.43(i)(22), 1355.43(i)(23), and 1355.43(i)(24)). We also recommend adding a data element that addresses the ICWA requirement regarding the return of the child to the birth parents if consent is withdrawn (25 U.S.C. 1913(b)).

Foster care and pre-adoptive placement preferences – These data elements specify information related to two of the three types of placements that are covered under the ICWA placement preferences for foster care and pre-adoptive placements (25 U.S.C. 1915(b)). ICWA defines foster care placement to include foster care, guardian or conservator, or institutional placement (25 U.S.C. 1903(1)(i)). While the full AFCARS NPRM provides data elements that address guardianships more generally, these data elements do not cover the placement preferences included under ICWA fully. For example, the AFCARS NPRM provides data elements that can identify relative and non-relative guardianship homes, but there are no data elements that can identify whether the guardian home was a tribally licensed or approved home or another Indian family guardian home licensed by the state. Our recommendation is to add clarifying language to the SNPRM in this section as follows:

"Indicate which foster care or pre-adoptive placements that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) were available to accept placement. "Foster Care Placement" is defined under ICWA as a "...temporary placement in a foster home or institution or the home of a guardian or conservator…" (25 U.S.C. 1903(1)(i))."

Termination of parental rights – This category creates data elements that track ICWA requirements regarding involuntary and voluntary termination of parental rights. Three of the four ICWA requirements are addressed in the data elements (evidentiary standard – beyond a reasonable doubt, expert witness testimony, and continued custody resulting in serious damage). However, arguably one of the most important requirements to avoid termination of parental rights, the provision of active efforts, is not included. This is important because the first determination of active efforts in a removal can occur within the first few months of a case being opened, while the termination of parental rights hearing can occur several months or even a year or more from the first active efforts determination. We recommend adding a data element that asks if the court made a determination, in a court order that active efforts were made by the Title IV-E agency between removal/placement in foster care and before the termination of parental rights.

In addition, we suggest adding in a data element that considers alternatives to termination of parental rights that may be available to the Title IV-E agency. In California for example, one alternative permanent plan is a Tribal Customary Adoption wherein the parental rights are not severed, but rather modified. The adoptive parent in this case is granted the same rights and responsibilities as they would under a contemporary adoption. This addition to state law was in direct recognition that the severance of the parental relationship is incongruous with some tribal customs and traditions. The Pechanga Band requests a Tribal Customary Adoption in state court child custody proceedings, unless there is a

compelling reason to consider a contemporary "western" adoption (termination of parental rights). While not all states may offer this option, failing to account for alternative permanent plans (outside of guardianships and long-term foster care) will not accurately capture data on more culturally appropriate outcomes for tribal children and families.

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August 29, 2017

Via electronic correspondence at: infocollection@acf.hhs.gov

Attn: ACF Reports Clearance Officer
Administration for Children and Families
Office of Planning, Research and Evaluation
330 C Street SW.
Washington DC 20201

Re: Adoption and Foster Care Analysis Reporting System for Title IV- B and Title IV-E (AFCARS) Proposed Information Collection Activity; Comment Request – Federal Register (June 30, 2017)

Dear Sir or Madam,

The Pechanga Band of Luiseño Indians submits these comments on the Proposed Information Collection Activity 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. In fact, this Tribe provided comments in response to the SNPRM (please see attached letter dated May 9, 2016).

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.)

In contrast, this Proposed Information Collection Activity was not distributed to tribes in a timely manner and tribes were pressed for time to provide comment.

Unlike the previous sequence of comments and review, the pending Proposed Information Collection Activity was not widely distributed – indeed this Tribe did not receive notice of it until August 20, 2017. Absent further explanation, it is unclear whether, or why the Agency needs a *third* set of comments on the previously vetted elements – but nevertheless tribes should have been notified and consulted about this request.

This collection activity in no way comports with the requirements of the ACF Tribal Consultation Policy, 76 Fed. Reg. 55678, 55685 which requires, "timely, respectful, meaningful, and effective two-way communication and consultation with tribes."

States are already in the process of implementing these changes.

Since these regulations have been effective for approximately seven 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. Any delay of the implementation of the ICWA-related data points would be contrary to the best interest of tribal children and families, a waste of finite state child welfare resources, and creates confusion over whether to continue implementation.

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.

For the foregoing reasons, we request this proposed information collection activity be withdrawn by the agency.

Specific Comments:

The Department specifically requests comments on the following (a) – (d) items:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

Comment: Further collection of information related to the AFCARS at this stage is not necessary and will only serve to create uncertainty and confusion, waste child welfare resources, and delay the reporting of data for which benefits and burdens have been heard and a decision made that the benefits outweigh the burdens.

It is unclear why additional information is being sought, as comments have been provided multiple times with regard to the critical importance of having ICWA-related data points which served and continue to serve the agency and its functions.

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information.

Comment: Accuracy of the estimate of the burden of AFCARS data collection was addressed in comments to both the 2015 NPRM and 2016 SNPRM, some of which challenged the accuracy of the estimates. In response, the Final Rule addressed those comments by creating and explaining a new estimate for the burdens associated with changing data systems and collecting and reporting data. The new burden estimates are sufficient.

Additionally, to solicit information solely regarding the potential burden of the regulations without also soliciting information and comments on its potential benefits is arbitrary, capricious, an abuse of discretion, and not in accordance with the AFCARS authorizing statute.

(c) The quality, utility, and clarity of the information to be collected.

Comment: The Agency received comments for both the 2015 NPRM and the 2016 SNPRM regarding the specific data elements to ensure it would be quality data in keeping with the AFCARS authorizing statute. As already documented in prior comments and as highlighted by the Final Rule, the data to be collected will produce necessary information which will guide, clarify and improve outcomes for all children and families in state child welfare systems.

To reassess the data elements one more time does more harm than good where states have already begun, in some instances in consultation with tribes, to develop data systems in accordance with the 2106 Final Rule.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comment: Rather than change the 2016 Final Rule, we recommend the Agency conduct an evaluation of state case management systems to determine if there is technology sufficient to allow for a streamlined approach to data sharing between states and the Agency. Moreover, this is not the appropriate stage at which to be soliciting comments, since an in-depth investigation is required.

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 fact, the process driven delay impairs the child welfare system as a whole. There is no logical reason to change the regulations as currently in effect. Modifications at this stage of implementation will only create costly delays and confusion. **This proposed information collection activity is unnecessary and should be withdrawn.** In the interest of protecting our children and families, we respectfully submit these comments.

Sincerely,

Steve Bodmer
General Counsel

Enclosure

As of: September 14, 2020
Received: June 13, 2018
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Comments Due: June 13, 2018
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AFCARS 2018-2020

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

Document: ACF-2018-0003-0177
Tribal Law and Policy Institute

Submitter Information

Name: Jerry Gardner
Address: 90046
Organization: Tribal Law and Policy Institute

General Comment

See attached

Attachments

Tribal Law and Policy Institute

TRIBAL LAW AND POLICY INSTITUTE

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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

Re: RIN: 0970-AC47

Dear Director McHugh,

I am writing to you on behalf of the Tribal Law and Policy Institute (TLPI), a Native American owned and operated non-profit organized to promote the enhancement of justice in Indian country and the health, well-being, and culture of Native peoples.

The Tribal Law and Policy Institute submits these comments on the 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 (ICWA). Data points specific to ICWA were incorporated into AFCARS as detailed in the Final Rule published on December 14, 2016.

I. 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 (HHS) 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's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act. The Final Rule, which the Administration on Children and Families (ACF) promulgated pursuant to

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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.

Moreover, tribal consultation is fundamental in constructing an effective and comprehensive data collection scheme that comports with the fundamental mission of the Administration for Children and Families. Without collecting tribe's data, consulting with tribes, and listening to the needs of tribes and tribal advocates, the Administration overlooks a percentage of those that the administration is obliged to protect. Consulting with tribes ensure that decades, in some instances centuries, old treaties are correctly understood and that the unique legal and political relationship between tribes and the federal government is not misunderstood. At the cornerstone of the relationship between tribes and the government is a general acknowledgement of the trust responsibility and a respect for tribal sovereignty. Without adequate consultation, the federal government fails to meet these duties owed to tribes in perpetuity.

II. 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 ACF's February 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 in April 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.

III. In Contrast, this Proposed Information Collection Activity Was Not Distributed to Tribes in a Timely Manner and Tribes Were Pressed for Time to Provide Comment.

Per Executive Order 12866, the typical comment period is 60 days. This NPRM is only open for a 30-day comment period. The cited rationale for the shorter comment period for this NPRM, 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,

ignores the weight of the substantial resources that will have been wasted if this delay goes into effect. States have been working, in many cases together with tribes, to implement the regulation for over 15 months.

This collection activity fails to comport with the requirements of the ACF Tribal Consultation Policy, 76 Fed. Reg. 55678, 55685 which requires, "timely, respectful, meaningful, and effective two-way communication and consultation with tribes."

IV. 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. Any delay of the implementation of the ICWA-related data points would be contrary to the best interest of tribal children and families, a waste of finite state child welfare resources and creates confusion over whether to continue implementation.

V. 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.
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> 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:
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> 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;
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> 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.[1]
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.

For the foregoing reasons, we strongly oppose any delay in the implementation of the regulation and request this proposed information collection activity be withdrawn by the agency.

Sincerely,

Jerry Gardner
Executive Director
The Tribal Law and Policy Institute

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[1] 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.

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

Document: ACF-2018-0003-0178
Trevor Project

Submitter Information

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General Comment

See attached

Attachments

Trevor Project

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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 Regulations.gov

Dear Ms. McHugh:

On behalf of The Trevor Project 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 Trevor 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.

As you know, the Trevor Project is the nation's largest provider of crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender and questioning young people ages 13-24. Every day, we save countless young lives through our phone, text and instant message crisis intervention services. As a leader and innovator in suicide prevention, The Trevor Project offers the largest safe social networking community for LGBTQ youth, best practice suicide prevention educational trainings, resources for youth and adults, and advocacy initiatives.

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

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(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. <u>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</u>

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.[1] In April

[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

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."[2] 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.[3] 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.[4] 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.[5] 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.[6] 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.[7]

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.[8] 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

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[2] 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
[3] *Ibid.*
[4] 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
[5] *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
[6] 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.
[7] Same as 5 above.
[8] Same as 4 above.

involvement.[9] They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[10] 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.[11] 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.[12] 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

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[9] *Ibid.*
[10] *Ibid.*
[11] 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
[12] *Ibid.*

care.[13] Based on average annual foster care maintenance payments per child of $19,107 in FY2010,[14] 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[15], 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.

[13] 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
[14] Same as 11 above.
[15] Same as 4 above.

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.[16] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[17] 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."[18] 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.[19] 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 "youth 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."[20] 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

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[16] 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/
[17] 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/
[18] Same as 2 above.
[19] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/
[20] 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)."

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.[21] 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.[22] 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.[23] 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 "information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." Additionally,

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[21] 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

[22] 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).

[23] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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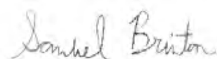
the rule directed agencies to guidance and recommended practices developed by “state and county agencies, advocacy organizations and human rights organizations.”

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,



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

Document: ACF-2018-0003-0179
California Indian Legal Services

Submitter Information

Name: Jedd Parr
Address: 95814
Organization: California Indian Legal Services

General Comment

See attached

Attachments

California Indian Legal Services

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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

June 13, 2018

Via email to *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,

California Indian Legal Services 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 requirements, will ensure 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 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 ACF's 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 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. CILS is aware 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 clients' 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 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. CILS has numerous clients whose tribal social service systems would benefit greatly from this data.

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 achieved 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.

<u>The foregoing are responses to the Questions for Comment provided in the ANPRM:</u>

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 law informs how the existing child welfare system may improve in whole.

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

In closing, the ICWA 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 children and families, we respectfully submit these comments.

Sincerely,

CALIFORNIA INDIAN LEGAL SERVICES

Jedd Parr
Directing Attorney, Sacramento Office

PUBLIC SUBMISSION

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Document: ACF-2018-0003-0180
Minnesota Department of Human Services

Submitter Information

Name: Marvin Davis
Organization: Minnesota Department of Human Services

General Comment

See attached

Attachments

Minnesota Department of Human Services

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, [RIN: 0970-AC72].

Submitted via email to: CBComments@acf.hhs.gov

Dear Kathleen McHugh,

On behalf of the Child Safety and Permanency Division of the Minnesota Department of Human Services, please accept the following comments regarding the AFCARS proposed rulemaking RIN: 0970-AC72.

1. HHS should maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression because our agency wants additional data so we can improve outcomes, identify and fund needed resources, and identify areas for improvement.

- These questions are not overly burdensome and the benefits of collection of these data elements - including cost benefits - outweigh any burden.
- These data elements will help states and tribes meet their primary mission of safety, well-being and permanency of foster youth, particularly the 19% estimated to be LGBTQ.[1]

2. Our agency has already taken significant steps to improve our polices and practice to support LGBTQ youth and families and we have already begun/are laying the groundwork for SOGIE-data

[1] *Ibid.*

collection and, therefore, the burden of these data elements in the AFCARS Final Rule is not significant.

- Our state agency is currently in the process of working towards the Human Rights Campaign (HRC) All Children, All Families Certification which promotes LGBTQ inclusive policies and affirming practices among child welfare agencies. Through this process we have begun work examining and adapting our data collection, practice guidance and policies to be inclusive and responsive to the needs of LGBTQ youth and families.

3. The core objectives of safety, permanency, and well-being apply to all children in the custody of our state's child welfare system, including LGBTQ children and the Social Security Act requires collection of data regarding characteristics of all children in care.[2]

- 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."[3]
- 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.[4]

4. LGBTQ children continue to experience worse safety, permanency and well-being outcomes than other foster youth; data at the state level is urgently needed to drive improvements, improve outcomes, reduce costs, and reduce disparities; data at the national level is necessary to inform federal law and policy and funding determinations and to identify best practices for replication.

- Disparate outcomes include placement instability including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons.[5] Long-lasting placement instability unrelated to initial individual differences significantly worsens children's behavioral well-being."[6]

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[2] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

[3] 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

[4] Same as 1 above.

[5] *Ibid.*

[6] 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

- This data will help quantify the need for LGBTQ identified foster and adoptive homes and aid in the proper distribution of state level resources for training, outreach and support of those families.
- 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.
- Reducing instability and achieving permanency for LGBTQ children through placement with affirming, supportive families and providing needed supportive services could provide great cost savings
- Collecting this data nationally will allow the Children's Bureau, states and tribes to identify successes and best practices in improving outcomes for this population and to replicate them to address disparities.

5. HHS should maintain the question 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.
- Remaining safely at home is a cost savings that our state could achieve by helping a child remain with their family of origin through targeted supportive services related to this source of family conflict.
- This data 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 our state to further work to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular.

6. HHS should retain the voluntary sexual orientation question for adoptive and foster parents and guardians (and add gender identity questions). Resulting data will help states and tribes recruit and support LGBTQ caregivers, increasing the pool of available homes for children including LGBTQ youth, and help identify states and agencies which can do better in recruitment of LGBTQ resource families.

- 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 heterosexual

counterparts.[7] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children. [8]

- 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."[9]
- 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.[10]
- Recruitment of LGBTQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs associated with placement instability that these youth experience.

7. HHS should *add* voluntary gender identity questions for foster youth over 14 and foster and adoptive parents and guardians because this information is important and it is efficient to collect this information along with current elements.

- "Youth 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 (Keuroghlian, Shtasel, & Bassuk, 2014; Saewyc et al., 2006)."[11]
- Adding gender identity questions for foster youth and foster and adoptive parents and guardians will help programs save costs by identifying affirming placements and reducing placement instability.

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[7] 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/

[8] 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/

[9] Same as 4 above.

[10] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/

[11] 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)."

- Collecting gender identity data as well as sexual orientation data will help states and tribes develop "streamlined" comprehensive services with no gaps.
- Collecting this 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).

8. The sexual orientation data elements of foster youth, foster and adoptive parents and guardians can be administered safely, and the Children's Bureau should provide training and resources to states and tribes to do so.

- The questions directed towards youth over 14 and parents and guardians are voluntary.
- Population-based surveys have successfully collected these data from youth for many years.
- Support the safe and affirming collection of sexual orientation information with the understanding that, as a prerequisite and consistent with federal law and professional standards, states must protect youth and families from discrimination on account of their sexual orientation and gender identity and expression ("SOGIE"), provide training to staff regarding respectful collection of SOGIE information, and implement confidentiality protocols for SOGI information.
- ACF should provide technical assistance to states in developing specific policies to protect confidentiality and prevent unauthorized disclosure and in developing policies and procedures governing the management of sexual orientation and gender identity information, including data storage and disclosure protocols.

Thank you for allowing us the opportunity to provide comments,

Marvin Davis
Deputy Director
Child Safety and Permanency Division
Minnesota Department of Human Services

PUBLIC SUBMISSION

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0181
MassEquality

Submitter Information

Name: Deborah Shields
Organization: MassEquality

General Comment

See attached

Attachments

MassEquality

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.

Dear Ms. McHugh:

On behalf of MassEquality, 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. MassEquality 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.

MassEquality is the leading grassroots advocacy group in the state. We work to ensure that everyone in Massachusetts has the ability to thrive and live without discrimination or oppression based on sexual orientation, gender identity, or gender expression. Therefore, it is extremely important to us that the U.S. Department of Health and Human Services, ACYF, ACF, Children's Bureau retains all data in the 2016 AFCARS Final Rule, including the questions about sexual orientation and gender identity and expression. Our mission is to make Massachusetts a safe and welcoming place for everyone. Keeping these questions means continuing to ensure the safety of LGBTQ adoptive families and children.

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 (19% of foster youth over the age of 12 identify as LGBTQ) and they 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 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. 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." 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.

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. 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. 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. 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.

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. 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. They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness. 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. 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. 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. Based on average annual foster care maintenance payments per child of $19,107 in FY2010, 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, 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. National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children. 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." 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. 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." 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. 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. 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. 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

Retaining the 2016 AFCARS Final Rule data elements is essential for the nation as a whole, and Massachusetts in particular. As Massachusetts has 3,459 same-sex couples raising an estimated 6,918 children, keeping the Final Rule data is crucial to learn how best we can help LGBTQ youth in foster care and their foster parents.

For the reasons outlined above, MassEquality urges 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,
Deborah Shields, Executive Director
MassEquality

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Document: ACF-2018-0003-0182
National Center for Youth Law

Submitter Information

Name: Jesse Hahnel
Organization: National Center for Youth Law

General Comment

See attached

Attachments

National Center for Youth Law

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, DC 20024

Re: Response to Request for Public Comments on the Education Elements of the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule

Dear Ms. McHugh,

Thank you for providing an opportunity to share comments regarding the Adoption and Foster Care Analysis Reporting System (AFCARS). Pursuant to the notice published in the Federal Register on March 15, 2018 (83 Fed. Reg. 11450), National Center for Youth Law submits these comments expressing support of the education elements of the AFCARS Final Rule issued in 2016.

In response to Question 1, the new education data elements 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 3 public comment periods, including opportunities for agencies and the public to comment on the burdens and benefits of updating the AFCARS regulation.

Maintaining key educational data is essential to monitoring states' compliance with the education requirements of the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) and most importantly, to ensuring that the well-being needs of children in foster care are being met. Having this limited data in AFCARS is necessary to inform and improve states' practice and policies and enable them to measure and track the education progress of children in care. As such, National Center for Youth Law enthusiastically supports retaining the four basic education-related data elements included in the 2016 Final Rule.

Although educational information was not part of AFCARS prior to the 2016 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 straight-forward – 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 following data elements are included in the 2016 Final Rule and should be retained:

1. 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.
2. 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.
3. 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.
4. 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).

For the education data elements, questions 3, 4, and 5 are interconnected. As reflected above, **the education data elements have already been open for extensive public comment and debate. The Final Rule is the end result of identifying a finite number of basic education data elements that will yield critically important national level data.**

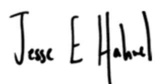
As described previously, each of the four data elements directly links with the federal requirement to support the safety, permanency, and well-being of children in foster care. To that end, basic knowledge of the level of school a child has completed, and whether that child is receiving special education services is essential. This data is not only easy to collect and report on, but more importantly, is information that child welfare agencies already can and should have. Reporting this information for AFCARS will only provide a national picture and identify trends.

The two elements of school enrollment and school stability are also directly related to federal requirements under Fostering Connections. Child welfare agencies are already required to ensure that all children in foster care receiving Title IV-E funding are enrolled in school; documentation of this does not create a burden and in fact most already do so. Similarly, documenting whether children have moved school placements and for what reasons is also required under the Fostering Connections Act as part of the child's case plan. As such, reporting should not create an unnecessary burden, and will allow for better analysis about the challenges of students in foster care related to education stability.

The resulting Final Rule and new data collection requirements were thoughtfully considered and seek to ensure child welfare agencies are gathering data on all the critical child and family-related outcomes to ensure safety, permanency, and well-being. The Final Rule brings child welfare data collection in line with statutory changes and requirements enacted since 1993. These changes were long overdue and will support agencies to provide accurate and consistent data across states on key outcome areas. Furthermore, the updated requirements in the 2016 Final Rule represent a shift away from "point-in-time" data toward a more longitudinal data approach which will help agencies address children and families' needs more effectively. Finally, 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 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.

In conclusion, National Center for Youth Law continues to support the new data requirements related to education as they are set out in the Final Rule. These updates are long-awaited and the result of robust and thoughtful discussion over many years. 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.

Sincerely,



Jesse Hahnel
Executive Director
National Center for Youth Law

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Document: ACF-2018-0003-0183
National Center for Child Abuse Statistics and Policy

Submitter Information

Name: Ann Ratnayake
Address: 20001
Organization: National Center for Child Abuse Statistics and Policy

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General Comment

See attached

Attachments

National Center for Child Abuse Statistics and Policy

Reducing Violence Against Children by Focusing on Innovation
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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, DC 20024

Re: Response to Request for Public Comments on the Education Elements of the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule

Dear Ms. McHugh,

Thank you for providing an opportunity to share comments regarding the Adoption and Foster Care Analysis Reporting System (AFCARS). Pursuant to the notice published in the Federal Register on March 15, 2018 (83 Fed. Reg. 11450).

On behalf of the National Center for Child Abuse Statistics and Policy ("NCCASP"), 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. [Organization] 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.

NCCASP prevents child abuse and protects victims by spreading innovations in technology, research, and law across state lines to empower frontline professionals to better address child abuse in their communities. NCCASP inherently supports better data and statistics to illuminate the hidden problem and potential policy solutions.

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

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 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).

Conclusion

NCCASP continues to support the new data requirements related as they are set out in the Final Rule. These updates are long-awaited and the result of robust and thoughtful discussion over many years. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

Ann Ratnayake Macy J.D./BBA
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Document: ACF-2018-0003-0184
Tonkawa Tribe of Oklahoma

Submitter Information

Name: Christi Gonzalez
Address: 74653
Organization: Tonkawa Tribe of Oklahoma

General Comment

See attached

Attachments

Tonkawa Tribe of Oklahoma

TONKAWA TRIBE OF OKLAHOMA

ICW / SOCIAL SERVICES

1 Rush Buffalo Road • PHONE (580) 628-7025
TONKAWA, OKLAHOMA 74653

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

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

Dear Ms. McHugh:

The Tonkawa Tribe of Oklahoma 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). Our 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). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

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 <u>self-identified</u> 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.

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,

Christi L. Gonzalez
ICW / Social Services Director
Tonkawa Tribe of Oklahoma

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

Document: ACF-2018-0003-0185
Kaw Nation Indian Child Welfare

Submitter Information

Name: Labrandia Lemley
Organization: Kaw Nation Indian Child Welfare

General Comment

See attached

Attachments

Kaw Nation Indian Child Welfare

Kaw Nation Indian Child Welfare

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

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

Dear Ms. McHugh:

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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.

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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 <u>self-identified</u> 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.

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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.

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Responses to the Questions for Comment provided in the ANPRM:

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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.

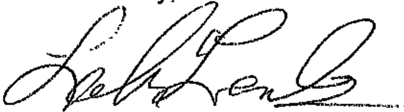
Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points is critical. The Title IV-B plan requirement for states that requires that states consult with tribal governments 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,



Labrandia Lemley
Director
Kaw Nation
Indian Child Welfare

As of: September 14, 2020
Received: June 13, 2018
Status: Posted
Posted: June 14, 2018
Tracking No. 1k2-93po-kifb
Comments Due: June 13, 2018
Submission Type: E-mail

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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-2018-0003-0186
Little River Band of Ottawa Indians

Submitter Information

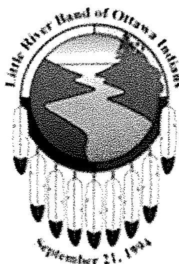
Name: Jason Cross
Address: 49660
Organization: Little River Band of Ottawa Indians

General Comment

See attached

Attachments

Little River Band of Ottawa Indians



Gaá Čhíng Ziíbi Daáwaa Aníšhinaábek
Little River Band of Ottawa Indians

Family Services Department
2608 Government Center Drive
Manistee, MI 49660

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

Sent via electronic correspondence at: 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 Little River Band of Ottawa 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.

Comprehensive national data collection and distribution mandated by the federal government is critical to the Tribe's ability to monitor ICWA implementation. Tribes conduct ICWA work in numerous jurisdictions throughout the United States. Currently, the Tribe receives little or no data from states and the information we are given is at times incorrect or incomplete. Reliable data collection would allow tribes to more closely monitor ICWA implementation and help hold states accountable for Indian children. Knowing the status and location of Indian children is vital to the continued existence of tribal families and tribes.

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.

<u>The foregoing are responses to the Questions for Comment provided in the ANPRM:</u>

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 provides 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.

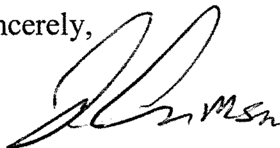
5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with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



Jason Cross
Director of Family Services
Little River Band of Ottawa Indians
O: (231) 398-6736
jcross@lrboi-nsn.gov

Little River Band of Ottawa Indians
Tribal Council
2608 Government Center Drive
Manistee, MI 49660
(231) 723-8288

Resolution #18-0613-186

Resolution in Support of Collecting Indian Child Welfare Act-Related Data in the Adoption and Foster Care Analysis Reporting System in accordance with the Final Rule Published on December 14, 2016

WHEREAS, the status of the *Gaá Čhíng Ziíbi Daáwaa Aníšhinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

WHEREAS, the Tribe adopted a new Constitution, pursuant to a vote of the membership on May 27, 1998, which Constitution became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; and

WHEREAS, the Tribe adopted amendments to the Constitution on July 11, 2016 which became effective upon approval by the Assistant Secretary-Indian Affairs on August 24, 2016; and

WHEREAS, the Tribal Council is authorized under Article IV, Section 7(a) of the Constitution to provide for the public health, peace, morals and education and general welfare of the Little River Band and its members; and

WHEREAS, on December 14, 2016, the Department of Health and Human Services (DHHS) issued regulations (Final Rule) that require collection of data relating to Indian Child Welfare Act (ICWA) compliance through the Adoption and Foster Care Analysis Reporting System (AFCARS); and

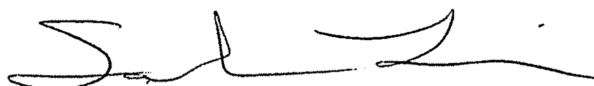
WHEREAS, on March 1, 2018 DHHS published the attached proposal that may negatively affect the December 14, 2016 ICWA data collection requirements set to take effect October 1, 2019; and

WHEREAS, Tribal Council is committed to the welfare, care, and protection of Indian children and families and the exercise of the Tribe's rights and responsibilities under ICWA.

NOW THEREFORE IT IS RESOLVED that the Tribal Council hereby submits this resolution in support of collecting Indian Child Welfare Act-related data in the Adoption and Foster Care Analysis Reporting System in accordance with the Final Rule published on December 14, 2016.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 0 AGAINST, 0 ABSTAINING, and 2 ABSENT, at a Regular Open Session of the Little River Band of Ottawa Indians Tribal Council held on June 13, 2018 at the Little River Band's Government Center in Manistee, Michigan, with a quorum being present for such vote.



Sandra Lewis, Tribal Council Recorder

Joseph Riley II, Tribal Council Speaker

Attest:

Distribution: Council Records
Tribal Ogema
Unified Legal Department

As of: September 14, 2020
Received: June 13, 2018
Status: Posted
Posted: June 14, 2018
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PUBLIC SUBMISSION

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-2018-0003-0187
Tyler Clementi Foundation

Submitter Information

Name: Jason Cianciotto
Address: 10001
Organization: Tyler Clementi Foundation

General Comment

See attached

Attachments

Tyler Clementi Foundation

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.

Dear Ms. McHugh:

On behalf of the Tyler Clementi Foundation 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 Tyler Clementi Foundation 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 Tyler Clementi Foundation was created by Jane and Joe Clementi to prevent bullying through inclusion, and the assertion of dignity and acceptance as a way to honor the memory of their son Tyler, a son, a brother and a friend. In 2010, Tyler's death became a global news story, highlighting the impact and consequences of bullying, while sparking dialogue among parents, teachers, and students across the country. Tyler's story also links to broader issues impacting youth and families, such as LGBT inequality, safety in schools, youth in crisis, higher education support systems, and cyberbullying.

Not only does the Tyler Clementi Foundation continue to carry the important message about suicide risk facing many LGBT youth, which can be three to seven times higher than it is for other youth, but also it recognizes that standing up to bullying speaks universally across all cultures and identities. The Foundation was born out of the urgent need to address these bullying challenges facing vulnerable populations, especially LGBT youth and other victims of hostile social environments. Through programs such as #Day1, which provides free, downloadable, bullying-prevention toolkits customized for different

communities, the Foundation encourages leadership in creating safe spaces where individuals are able to stand up to bullying and embrace diversity.

Bullying is a serious educational issue and matter of public health and safety. It creates a climate of fear and panic within schools, on playgrounds, and throughout neighborhoods – and in today's digital age, bullying is carried out after school hours over the Internet. Children, adolescents, and adults harmed by bullying often suffer from a wide range of psychological and school-related problems, including anxiety, depression, low self-esteem, suicidal ideation, chronic lateness and absences, and difficulty concentrating.

Bullying can often have painful physical and emotional effects such as:

- Emotional Distress
- Substance Abuse
- Missing Work & School
- Suicide

School administrators, staff, educators, parents, and community members can help prevent bullying by discussing it in classes, building a safe school environment, and by creating a bullying-prevention strategy in their community. Bullying can also be prevented through legislation, including the proposed Tyler Clementi Higher Education Anti-Harassment Act, which will grant protections from online and offline bullying for college students, as well as the Safe Schools Improvement Act, which does the same at the K-12 level.

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.

A. 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. 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." 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.

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. 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. 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. 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.

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. 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. They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness. 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. 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. 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. Based on average annual foster care maintenance payments per child of $19,107 in FY2010, 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, 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.

A. 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. National surveys tell us that nearly 2 million lesbian, gay and bisexual

adults are interested in adopting children. 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." 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. 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.

A. 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." 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).

A. 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. 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

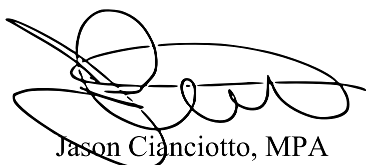
adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey (as noted in Children's Bureau comments to the Final Rule) and SOGI information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession's understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns. 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. 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

A. 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,



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PUBLIC SUBMISSION

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-2018-0003-0188
Comment on FR Doc # 2018-05042

Submitter Information

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General Comment

I urge HHS to retain the questions for foster youth about sexual orientation and gender identity. LGBTQ children and teens may be in foster care due to an untenable situation in their home lifeabuse targeted at them precisely because of their sexual orientation or gender identity. We need to protect these youthand collect this important data that reflects their experiences.

As of: September 14, 2020
Received: June 13, 2018
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Tracking No. 1k2-93p8-nlhb
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Submission Type: Web

PUBLIC SUBMISSION

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-2018-0003-0189
Alabama

Submitter Information

Name: Holly Christian
Organization: Alabama

General Comment

Alabama Comment

Alabama appreciates the opportunity to comment on the Proposed Rule Changes to Adoption and Foster Care Analysis and Reporting Systems (AFCARS). Alabamas SACWIS system, FACTS, would require a large number of modifications and enhancements in order to capture all of the proposed data elements. Based on input from FACTS Analysts, FACTS IT Programmers, FACTS System Managers, Reports Managers, and Family Service Managers, the estimated initial and on-going work hours required to update FACTS to capture and report on the new data elements proposed would be over 14,000 hours.

Non- ICWA related data fields that would require modification to FACTS include:

Childs Sexual Orientation
Developmental Delay
Educational Stability
District Zoning Rules
Service/Programs
Child Request
Pregnant at the end of reporting period
Ever fathered or bore children
Child and his/her children placed together
Environment at removal
Whereabouts unknown
Failure to return
Child requested placement
Parental immigration detainment

Family conflict related to childs sexual orientation
Victim of sex trafficking prior to entering foster care
Foster parent sexual orientation
Active efforts

ICWA related data fields that would require modification to FACTS include:

Reason to know the child is an Indian Child as defined by the Indian Child Welfare Act
Application of ICWA
Court determination that ICWA applies
Request to transfer to tribal court
Denial of transfer
Tribal membership mother
Tribal membership father
Tribal Title IV-E
Available ICWA foster care and pre-adoptive
Foster care and pre-adoptive placement
Good cause under ICWA
First parent tribal membership
Second parent tribal membership
First adoptive parent tribal membership
Second adoptive parent tribal membership
Available ICWA adoptive placements
Adoption placement preference
Good cause under ICWA
Basis for Good cause

FACTS Analyst tasks would include analyzing information required, writing business rules for the development of new screens and fields, meeting with program areas to design changes and ensuring the changes do not take away from documentation needs already present in FACTS.

FACTS generated reports would also have to be modified. This would require the writing of detail design documents and report designs by business analysts in conjunction with FACTS Functional and Family Services Staff. Additionally, development, testing and implementation by Reports Programmers would be required. The Statewide Reporting System, ERD, would also need to be updated to ensure statewide access to reports monitoring entry of required fields.

Training would need to be modified for some existing fields and additional training created for new fields. The training would then need to be implemented statewide. Policy would also need to be evaluated and updated. New policy would need to be disseminated throughout the state.

IT development time would include the programming of new fields added to the application, developer testing, UAT testing, edit checks, and extraction coding / testing or new modifications or data fields.

There are approximately 6300 children in foster care in Alabama. It would take approximately one hour for caseworkers to collect and enter the additional information into the States tracking system. This would create an estimated cost of $113,000.00. Additional FACTS system and IT personnel would be required and would need an estimated 6170 hours to complete programming to capture the proposed data elements at an estimated cost of $308,500.00. There are additional implementation costs associated with the proposed data elements that include FACTS analysts, reports, training and policy staff. These additional work hours are estimated at 1865 and at an estimated cost of $93,200.00

Alabama believes that the amount of time, personnel, and financial resources that would be required to collect these data elements is overly burdensome. We believe that the additional data requirements proposed would pull

our valuable resources away from the field and decrease the amount of time that our caseworkers have to work with the families and children that we serve.

Please see attachment for resource estimations by proposed element.
See attached file(s)

Attachments

Alabama estimates

New Fields			Will affect Mobile App	Will require a new field be added or existing field be modified in FACTS (Y/N)	Will require policy updates (Y/N)
Data Element	Description	ICWA Related			
7	Child's Sexual Orientation		x	Y	no
8-14	Reason to know a chld is an "Indian Child" as defined in the Indian Child Welfare Act	X	x	Y	not in policy
15-17	Application of ICWA	X	x	Y	no
18-20	Court determination that ICWA applies	X	x	Y	no
21-23	Notification- ICWA	X	x	Y	no

24	Request to transfer to tribal court-ICWA	X	x	Y	no
25-28	Denial of Transfer- ICWA	X	x	Y	no
39	Date of Health Assessment			N	no
40	Timely Health Assessment			N	no
50	Developmental Delay			Y	no
51	Developmental Disabilty			Y/N	no
53	School Enrollment			Y/N	no
54	Educational Level			Y/N	no
55	Educational Stability			Y	no
56	Proximity			N	no
57	District/ Zoning Rules			Y	no
58	Residential Facility			N	no
59	Service/Programs			Y	no
60	Child Request			Y	

61	Parent/Legal Guardian Request			Y/N	
62	Other			Y/N	
63	Pregnant as of the end of the reporting period			Y	
64	Ever fathered or bore children			Y	
65	Child and his/her children placed together at any			Y/N	no
66	Special Education			Y/N	no
68	Prior Adoption Date			Y/N	
69	Prior Adoption Type- *Intercounty*			Y	
70	Prior Guardianship			Y	
71	Prior Guardianship Date			Y	
87	Total number of Siblings		x	Y	
88	Siblingsin Foster Care			N/Y	
89	Siblings in Living Arrangement			Y	
92	Tribal Membership Mother	X	x	Y	no
93	Tribal Membership Father	X	x	Y	no
94	Termination of Parental Rights			N	no

95	Termination of Parental Rights Petition			N	no
97-99	Involuntary termination/modification of parental	X		Y	no
100	Voluntary termination/modification of parental	X		Y	no
103	Removals under ICWA	X		Y	no
106	Environment at Removal			Y	
108	Runaway		x	N	no
109	Wherabouts Unknown			Y	no
112	Pychological/Emotional Abuse			N	no
114	Medical Neglect			N	no
115	Domestic Violence			N	no
117	Failure to Return			**Y**	no
125	Inadequate Access to Mental Health Services			Y	
126	Inadequate Access to Medical Services			Y	
134	Child Requested Placement			Y	no
135	Sex Trafficing		x	N	no
136	Parental Immigration Detainment or Deportation		x	Y	no
137	Family Conflict related to child's sexual			Y	
138	Educational Neglect		x	N	
139	Public Agency title IV-E agreement			**Y**	
140	Tribal Title IV-E Agreement	X		Y	no
142	Victim of Sex Trafficking prior to entering FC		x	Y	no
143	Report to Law Enforcement		x	Y	no
144	Date		x	Y	
145	Victim of Sex Trafficking while in FC			Y	no
146	Report to Law Enforcement			Y	no
147	Date			Y	
150	Foster Family home type: Licensed home			Y/N	no
151	Foster Family home type: Therapeutic foster			Y/N	no
152	Foster Family home type: Shelter care foster			Y	no
157	Private Agency Living Arangement			Y	no
159	Jurisdiction or County where child is living			Y	no
160-164	Available ICWA foster care and pre-adoptive	X		Y	no
165	Foster care and pre-adoptive placement	X		Y	no
166	Basis for Good Cause	X		N	no
167	Good Cause under ICWA	X		Y	no
173	Child's relationship to the Foster Paret			Y	
175	First Foster Parent Tribal Membership	X		Y	no
184	Gender of first Foster Parent			N	no
185	First Foster Parent Sexual Orientation			Y	no
187	Second Foster Parent Tribal Membership	X		Y	no
188	Race of second foster parent			N	not in policy

196	Gender of second Foster Parent			N	not in policy
197	Second Foster Parent Sexual Orientation			Y	not in policy
199	Date of Permanency Plan			N	no
202	Juvenile Justice			Y	
203	Caseworker Visit Dates			N	no
204	Caseworker Visit Location			N	no
205	Transition Plan			Y	no
206	Date of Transition Plan			Y	no
207-219	Active Efforts			Y	
223	Transfer to Another			Y	
234	First adoptive parent or guardian tribal	X		Y	
243	Gender of first adoptive parent or guardian			N	not in policy
244	First Adoptive parent ot legal guardian sexual orientation			Y	not in policy
246	Second adoptive parent, guardian, or other member of the couple tribal membership	X		Y	
255	Sex of second adoptive parent, guardian, or other			N	
256	Second adoptive parent, guardian, or other			Y	
258	Interjurisdictional Adoption or Guardinaship Jurisdiction			Y	

261	Siblings in an adoptive home of guardianship home			y	
262-265	Available ICWA adoptive placements	X		Y	no
266	Adoption Placement preferences under ICWA	X		Y	no
267	Good Cause under ICWA	X		Y	
262-272	Basis for Good Cause	X		Y	

Estimated Additional **Functional** Hours Required Initally/On-going	Estimated Additional **Developer** Hours Required Initially/On-going	Estimated Additional **Reports/Data** Hours Required Initially/ On-going	Estimated Additional **User** Hours Required Initially/On-going	Total Estmated Hours
20	120	5	1	146
20	90	8	6	124
35	120	8	1	164
20	150	8	1	179
20	90	8	1	119

30	150	8	1	189
30	150	8	1	189
	10	3	1	14
	10	5	1	16
10	80	3	1	94
5	80	3	1	89
5	60	3	1	69
5	60	3	1	69
10	60	5	1	76
	10	2	1	13
25	60	5	1	91
	10	1	1	12
50	200	40	15	305
10	60	2	6	78

10	60	2	6	78
10	60	0	6	76
20	80	5	6	111
25	80	10	6	121
10	100	3	1	114
10	60	3	1	74
10	40	3	1	54
10	40	3	1	54
10	40	3	1	54
10	40	3	1	54
10	90	3	3	106
15	60	3	2	80
10	60	5	2	77
20	120	5	3	148
20	120	5	3	148
	10	0	1	11

10	10	0	1	21
20	80	5	1	106
20	80	5	1	106
20	80	5	5	110
20	80	0	1	101
	10	0	1	11
10	60	3	1	74
	10	0	1	11
	10	0	1	11
	10	0	1	11
10	60	3	1	74
10	60	8	2	80
10	60	8	2	80
10	60	5	1	76
	10	0	1	11
20	120	3	2	145
10	60	10	5	85
	10	5	1	16
25	120	8	1	154
20	100	10	5	135
5	60	3	3	71
15	60	5	1	81
15	60	5	1	81
15	40	5	3	63
15	40	5	1	61
15	40	5	1	61
5	60	1	1	67
5	60	1	1	67
5	60	1	1	67
10	80	3	2	95
10	40	3	1	54
15	60	10	5	90
15	60	2	1	78
15	10	2	3	30
15	60	5	3	83
	60	0	1	61
10	80	0	1	91
	10	0	1	11
15	60	5	1	81
10	60	2	1	73
	10	0	6	16

	10	0	6	16
15	60	3	6	84
	10	0	1	11
15	80	5	1	101
	10	0	1	11
	10	0	1	11
20	80	8	6	114
20	60	8	6	94
30	100	20	1	151
15	80	10	1	106
15	80	2	1	98
	10	0	6	16
15	80	5	6	106
	80	2	1	83
	10	0	1	11
15	80	2	1	98
20	60	5	1	86

15	80	5	1	101
20	100	10	5	135
20	100	10	5	135
20	100	10	5	135
20	100	10	5	135
				8034

COMMENTS
FACTS currently does not collect this information and new fields and/or new screens would have to be developed to encompass the information needed to report this. Functional time would include, analyzing information required, writing business rules for development of screen and fields, meeting with program areas to design changes and ensure the changes do not take away from documentation needs already present in FACTS. Reports would have to be modified. This would require the writing of Detail Design Documents and report design, development, testing and implementation. Training would need to be modified and implemented. FACTS. IT development time would include new fields added to the application, coding, developer testing, UAT testing, edit checks, and extraction coding / testing.
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Submission Type: Web

PUBLIC SUBMISSION

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-2018-0003-0190
Comment on FR Doc # 2018-05042

Submitter Information

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General Comment

I also have to say that I urge HHS to retain the questions for foster youth about sexual orientation and gender identity. LGBTQ children and teens may be in foster care due to an untenable situation in their home lifeabuse targeted at them precisely because of their sexual orientation or gender identity. We need to protect these youthand collect this important data that reflects their experiences.

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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-2018-0003-0191
American Bar Association

Submitter Information

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Organization: American Bar Association

General Comment

See attached file(s)

Attachments

American Bar Association

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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, DC 20024

Re: RIN: 0970-AC72

Response to Request for Public Comments on the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule

Dear Ms. McHugh,

Thank you for providing an opportunity to share comments regarding the Adoption and Foster Care Analysis Reporting System (AFCARS). Pursuant to the Notice published in the Federal Register on March 15, 2018 (83 Fed. Reg. 11450), the American Bar Association (ABA), a voluntary professional membership organization with more than 400,000 members, submits these comments to express continued support for the AFCARS Final Rule published in the Federal Register on December 14, 2016.

The Department of Health and Human Services (HHS) released the Final Rule after many years of work and no fewer than three public comment periods, which included several opportunities for state child welfare agencies and the public to comment on the burdens and benefits of implementing the AFCARS regulation. When responding to those comments, HHS concluded the need for updated data collection in the child welfare system outweighs the burdens anticipated to implement those new data categories in AFCARS reporting. Specifically, HHS incorporated cost and burden estimates into its "careful consideration of input received from states and tribes" and concluded that in light of the anticipated benefits, the "Final Rule does not represent an unnecessary diversion of resources" for state and tribal child welfare agencies. 81 Fed. Reg. 90524, 90566 (December 14, 2016). We agree with the Department's original assessment in 2016 and continue to support timely implementation of the AFCARS Final Rule in full.

Background

In an abrupt shift from its 2016 conclusion, on March 15, 2018, HHS issued an Advanced Notice of Proposed Rulemaking (ANPRM) identifying the AFCARS Final Rule as a regulation "in which the reporting burden may impose costs that exceed benefits." 83 Fed. Reg. 11450, 11449. HHS acknowledged in the ANPRM that although state and tribal agencies previously

commented on the burden and cost when given several opportunities to do so, ultimately the Department had received "too few estimates." As a result, HHS now seeks a new round of comments focused on the burdens associated with AFCARS data collection.

Administrative Procedure Act Requirements

The decision to repeal or revise a Final Rule is subject to notice and comment rulemaking under the Administrative Procedure Act. *Clean Air Council v. Pruitt*, 862 F.3d 1, 14 (D.C. Cir. 2017) (explaining that although agencies have broad discretion to reconsider a final rule after it has been issued, the agency must nevertheless meet procedural requirements). This ensures that an agency cannot "undo all that it accomplished through its rulemaking without giving all parties an opportunity to comment on the wisdom of repeal." *Consumer Energy Council of Am. v. Fed. Energy Regulatory Comm'n*, 673 F.2d 425, 446 (D.C. Cir. 1982). There are two key rules that emerge under APA case law as important touch points for the present ANPRM.

Agencies cannot ignore prior factual findings. This means that when an agency seeks to repeal portions of a policy, its revised factual findings cannot contradict prior factual findings without a clear justification for doing so. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009); see also *State of California v. United States Bureau of Land Management*, 277 F.Supp. 3d 1106 (N.D. Cal. 2017) ("New presidential administrations are entitled to change policy positions, but to meet the requirements of the APA they must give reasoned explanations for those changes and 'address prior factual findings'") (original citations omitted). As applied to the AFCARS Final Rule, HHS previously concluded the costs associated with implementing the new data elements were not overly burdensome. Indeed, HHS did make certain changes to the Rule based on burden comments and decided with respect to others, such as ICWA data, that the benefits outweighed the burdens and should be retained. 81 Fed. Reg. 90524. The Department relied on input from 218 commenters, including 59 state and tribal entities, to reach these conclusions. To reassess this finding, the Department must explain the basis for disregarding the facts and circumstances underlying its 2016 conclusions.

Agencies must always balance the anticipated costs with the anticipated benefits of implementing a Rule. This means that an agency cannot look only at the potential costs of implementing a Final Rule when considering repeal or revision. *State v. United States Bureau of Land Management*, 277 F.Supp. 3d 1106 (N.D. Cal. 2017) (finding that that Bureau of Land Management's actions were arbitrary and capricious when it postponed a Rule's compliance dates based on burdens and failed to consider the Rule's benefits). In addition to examining both costs and benefits, the agency must also consider immediate and longer-term impact. For example, in some instances immediate costs may be high but fade over time while benefits are slow to accrue but develop several years after new systems are in place. Significantly, agencies cannot find new costs in the mere fact that compliance deadlines are looming because those costs were "completely foreseeable" when the Rule was issued. *Id.* (rejecting "changed circumstances" argument based on an upcoming compliance deadline). As applied to the AFCARS Final Rule, although the ANPRM focuses almost exclusively on the burden associated with implementing the Final Rule, HHS has a simultaneous obligation to continue examining the benefits of the Rule and will need to look at long-term impact of those national benefits.

The Benefits of the AFCARS Final Rule Continue to Outweigh the Potential Burdens

Three overarching categories of benefits will accrue from implementing the AFCARS Final Rule. First, the Rule marks a significant shift away from point-in-time data regarding children in foster care to more longitudinal information about children's and families' circumstances leading to entering and exiting the child welfare system. Such data provides a much deeper level of understanding on how to prevent entry into the system and how to ensure safe and permanent exits from the system occur in a timely manner. At a time when numbers of children in foster care are steadily increasing across the country, this kind of longitudinal data is essential to help understand patterns from both a local and national level.

Second, the Final Rule critically addresses and incorporates data collection that will demonstrate on a national level how states have implemented federal laws in the child welfare field over the last two and a half decades because AFCARS data requirements have not been amended since 1993. In this respect, the Final Rule provides invaluable data to allow Congress and others to understand the impact of the following federal statutes and regulations that bear on child welfare:

- Adoption and Safe Families Act (1997)
- Fostering Connections To Success and Increasing Adoptions Act (2008)
- Preventing Sex Trafficking and Strengthening Families Act (2014)
- Every Student Succeeds Act (2015)
- Indian Child Welfare Act Regulations (2016)

Each of these federal laws and regulations addressed important substantive issues in the child welfare field such as trafficking, educational stability, child health, guardianship, and sibling engagement. Without data that tracks these substantive issues, it is very challenging to fully understand how Congress's laws have been implemented across the country.

Finally, the Final Rule is extremely beneficial in that it is long overdue and fills key gaps in existing data in the child welfare field. For example, AFCARS currently includes no information about a child's education and schooling, even though this is one of the most consequential elements of a child's well-being while in foster care. The ABA strongly supports the 2016 AFCARS Final Rule as a whole, including new data elements that address such areas as children's health assessments, developmental delays, education, youth pregnancy, prior guardianships and adoption, siblings, ICWA-related information, termination of parental rights, family circumstances at removal, access to medical and mental health services, sex trafficking, immigration detention and deportation, sexual orientation, living arrangement and provider information, juvenile justice, and LGBTQ-related information of youth and caregivers. With respect to filling key gaps, we write below to highlight some of the benefits of several provisions that have a direct connection to the work we conduct in this field.

New Data Elements Regarding the Indian Child Welfare Act (ICWA)

The 2016 Final Rule included, for the first time, data elements for states related to Native American children who are in foster care or have been adopted. There is no other federal data collection of information about Native American children in the child welfare system, and HHS has the authority to collect this information under Section 479 of the Social Security Act. Some of these new elements track both how states are implementing ICWA requirements and how they

are identifying Native American children and their families' tribal affiliations. These data elements are instrumental in tracking the well-being of Native American children and are instrumental in gaining a better understanding of issues such as disproportionality in removals of Native American children from their homes.

When reviewing comments submitted in 2016, HHS specifically evaluated many of the same burden concerns that states are raising today. For example, HHS looked at states' descriptions of the costs associated with collecting and reporting ICWA-related data in AFCARS. The agency concluded, however, that the ICWA data elements should not be changed because the benefits of that data outweigh those projected burdens. HHS explained that without this data "it is unclear how well state title IV-E agencies implement ICWA's requirements" and that with greater data collection it will be easier to address confusion about how to apply ICWA, including in states with large Native American populations. 81 Fed. Reg. 90524, 90528. The ABA continues to support HHS's original assessment and strongly affirms the importance of including ICWA data elements in the Final Rule.

New Data Elements Regarding LGBTQ Youth and Families

Studies and anecdotal evidence suggests LGBTQ-identified children and youth are overrepresented in the child welfare population, and their specific needs are best served when child welfare agencies have information about which children are in this category. Currently, however, there is no clear way to capture that information. New data elements in the Final Rule address this problem by including: a voluntary question regarding a child's sexual orientation for children 14 and older (Section 355.44(B)(2)(II)); a voluntary question regarding the sexual orientation of foster and adoptive parents and legal guardians (Section 1355.44(E)(18) & (E)(24)); and, in the case of a child's removal from a home, whether that removal was due to family conflict related to a child's sexual orientation, gender identity, or gender expression (Section 1355.44(d)(xxx)). The ABA strongly supports retaining all LGBTQ-related data elements included in the 2016 Final Rule.

New Data Elements Regarding Education

Educational data is essential to ensuring that the educational needs of children in foster care are being met as required by federal law in the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections). The ABA enthusiastically supports retaining the four education-related data elements included in the 2016 Final Rule. Their inclusion marks tremendous progress and will surely lead to improved data that can be used to inform and improve states' practices and policies and enable them to measure and track the educational progress of children in foster care.

Although educational information was not reported prior to the 2016 Final Rule, several of these data elements are already being collected 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 straight-forward. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased

attention to educational issues is critical. The following data elements are included in the 2016 Final Rule and should be retained:

1. School Enrollment: We support the inclusion of basic information to track a child's enrollment in school. This data requirement also aligns AFCARS with the requirements of Fostering Connections. 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.
2. 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. This element provides additional detail beyond the school enrollment data point and, in concert with school enrollment, is key to determining details about drop-out and retention rates.
3. 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, many 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), but 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. Qualitative review or case study regarding school stability, while important, does not preclude the need for quantitative data in this critical area. This data will be integral to determining the overall school stability of children during their entire stay in care.
4. Special Education: We support the need for this data element. Studies indicate that anywhere from 35% to 47% of children and youth in foster care receive special education services at some point in their schooling (compared to the national average of under 13% of school-aged children). But we currently have no reliable national data on the exact number of students in care who qualify for services under the Individuals with Disabilities Education Act (IDEA). This data element would fill this critical 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 Individualized Education Programs and Individual Family Service Plans are outlined within the IDEA.

Collecting more comprehensive information on a child's educational experiences in a state's foster care system will allow us to better serve all children in foster care. We continue to enthusiastically support the inclusion of these four critical education data elements.

The Burdens of the AFCARS Final Rule Do Not Outweigh These Benefits

With tremendous respect for the states that will need to implement the data elements in the Final Rule, we write here to express our support for HHS's original conclusion that the benefits of these new data elements outweigh the potential burdens. No changed circumstances appear to justify revisiting that original conclusion. *Clean Air Council v. Pruitt*, 862 F.3d 1, 14 (D.C. Cir. 2017). There are several reasons we hold this view.

First, updates to data collection systems are inevitable because AFCARS has not been updated in 25 years. As a result, costs associated with a revision and re-training for staff will occur regardless of whether this Final Rule moves forward or another one takes its place. In this respect, it appears that concerns about the timeliness of the updates are at risk of being conflated with the general costs. The recent *Bureau of Land Management* decision is instructive. There the court expressly rejected costs associated with the looming implementation deadline of a new rule because those costs were foreseeable when the rule originally issued and had not changed over time. *State v. United States Bureau of Land Management*, 277 F.Supp. 3d 1106 (N.D. Cal. 2017). Similarly, although several states have submitted comments noting the nearing deadline of AFCARS compliance, the burdens associated with updates to data fields will occur at some point and are not resolved by merely delaying, yet again, the AFCARS Final Rule.

Second, as discussed above, some states across the country are already collecting data that has now been incorporated into AFCARS. (See ANPRM submission from the State of Nebraska.) This means the burden of gathering information is minimal. For example, as the State of California noted in its recent response to the ANPRM, "irrespective of corresponding AFCARS data elements, states are obligated to modify their data system as well as to modify policies and procedures" to incorporate new ICWA data elements. (ANPRM Comment submitted by State of California Department of Social Services, June 5, 2018.) Similarly, states throughout the country are already planning for how they may update their existing Statewide Automated Child Welfare Information Systems (SACWIS) to comply with new Comprehensive Child Welfare Information System requirements, with an emphasis on interoperability between child welfare agencies, courts and schools. This interoperability of systems can occur even if requirements regarding data elements are in flux, and may alleviate child welfare agencies' burden of collecting education information. In this respect, the burden of collection or training is minimal because states are already collecting new data elements provided for in AFCARS and entering that information into their state systems. What AFCARS collection provides is an opportunity to understand that data and information in a nationally aggregated way that allows for comparison across states, an invaluable benefit for both states and the federal government.

Finally, when provided with multiple opportunities to comment on the AFCARS Rule, states did not originally submit sufficient information about the costs and burdens for the federal authorities to find a substantial burden. To revisit that question now, after states had ample time to share views on that previously, raises questions. Indeed, the current ANPRM suggests that the states that did not originally provide input should share it now, but the initial submissions indicate that many states submitting comments today have already expressed precisely the same concerns in prior opportunities to comment. As explained above, the looming deadline of the AFCARS data implementation is not enough of a changed circumstance upon which to repeal the rule. Nor is data viewed in a vacuum from that provided several years ago. See *Open Communities Alliance v. Carson,* 286 F.Supp. 3d 148, 160 (D.D.C. 2017) (explaining that

agency action is "arbitrary and capricious" when its decisions run counter to the evidence before the agency).

The Department must look at both the short and long-term implications of this balance between benefits and costs. We continue to agree with HHS's original assessment that when viewed as a long-term impact and when considered in the aggregate, the benefits of this Final Rule – including longitudinal data, addressing 25 years of seminal child welfare legislation, and filling key gaps in existing data – far outweigh the projected burdens, which are largely inevitable, short-term and were foreseen but not commented on previously.

Conclusion

Updates to data collection requirements included in the Final Rule are long-awaited and are the result of robust and thoughtful discussion over many years. These requirements were included after numerous rounds of public comments, and many of these comments responding to the ANPRM were previously addressed by HHS in the Final Rule. The Final Rule was tailored to address current areas of weakness in data collection and reporting and must be retained to ensure the safety, permanency, and well-being of children in foster care. The Final Rule brings child welfare data collection in line with statutory changes and requirements enacted since 1993. These changes are long overdue and will support agencies to provide accurate and consistent data across states on key outcome areas. There are no changed circumstances that appear to alter the original assessment that benefits of this information outweigh the burdens associated with collecting it. The ABA continues to support the new data requirements as they are set out in the Final Rule.

Sincerely,

Thomas M. Susman

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0192
New Mexico

Submitter Information

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General Comment

New Mexico appreciates the opportunity to provide feedback on issues related to the AFCARS 2016 Final Rule, particularly with respect to collecting and coding of qualitative data elements. Although the New Mexico Children, Youth, and Families Department (CYFD) has begun planning updates to our State Automated Child Welfare Information System (SACWIS) in order to be in compliance with the requirements set forth in 45 CFR part 1355 (AFCARS), there are significant challenges related to these efforts, including broader systemic issues and as well as concerns related to specific data elements.

The state intends to submit a notice of intent to transition our current legacy (SACWIS) system to a Comprehensive Child Welfare Information System (CCWIS). The state is in the early planning stages for CCWIS and due to significant budget constraints, the CCWIS project will be developed and implemented over several years. The timelines required for AFCARS 2.0, will necessitate that the agency divert resources from CCWIS to updating our legacy system in order to be in compliance. The current SACWIS system is becoming increasingly difficult and expensive to operate and maintain.

Our current SACWIS does not have the functionality to exchange data with other child welfare partners including the Courts, the education system and Tribes. As a result, in order to report on some of the elements the agency will be required to collect this data from outside agencies and ensure that case managers enter this information in the SACWIS. Front line workers are already burdened with significant data entry and case documentation that limits the time they have to work directly with families. The current SACWIS system is not based on technology effective or efficient enough to support the significant data exchanges nor does it support a standardized model for specified data exchanges.

The state has divided the new AFCARS elements into six phases in order to plan, develop, and train staff on new AFCARS data elements. The agency has estimated time frames for each stage of the project based upon initial

efforts related to the ICWA data elements (Note that the agency does not have dedicated staff for this project):

o 3 months to develop requirements including workgroups with subject matter experts.
o 4 months to code
o 1-2 months for testing
o 1 month for staff training
o Ongoing training and support
o Ongoing data quality review

ICWA Elements: Currently the ICWA data elements represent a significant burden for the State, given that the agency does not currently have a bi-directional data exchange with the courts. Our state has a significant Native American population including several Tribes and Pueblos. Several of the data elements are collected by the Courts including the determination that ICWA applies and other ICWA findings by the court. Although expanded data collection related to this population will promote an improved understanding of practice, regional differences, and collaboration with the Tribes, some of the elements lend themselves more to qualitative case review including inquiry with the childs mother, father, and custodian.

Physical and Behavioral Health Elements: The State is currently working to update the SACWIS and train staff to more accurately collect data related to the physical and behavioral health needs of children in care in order to address practice needs as well as issues identified in our AFCARS Improvement Plan. The state advocates for retention of these AFCARS 2.0 elements with an extended timeframe for implementation.

Education Elements: The agency supports expanded data collection related to education. The current SACWIS does collect data related to these elements but additional staff training and monitoring of data quality is necessary in order ensure accurate reporting. In addition, a goal of the CCWIS project is to develop a bi-directional data exchange with the States Public Education Department in order to improve data quality and limit duplicate data entry. An expanded timeframe for reporting the new elements would further these efforts.

Other elements including historical placement information and financial assistance for the child will require significant updates to the SACWIS and reporting structures. These changes will be difficult and expensive to implement. In order to meet the requirements for AFCARS reporting the state will need to divert resources from system modernization.

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AFCARS 2018-2020

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Document: ACF-2018-0003-0193
ZERO TO THREE

Submitter Information

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Organization: ZERO TO THREE

General Comment

Attached comments from Matthew Melmed, Executive Director of ZERO TO THREE

Attachments

ZERO TO THREE

Attn:
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

From:
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ZERO TO THREE
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Washington, DC
20037

RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, Out-of-Home Care Final Rule Issued 12/14/16 (81 FR 90524) (1355.44).

AGENCY: Administration for Children and Families

DOCKET NUMBER: ACF-2018-0003

REGULATORY INFORMATION NUMBER: RIN:0970-AC72

Submitted via email to CBComments@acf.hhs.gov.

As an organization whose mission is to improve the lives of infants and toddlers, we are writing in support of the AFCARS Out-of-Home Care Final Rule Issued 12/14/16 (81 FR 90524) (1355.44) and the new data elements it includes.

Founded more than 40 years ago, ZERO TO THREE is a national nonprofit organization, located in Washington, DC, whose mission is to ensure that all babies and toddlers have a strong start in life. We translate the science of early childhood development into useful knowledge and strategies for parents, practitioners, and policymakers. We work to ensure that babies and toddlers benefit from the family and community connections critical to their wellbeing and healthy development.

In response to the questions on which you are seeking comment about the level of burden and the utility of data elements, we note that the release of the Final Rule in December 2016 was the culmination of many years, and no fewer than 3 public comment periods, including opportunities for agencies and the public to comment on the burdens and benefits of updating the AFCARS regulation.

Infants and toddlers make up the largest group of children who have been maltreated and spend the greatest amount of time in care once admitted. More than 80% of maltreated babies show disturbances in attachment to caregivers, and these children are at high risk for developmental delays or neurological impairment. Many enter foster care with complex physical health needs associated with inadequate health care and neglect. Thus, being able to track and measure how these needs are met and their progress on overcoming problems is critical to healing the impacts of maltreatment, environmental problems, and even the damage from child welfare practices not attuned to supporting critical early development.

In answer to question 1, we do not believe that these much-scrutinized data elements are overly burdensome as they relate to infants and toddlers. Our work developing and implementing the Safe Babies Court Teams approach, which works with infants and toddlers in foster care and their families, is fueled by robust data collection that allows responsive case management, continuous quality improvement at the site level, and a clear picture of child well-being, service provision, and outcomes at all levels. Many of these data elements are included in the AFCARS Final Rule. We not only know that collecting them is feasible; we also know how they facilitate strong case and program management. The benefit to having these data at the local, state, and national level will be immeasurable.

Timely identification of needs and referral to services in early childhood is essential for building a foundation of health and well-being; the final rule changes to AFCARS will provide meaningful case-level information that will drive case planning that effectively supports this foundation. The revised data structure will also allow analysis of the child's entire experience in out-of-home care, allowing for longitudinal analysis of needs, services, and child welfare outcomes. The following new data elements are particularly salient for supporting more accurate assessment of the health and well-being of the very youngest and most vulnerable children in foster care:

- (b) Child Information. New elements addressing health, mental health, and developmental problems are essential for effective case planning and frontloading of services, including Part C services for young children with developmental needs. These are specifically:
    - Health Assessment (b.11.i) and Date of health assessment (b.11.ii). However, we note that Timely Health Assessment (b.12) as currently measured (yes/no without a definition of "timely") is unreliable. Timeliness can be measured using the date of child removal (d.1) and date of health assessment. In the interest of burden, our recommendation would be to omit this element.
    - Autism spectrum disorder (b.13.ii), Mental/emotional disorders (b.13.vi), Attention deficit hyperactivity disorder (b.13.vii), Developmental delay (b.13.ix), and Developmental disability (b.13.x).
- (b) Child Information. A child's separation from siblings is traumatic and compounds the trauma of separation from the caregiver. Data on the child's siblings (b.23-b.25) is essential for efforts to keep children together with siblings.
- (d)(6) Child and family circumstances at removal now includes key risk factors that must be addressed in case planning and targeted, appropriate services including trauma-focused interventions: Psychological or emotional abuse (d.6.v), Medical neglect (d.6.vii), Domestic violence (d.6.viii), Prenatal alcohol exposure (d.6.xv), Prenatal drug exposure (d.6.xvi), Diagnosed Condition (d.6.xvii), Inadequate access to mental health services (d.6.xviii), Inadequate access to

medical services (d.6.xix), Caretakers significant impairment – cognitive (d.6.xxiv), and Parental immigration detainment or deportation (d.6.xxix).

- (e) Living arrangement and provider information (previously Current Placement Settings) now includes important information about the child's foster home (whether licensed, therapeutic, shelter care) that allows monitoring of supports and possible risks related to out-of-home care.

Additionally, our organization is engaged in systems improvement efforts with child welfare and the courts to address the emotional and developmental needs of maltreated infants and toddlers. We rely on national-level data to assess the effectiveness of our work against national benchmarks and indicators, including National Survey of Child and Adolescent Well-Being (NSCAW). New elements (b.13-b.13.x) and (d)(6) Child and family circumstances at removal align with information that will be available under the new NSCAW III, allowing for comparisons with a nationally representative sample to assess and monitor this youngest cohort's needs more completely and with greater accuracy. Alignment of data across AFCARS and NSCAW is an important step forward in addressing the urgent public health need to improve the quality of child abuse and neglect research.

The Final Rule and new data collection requirements were thoughtfully considered and seek to ensure child welfare agencies are gathering data on all the critical child and family-related outcomes to ensure safety, permanency, and well-being. The Final Rule brings child welfare data collection in line with statutory changes and requirements enacted since 1993. These changes were long overdue and will support agencies to provide accurate and consistent data across states on key outcome areas. Most important, they will improve the ability to ensure positive outcomes for the babies, young children, and youth who are in the care of the child welfare system. That is the most important measure of all.

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. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

Matthew E. Melmed
Executive Director, ZERO TO THREE

PUBLIC SUBMISSION

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

Document: ACF-2018-0003-0194
Comment on FR Doc # 2018-05042

Submitter Information

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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 orientation, gender identify or gender expression.

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

Document: ACF-2018-0003-0195
Massachusetts Department of Children and Families

Submitter Information

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Organization: Commonwealth of Massachusetts - Department of Children and Families

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General Comment

See attached file(s)

Attachments

Massachusetts

Massachusetts Department of Children and Families

AFCARS ANPRM Comments – June 2018

Topic	Data Elements	Citation	Page	Comment
ICWA Data Elements	Child welfare agency actions to identify children coming under ICWA protection	1355.44(b)(3) 1355.44(b)(3)(i) 1355.44(b)(3)(ii) 1355.44(b)(3)(iii) 1355.44(b)(3)(iv) 1355.44(b)(3)(v) 1355.44(b)(3)(vi) 1355.44(b)(3)(vii) 1355.44(b)(4) 1355.44(b)(4)(i) 1355.44(b)(4)(ii)	90570	We agree with the need to cast a wide net to determine if a child is an American Indian and if an Indian child comes under ICWA protection. However, we do not see the need to ask so many and such specific questions for every child in placement. We propose the following: Limit the questions required to be answered for all children in placement to one or two questions focused on determining the likely applicability of ICWA. For instance, a. Does the child have Native American or Alaskan Native ancestry Yes/no/unknown; or b. Does the state title IV-E agency know or have reason to know the child is an Indian child as defined by ICWA? Yes/no If the answer to the seminal question is "yes", then require a question intended to determine if the child is entitled to ICWA protections. For instance, a. Is the child a member of or eligible for membership in a federally recognized Indian tribe? Yes/no/unknown;
ICWA Data Elements	Court actions to identify children coming under ICWA protection	1355.44(b)(5) 1355.44(b)(5)(i) 1355.44(b)(5)(ii) 1355.44(b)(6) 1355.44(b)(6)(i) 1355.44(b)(6)(ii) 1355.44(b)(6)(iii) 1355.44(b)(7) 1355.44(b)(8) 1355.44(b)(8)(i) 1355.44(b)(8)(ii)	90570 - 90571	It is not clear how this adds to or is essentially different from asking if the state agency has reason to know the child is covered by ICWA. We recommend these items be dropped. 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. Current counts indicate that there are 59 children in placement in Massachusetts for whom ICWA protections apply. To develop an interface with the court system to capture all the court data elements or to develop pages for case workers or lawyers to enter such detailed data on these children would have a high cost.

Topic	Data Elements	Citation	Page	Comment
		1355.44(b)(8)(iii)		
Non-ICWA Data Element	Educational Stability	1355.44(b)(16) 1355.44(b)(16)(i) 1355.44(b)(16)(ii) 1355.44(b)(16)(iii) 1355.44(b)(16)(iv) 1355.44(b)(16)(v) 1355.44(b)(16)(vi) 1355.44(b)(16)(vii)	90572 - 90573	This provides at best a crude measure of stability. It will only capture one school move during a reporting period when there may be multiple moves and does not consider other education disruptions like poor attendance or multiple in and out of school suspensions. It will be difficult to obtain consistent actionable data and will create a significant data collection and documentation burden. Case reviews and other qualitative data will provide a better method for analyzing placement stability.
Non-ICWA Data Element	Pregnant as of the end of the report period	1355.44(b)(17)(i)	90573	Case workers would be required to record any pregnancy and its termination, as they became aware of these events, in order to have accurate data as of the report period end dates. This additional record keeping is burdensome for workers.
Non-ICWA Data Element	Prior adoption date	1355.44(b)(19)(i)	90573	A child's adoption prior to the current placement episode is currently recorded. Determining and recording the exact date of the adoption, particularly those which occurred outside the United States could be a time consuming effort for case workers without any casework benefit.
Non-ICWA Data Element	Prior adoption intercountry	1355.44(b)(19)(ii)	90573	Capturing whether a child's prior adoption occurred outside the United States is unnecessary record keeping and may not have any current relevance since international adoption regulations change over time.
Non-ICWA Data Element	Prior guardianship and date	1355.44(b)(20)(i) 1355.44(b)(20)(ii)	90573	Data on children with a prior in-state guardianship is available. If a child's prior guardianship occurred in another state, this would be another unnecessary data collection burden for case workers.
Non-ICWA Data Element	Child financial and medical assistance	1355.44(b)(21) 1355.44(b)(21)(i) 1355.44(b)(21)(ii) 1355.44(b)(21)(iii) 1355.44(b)(21)(vi) 1355.44(b)(21)(ix)	90573	Instructions issued with the December, 2016 rule indicated that financial and medical assistance for the child needed to be reported for periods when the child had been returned home but was still in state custody. Massachusetts does not currently collect this information for children who have been returned home. A number of interfaces would need to be expanded to collect this information or case workers would need to record it.

Topic	Data Elements	Citation	Page	Comment
				In addition, Massachusetts does not currently have an interface to collect data on child's SCHIP eligibility. A new interface would be required.
Non-ICWA Data Element	Siblings	1355.44(b)(23) 1355.44(b)(24) 1355.44(b)(25)	90573-90574	Sibling data is better captured as qualitative data due to the complexity and the possibility that a worker may not initially have access to complete information. Additionally, children and families may identify persons as siblings who do not meet the definition listed in the December, 2016 rule which included only a brother or sister by a biological, legal or marital connection, reducing the meaning of national data.
ICWA Data Elements	Termination of parental rights under ICWA	1344.44(c)(6) 1344.44(c)(6)(i) 1344.44(c)(6)(ii) 1344.44(c)(6)(iii) 1344.44(c)(7)	90574	These data elements pertain to court actions, not actions by the child welfare agency. We believe the data elements in this section should be eliminated or, at a maximum ,reduced to: Indicate whether one or both parents or the Indian custodian voluntarily relinquished parental rights. Yes/No a. If "yes", is there a court order indicating the voluntary consent was made in writing and recorded in the presence of a judge? Yes/No/Does not apply
ICWA Data Elements	Removals under ICWA	1344.44(d)(3) 1344.44(d)(3)(i) 1344.44(d)(3)(ii) 1344.44(d)(3)(iii)	90574 – 90575	These data elements pertain to court actions, not actions by the child welfare agency. We believe the data elements in this section should be eliminated
ICWA Data Elements	Available ICWA foster care and pre-adoptive placement preferences	1344.44(e)(8) 1344.44(e)(8)(i) 1344.44(e)(8)(ii) 1344.44(e)(8)(iii) 1344.44(e)(8)(iv) 1344.44(e)(8)(v)	90577	We strongly recommend the data elements in this section be dropped. The more salient questions are where the child was actually placed and, if the placement preferences were not followed, why not. Otherwise, this represents a significant and burdensome data documentation effort.

Topic	Data Elements	Citation	Page	Comment
ICWA Data Element s	Foster care and pre-adoptive placement preferences under ICWA	1344.44(e)(9)	90577-90578	We strongly recommend this data element be dropped. See comments for Available ICWA foster-care and pre-adoptive placement preferences.
ICWA Data Element s	Good cause under ICWA	1344.44(e)(10)	90578	We strongly recommend this data elements be dropped. See comments for Available ICWA foster-care and pre-adoptive placement preferences.
ICWA Data Element s	Basis of good cause	1344.44(e)(11) 1344.44(e)(11)(i) 1344.44(e)(11)(ii) 1344.44(e)(11)(iii) 1344.44(e)(11)(iv) 1344.44(e)(11)(v)	90578	We strongly recommend the data elements in this section be dropped. See comments for Available ICWA foster-care and pre-adoptive placement preferences.
Non ICWA Data Element	Child's relationships to foster parents	1355.44(e)(13)	90578	Family relationships are so varied and fluid that summary statistics are not likely to be meaningful. The instructions for how to define various combinations of relatives who make up the foster household took 39 lines in the December, 2016 regulations. This is best examined in a case review.
Non ICWA Data Element	Tribal membership of foster parents	1355.44(e)(15) 1355.44(e)(21)	90578 - 90579	Collecting tribal membership for foster parents would be burdensome for family resource workers because they would need to see documentation of the membership. This requirement does not contribute to good case work.
ICWA Data Element s	Active Efforts under ICWA	1355.44(f)(10) 1355.44(f)(10)(i) 1355.44(f)(10)(ii) 1355.44(f)(10)(iii) 1355.44(f)(10)(iv) 1355.44(f)(10)(v) 1355.44(f)(10)(vi) 1355.44(f)(10)(vii) 1355.44(f)(10)(viii)	90580	We feel that the data collection and data entry required by some of the elements in this section are unduly burdensome. We suggest the elements collected in this section be changed to the following: a. Completed comprehensive assessment of family. Yes/No b. Conducted or caused to be conducted a diligent search for the Indian child's extended family members for assistance and possible placement. Yes/No c. Invited representatives of the Indian child's tribe to participate in the

Topic	Data Elements	Citation	Page	Comment
		1355.44(f)(10)(ix) 1355.44(f)(10)(x) 1355.44(f)(10)(xi) 1355.44(f)(10)(xii) 1355.44(f)(10)(xiii)		proceedings. Yes/No d. Supported regular visits. Yes/No
ICWA Data Elements	Available ICWA adoptive placements	1355.44(h)(20) 1355.44(h)(20)(i) 1355.44(h)(20)(ii) 1355.44(h)(20)(iii) 1355.44(h)(20)(iv)	90582	As with foster care placements, we strongly recommend this section be dropped. The more salient questions are whether the preferences were followed in regard to the child's adoption and, if not, why not.
ICWA Data Elements	Adoption placement preferences under ICWA	1355.44(h)(21)	90582	As with foster care placements, we strongly recommend this element be dropped. See comments under Available ICWA adoptive placements.
ICWA Data Elements	Good cause under ICWA adoption	1355.44(h)(22)	90582	As with foster care placements, we strongly recommend this element be dropped. See comments under Available ICWA adoptive placements.
ICWA Data Elements	Basis for good cause under ICWA adoption	1355.44(h)(23) 1355.44(h)(23)(i) 1355.44(h)(23)(ii) 1355.44(h)(23)(iii) 1355.44(h)(23)(iv) 1355.44(h)(23)(v)	90582	As with foster care placements, we strongly recommend this section be dropped. See comments under Available ICWA adoptive placements.

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

Document: ACF-2018-0003-0196
Massachusetts Commission on LGBTQ Youth

Submitter Information

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Organization: Commonwealth of Massachusetts Commission on LGBTQ Youth

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General Comment

Please see attached.

Attachments

Massachusetts Commission on LGBTQ Youth

THE COMMONWEALTH OF MASSACHUSETTS COMMISSION ON LGBTQ YOUTH

Alexander A. Nally
Chair

Sasha Goodfriend
Vice Chair

Corey Prachniak-Rincón
Director

June 13, 2018

RE: Comments on Adoption and Foster Care Analysis and Reporting System APRNM RIN 0970-AC72

The Massachusetts Commission on LGBTQ Youth ("the Commission" hereafter) is a government agency in the state of Massachusetts that was originally founded as a Governor's Commission in 1992 and today is an independent body established by the legislature. The Commission works regularly on the topic of data collection, including in partnership with the state's Department of Children and Families (DCF), which oversees Massachusetts's adoption and foster care systems. The Commission is tasked with providing technical assistance and support to agencies such as DCF on matters related to LGBTQ youth, and with issuing annual recommendations to agencies, available at http://mass.gov/annual-recommendations.

As a government agency which has worked at implementing data collection standards including that presented in the 2016 Adoption and Foster Care Analysis and Reporting System Final Rule ("AFCARS Final Rule"), the Commission strongly recommends that HHS maintains the existing data elements relating to sexual orientation, gender identity, and gender expression. Any burden associated with collecting this data is vastly outweighed by the benefit of collecting it, which is necessary in both identifying shortfalls in the system and in designing effective solutions to counter them. As the Commission has worked for 26 years at expanding data collection regarding LGBTQ young people in Massachusetts, we and our fellow agencies who have partnered with us - including DCF - have found many benefits to collecting this type of data. Many of these benefits were reported to HHS during the notice and comment period for the current rule, and must be given serious and objective consideration in analyzing whether the rule is "overly burdensome," which our success in Massachusetts leads us to believe it is not.

As our annual report linked above indicates, the available data in Massachusetts and nationwide suggests a deeply troubling situation for LGBTQ youth involved in the adoption and foster care system, with youth facing many challenges in addition to those faced by all youth in the foster care and adoption system. The available data also show that they are disproportionately part of and thus affected by these systems, with one

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leading study finding that 19% of foster youth, or nearly one in five, is LGBTQ.[1] And yet, the limitations of the data and our ongoing work in partnership with other state agencies indicates the need to do even more. To this end, rather than reducing data collection and further contributing to the "invisibilization" of this population, HHS should encourage even more collection of data regarding LGBTQ youth and parents, particulalarly with respect to gender identity and expression.

In Massachusetts, we have already made significant strides in increasing data collection, and whatever burden presented by these data elements in the AFCARS Final Rule is not significant. An arbitrary change to this rule designed to weaken data collection on LGBTQ youth and families would, on the other hand, present a significant threat to the steps we have taken to protect youth and ensure a more equitable and safe system. Reducing data will also mean that solutions to the challenges faced by LGBTQ youth and families will be less driven by data and thus less likely to be effective and efficient. To this end, HHS should add voluntary gender identity questions for foster youth over 14 and for foster and adoptive parents and guardians, which will also help to fill in existing gaps in knowledge.

Sincerely,

Corey Prachniak-Rincón
Director
MA Commission on LGBTQ Youth
corey.prachniak-rincon@state.ma.us

[1] 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

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0197
Illinois Dept. of Children and Family Services

Submitter Information

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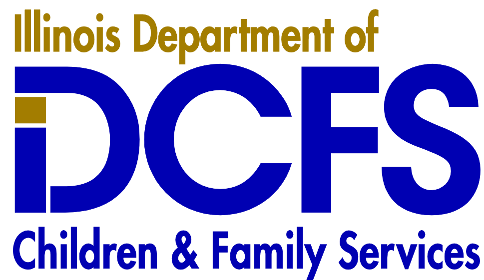
Organization: Illinois Dept. of Children and Family Services

General Comment

See attached file(s)

Attachments

Illinois



Bruce Rauner
Governor

Beverly J. Walker
Acting Director

June 13, 2018

Response to APNRM for Adoption and Foster Care Analysis and Reporting System

RIN: 0970-AC72

To provide an informed comment to the proposed additions to the AFCARS data collection, the Illinois Department of Children and Family Services (DCFS) convened staff representing the Bureau of Operations Division (including the sub-units of Child Protection, Intact Families, Placement, and Professional Development/Training), the Clinical Unit, Information Technology, Office of Policy, the Medical Liaison from Health Policy, Quality Assurance and the DCFS Indian Child Welfare Administration Liaison to review each element of the proposed additions to the AFCARS data collection.

Three criteria were utilized in assessing and categorizing each element: (1) the data element is currently collected and with a minor amount of effort and cost could be included in AFCARS reporting,(2) the data element is not currently collected, but the State is willing to study and consider making changes for the information to be included in data collection (3) the data element is not currently collected and the State objects to a requirement for collecting the data element due to the burdensome cost, both financially and in staff resources.

After a review of the proposed additions to the AFCARS data collection, Illinois has determined that there are sixty-seven (67) Non-ICWA related data elements and fifty-nine (59) ICWA related data elements that are not currently collected in Illinois DCFS databases and will require varying degrees of modification to implement the proposed additions. The assessment of each element is included in the table with the effort and expense noted as minor, moderate and major,

Illinois DCFS acknowledges that the proposed data elements pertaining to gender identity, sexual orientation and gender expression will require a change to DCFS policy, training, data collection, and reporting but is willing to further study and consider making this addition; even in the absence of these elements becoming an AFCARS requirement.

Where Non-ICWA related data elements appear to be minor changes/additions to current Policy/Procedure/Rules and data systems, the State does not oppose making changes, however, as seen in the Table below, the majority of data items will require a significant amount of staff resource to design, develop and implement these additions to Policy/Procedures/Rule and data systems. Each element was discussed and assessed as to whether the value of the added data element would likely improve casework, add deeper understanding to a problem and contribute to improved service and outcomes. The value was then weighed against whether it was deemed a minor, moderate or major burden to change the existing system of data collection and reporting. In further discussion related to cost versus benefit of adding each

element to current data collection and reporting, the State opposes the majority of the proposed additions as being too costly and burdensome to implement without justification as to benefit.

The majority of the ICWA related data elements are not captured in the Illinois DCFS databases. DCFS does have a paper process that captures many of the ICWA related elements and is working with Cook County (Chicago) Courts to begin incorporating the information into their data systems, which feeds into DCFS' legal database. However, implementing these changes on a statewide basis will be a costly, time consuming and intense resource effort.

Additionally, any of the proposed AFCARS related data elements that are not currently captured in a case record will need to go through a design, development and implementation process to be added to Policy/Procedure/Rules and database systems. Staff training and the time and cost to locate and enter information on existing cases is prohibitive in relation to the actual benefit from the information added. Illinois DCFS agrees that identifying children with Native American Heritage is critical to casework and delivery of service, but questions whether the proposed data element additions improves the identification, service availability and resource recruitment for this population of children and families. For the current state fiscal year, Illinois has identified 49 youth that have a tribal relationship based on tribal verification. Illinois feels that the amount of limited resources needed to implement the proposed additions to AFCARS outweighs the benefit that will be seen at the state level.

	Data is available in paper files, and with changes to systems, may be added to existing information system(s).	Data is not currently collected but Illinois is willing to further study and consider making changes for this data element to be collected	Data is not currently collected and the State objects due to the major burden of cost--both financially and to staff resources
Non-ICWA data elements not currently captured			
(b) Child information			
7. (b.2.ii) Child's sexual orientation		Moderate	
58. (b.16.iii) Residential facility			Major
59. (b.16.iv) Services/programs			Major
60. (b.16.v) Child request			Major
61. (b.16.vi) Parent/Legal Guardian request			Major
62. (b.16.vii) Other			Major
66. (b.18) Special education			Major
68. (b.19.i) Prior adoption date			Major
69. (b.19.ii) Prior adoption type - intercountry			Major
70. Prior Guardianship (b.20i)			Major

71. (b20.ii) Prior guardianship date			Major
87. (b.23) Total Number of siblings	Moderate		
88. (b.24) Siblings in foster care	Moderate		
89. (b.25) Siblings in living arrangement	Moderate		
(c) Parent or legal guardian information			
94. (c.5) Termination/modification of parental rights.		Minor	
95. (c.5.i) Termination/modification of parental rights petition		Minor	
(d) Removal Information			
106. (d.4) Environment at removal			Major
(d)(6) Child and family circumstances at removal			
115. (d.6.viii) Domestic violence		Major	
125. (d.6.xviii) Inadequate access to mental health services		Major	
126. (d.6.xix) Inadequate access to medical services		Major	
134. (d.6.xxvii) Child requested placement		Minor	
135. (d.6.xxviii) Sex trafficking		Minor	
136. (d.6.xxix) Parental immigration detainment or deportation	Moderate		
137. (d.6.xxx) Family conflict related to child's sexual orientation, gender identity, or gender expression.		Major	
138. (d.6.xxxi) Educational Neglect			Not tracked
139. (d.6.xxxii) Public agency title IV-E agreement	Moderate		
140. (d.6.xxxiii) Tribal title IV-E agreement	Moderate		
142. (d.7) Victim of sex trafficking prior to entering foster care			Major
143. (d.7.i) Report to Law Enforcement			Major

144. (d.7.ii) Dates of each report			Major
145. (d.8) Victim of sex trafficking while in foster care		Minor	
146. (d.8.i) Report to law enforcement			Major
147. (d.8.ii) Date			Major
(e) Living arrangement and provider information.			
173. (e.13) Child's relationships to the foster parent(s).		Minor	
185. (e.19) First foster parent sexual orientation.		Minor	
197. (e.25) Second foster parent sexual orientation		Minor	
(f) Permanency planning			
202 (f.5) Juvenile justice		Moderate	
205 Transition plan.	Minor		
206 Date of transition plan	Minor		
207 - 219 (f.10) Active Efforts.			Major
(g) General exit information			
223. (g.4) Transfer to another agency			Major
(h) Exit to adoption and guardianship			
244. (h.8) First adoptive parent or legal guardian sexual orientation.		Minor	
256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.		Minor	
258. (h.16) Interjurisdictional adoption or guardianship jurisdiction		Minor	
261. (h.19) Siblings in adoptive or guardianship home.		Moderate	
Adoption and Guardianship Assistance Data Elem			
11. Agreement termination date	Minor		
ICWA Related Data Elements			
(b) Child information			

8. (b.3) Reasons to know a child is and "Indian Child" as defined in the Indian Child Welfare Act.	Major		
15 - 17. (b.4) Application of ICWA.	Major		
18 – 20. (b.5) Court determination that ICWA applies	Major		
21 – 23. (b.6) Notification - ICWA	Major		
24. (b.7) Request to transfer to tribal court - ICWA	Major		
25 - 28. (b.8) Denial of transfer - ICWA	Major		
76. (b.21.iv) State/Tribal adoption assistance	Major		
77. (b.21.v) State/Tribal foster care	Major		
(c) Parent or legal guardian information			
92. (c.3) Tribal membership mother		Minor	
93. (c.4) Tribal membership father		Minor	
97 - 99 Involuntary termination/modification of parental rights under ICWA	Major		
100. Voluntary termination/modification of parental rights under ICWA	Major		
(d) Removal Information			
103 -105 Removals under ICWA.	Major		
(e) Living arrangement and provider information.			
160 -164 (e.8) Available ICWA foster care and pre-adoptive placement preferences: a member of the Indian child's extended family			Major
165. (e.9) Foster care and pre-adoptive placement preferences under ICWA.			Major
166. (e.10) Good cause under ICWA.			Major
167 -171. (e.11) Basis for good cause.			Major
175. (e.15) First foster parent tribal membership.		Minor	
187. (e21) Second foster parent tribal		Minor	

membership.			
(h) Exit to adoption and guardianship			
234. (h.4) First adoptive parent or guardian tribal membership.		Minor	
246. (h.10) Second adoptive parent, guardian, or other member of the couple tribal membership.		Minor	
262 - 265. (h.20) Available ICWA Adoptive placements.			Major
266. (h.21) Adoption placement preferences under ICWA.			Major
267. (h.22) Good cause under ICWA.			Major
268 – 272. (h.23) Basis for good cause.			Major

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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-2018-0003-0198
Kansas

Submitter Information

Name: Tony Scott
Organization: State of Kansas

General Comment

Thank you for the opportunity to provide comments on the AFCARS Final Rule. Please see attached file for comments from the State of Kansas.

Attachments

Kansas

Kansas respectively submits comments related to the cost and burden estimates for implementation of the AFCARS final rule.

Kansas does recognize areas of opportunity with the changes to AFCARS including new data elements added in the AFCARS rule. While these opportunities for additional data will assist in some areas, the high number of new data elements and requirements will add tremendous burden. For example, the new requirements will greatly increase the workload of the field staff charged with case management duties, working families toward reunification, safety and risk assessments and planning, adoption and other permanencies activities, and documentation of case files to satisfy compliance and oversight. A major concern is the massive amount of required information will very likely have negative impact on the quality of these work activities due to overburdening an already overly taxed staff. Kansas, like many other states, is experiencing a reduced workforce, so an additional concern is that many of these new data requirements are qualitative and best obtained in a case review. If implemented, it will likely reduce the reliability of our data due to “checkbox” like data collection. Some of the data elements this would include, but not limited to are:

Health assessment information
Educational data elements (stability, proximity, district/zoning rules, services/programs, etc.)
Termination of parental rights petition
Relationship of child to foster parent
Active Efforts for ICWA children
Available ICWA foster care and pre-adoptive placement data elements
Available ICWA adoptive placements data elements

These changes will also be overly burdensome on staffing resources for design, implementation, training, data entry, compliance, quality assurance, and monitoring. For example, business automation and quality assurance resources are currently involved in multiple state and Federal initiatives such as CCWIS planning and CFSR PIP. These significant increases in data requirements would directly impact those already limited resources. Below are approximate staffing costs (excluding IT department costs) to implement the AFCARS changes for the first year and then ongoing.

Out of Home Care- Data File

	Hourly Wage	**ICWA Cases Hours**	**All other Cases Hours**	**Total Annual Hours**	**Total Annual Cost**
DCF & Provider Staff	$23.88	1,778	33,010	34,788	$830,737.44
FACTS Data Entry Staff	$20.17	1,778	33,010	34,788	$701,673.96
Training	$33.38			15,685	$523,565.30
System Automation Manager	$44.12			11,658	$514,350.96
Management Systems Analyst	$44.12			8,986	$396,462.32
Reporting	$41.43			7,560	$313,210.80
Estimated Kansas Cost FFY2020					$3,280,000.78

	Hourly Wage	ICWA Cases Hours	All other Cases Hours	Total Annual Hours	Total Annual Cost
DCF & Provider Staff	$23.88	1,781	33,060	34,842	$832,015.26
FACTS Data Entry Staff	$20.17	1,781	33,060	34,842	$702,753.26
Training	$33.38			11,764	$392,673.98
System Automation Manager	$44.12			8,744	$385,763.22
Management Systems Analyst	$44.12			6,740	$297,346.74
Reporting	$41.43			5,670	$234,908.10
Estimated Kansas Cost Ongoing Years					$2,845,460.55

Additionally, the increase in data elements will require Kansas to make massive and costly changes to our Child Welfare Information System (FACTS). Due to our IT department working other Federally Mandated work efforts, the IT cost for implementing the changes required to meet the new AFCARS data collection has not been fully researched. The estimate for updating the Kansas Child Welfare applications is approximately 10,000 hours. This includes documenting requirements, system design, construction, testing, and implementation. The hourly contractor rate is $150 per hour, so the cost estimate to update the in house supported Child Welfare applications is $1,500,000.

Kansas also has 3rd party vendors that support other applications which would require changes to add and extract data to supply AFCARS information. One vendor is in process of making major infrastructure changes to the KS Eligibility and Medicaid system within in the next year. We estimate the vendor would be able to complete the AFCARS in December 2020. The other vendor is also working on major initiatives with a deadline of June 2019. We estimate this vendor would be able to complete these AFCARS changes by December 2019. At this time, however, we are not able to provide a cost estimate for our 3rd party vendors.

Currently, DCF has interfaces with the Kansas Department of Corrections-Juvenile Services (KDOC-JS) system. KDOC-JS is in process of implementing a new system, so we are unable to estimate time and cost for KDOC-JS to make the required changes.

With all the changes Kansas, would be required to make to our in-house system, two 3rd party vendor initiatives and another state agency initiatives, the time estimate to complete and implement AFCAR requirements is over two years.

In conclusion, while Kansas does see benefit in some of the changes to AFCARS and data elements, it comes with a high cost (a minimum of 7.6 million dollars), a large number of resources, and additional duties being added to our already overburden staff. We are concerned of the possibility of harmful unintended consequences if resources are diverted away from providing services to vulnerable children and families in Kansas.

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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-2018-0003-0199
Comment on FR Doc # 2018-05042

Submitter Information

Name: helen eigenberg

General Comment

I strongly 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. We need accurate info so that we protect and help ALL CHILDREN. I also strongly urge HHS to retain voluntary sexual orientation questions for foster youth and foster or adoptive parents. Please lets take care of foster youth

thank you helen eigenberg

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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-2018-0003-0200
Comment on FR Doc # 2018-05042

Submitter Information

Name: Brett Krasnov
Address: 19130
Email: brett5355@verizon.net

General Comment

I am commenting today to strongly 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. At the same time I ask that HHS keeps voluntary sexual orientation questions for foster youth & foster or adoptive parents.
Thank you for your kind attention to this comment.

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0201
South Dakota Division of Child Protection Services

Submitter Information

Name: Tonia Bogue
Address: 57501
Organization: South Dakota Division of Child Protection Services

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General Comment

The South Dakota Division of Child Protection Services respectfully submits the attached comments regarding ANPRM RIN 0970-AC72.
Please see attached file.

Attachments

South Dakota

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF THE SECRETARY
700 GOVERNORS DRIVE
PIERRE, SD 57501-2291
PHONE: 605-773-3165
FAX: 605-773-4855
WEB: dss.sd.gov

June 13, 2018

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

Dear Ms. McHugh:

The state of South Dakota respectfully submits comments regarding the additions and changes to AFCARS data elements included in the Final Rule dated December 14, 2016 (ANPRM RIN 0970-AC72). The South Dakota Division of Child Protection Services (SD-CPS) believes these changes would require a significant investment of not only staff resources, but also funding associated with staff to implement the proposed changes. The rule includes 272 elements, of which 153 are new elements. This represents an onerous resource burden for SD-CPS.

While states recognize the value in adding additional information to monitor and analyze outcomes for children in the child welfare system, there needs to be more recognition of the ever increasing demands put on state child welfare staff due to the complexity of the work, and a workable balance struck between the two. Significantly increasing the AFCARS data elements increases the burden on already stretched resources needed to provide services to children and families. The addition of 153 data elements in addition to the 120 elements already being tracked and recorded, will divert time away from direct casework, potentially cause delays in timely permanency for children, and affect other critical services for children that ensures their safety and well-being. Moreover, some of the new data requirements will not add value as they are already reported through South Dakota's SACWIS.

Outcomes in child welfare are the responsibility of many systems, not just child welfare agencies. This rule places all of the responsibility for reporting on state child welfare agencies. For example, the ICWA-related data elements in the final rule are based on the Department of Interior regulations, not the Department of Health and Human Services and many of those functions are the responsibility of the courts. Data elements such as if ICWA applies to the case; the Indian tribe determined to be the Indian child's tribe; whether the Indian child's parent or Indian custodian and the child's tribe were sent legal notice 10 days prior to the first child custody proceeding; decisions related to transfer from state to tribal court; provision of active efforts; evidence of testimony from a qualified expert witness; and court findings related to the standard of "serious emotional or physical damage" and the rulings related to evidentiary standards such as clear, convincing, or beyond a reasonable doubt are findings made by a court. However, the responsibility of capturing this data is placed on state child welfare agencies. In

addition to the burden of collection and entering these data elements, the penalties for non-compliant data will fall on the state child welfare agency not the agency charged with the task. States will be penalized funding from the Department of Health and Human Services for failing to report or inaccurately reporting Department of Interior data. The entity responsible for the data should be the entity charged with collecting and maintaining the data.

Some of the new data elements are duplicative of information collected and maintained elsewhere. When an abuse/neglect report is made, SD-CPS begins inquiring about the child's race. If there is any indication the child is potentially an Indian child, SD-CPS proceeds as if it is an ICWA case in policy and practice. In addition, SD-CPS has the required interface with IV-A which allows for import of race information from IV-A, if known. If the child is identified in the IV-A system as an Indian child, the state proceeds with the case following ICWA requirements. Inquiries with the child's parents, Indian custodian, and tribe(s) are made and documented in the State's SACWIS, ICWA Affidavits, court reports, and case narrative along with any dates. Such duplication is unnecessary, doesn't improve outcomes for children and creates additional burdens for staff.

Additional examples of duplication of effort by staff are capturing data related to health assessments and caseworker visits. SD-CPS has policy and procedures in place to direct staff related to timely health assessments for children and that information is captured in the State's SACWIS. This information is also gathered through the Child and Family Service Reviews and SD-CPS conducts ongoing case reviews that emulate the CSFR process. SD-CPS already reports information related to monthly caseworker visits and location of those visits from the state's SACWIS to the Children's Bureau in an aggregated data format.

SD-CPS believes the time estimate related to data entry by staff is low. SD-CPS estimates the time required by staff to compile and enter the required data elements would be close to 15 hours per year per child, 12 hours for direct staff and an extra three hours for supervisors. This would not only require additional time for data entry, but also additional time for ensuring data is current due to placement moves or changes in permanency goals. Supervisors would need to devote additional time to ensure timely data entry in the database matches court reports and other items, further limiting their time to provide clinical supervision to front line staff.

SD-CPS averages 1,242 Indian children in foster care each year. Using this average, the number of extra hours devoted to compiling and entering data supervisory oversight would be 14,904 hours for workers and 3,726 hours for supervisors, totaling 18,630 additional work hours per year. The average salary for a family services specialist is $19.73 per hour and the average salary for a family services specialist supervisor is $25.49 per hour. The estimated cost on an ongoing basis for a family services specialist would be $294,055.92 (14,904 x $19.73) and $94,975.74 (3,726 x $25.49) for a Family Services Specialist Supervisor at a total cost of $389,031.66.

Based on previous projects, the State estimates 2,500 hours of technical staff time devoted to research, workgroup participation, development, testing of revised screens and/or new screens, and mapping of new AFCARS elements to the screens. Cost to SD-CPS for technical time is $73.50 per hour for a total estimated cost of $183,750.00 (2,500 X $73.50) for development and implementation of SACWIS/CCWIS and AFCARS changes. The State also estimates additional child welfare staff time for

workgroups, testing, and implementation to be 150 hours for three SD-CPS SACWIS program staff and approximately 75 hours each for three SD-CPS staff with responsibilities related to foster care, adoption, and monitoring of Title IV-E Agreements with tribes. Estimated hours for SD-CPS staff for development, testing, implementation, and training is 675 hours at an average salary for six staff of $26.98 per hour for a total cost of $18,211.50 (675 hours x $26.98). The total initial project costs, including implementation and training, are estimated to be $201,961.50.

The estimated ongoing hours and associated costs for the six SD-CPS staff would be $3,561.36 (132 hours x average salary $26.98 per hour) based on previous projects and previous AFCARS data quality oversight. The estimated ongoing hours and associated costs for the technical staff would be $2,205.00 (30 hours x $73.50 per hour). The total estimated ongoing costs per year for program and technical staff is $5,766.36.

The South Dakota Department of Social Services (SDDSS) requests your thoughtful consideration of the significant burden the new AFCARS data elements places on program and technical staff, as well as financial resources. SDDSS recognizes the value of data in evaluating the child welfare system; however, it is a delicate balance between allocating time between direct service, data collection, and data entry. The task of balancing falls to staff who already have significant caseloads and difficult jobs. We are concerned that the addition of 153 new data elements will tip the balance and could thereby negatively impact our child welfare system. While there is value in adding additional information to monitor and analyze outcomes for children in the child welfare system, data collection should not be duplicative, and the expected results may not be realized due to staff having to choose between data entry and direct service.

If you have questions regarding South Dakota's comments, please contact Virgena Wieseler, Division Director of SD Child Protection Services at (605) 773-3227 or Tonia Bogue, SACWIS Project Director at (605) 688-4330 ext. 229.

Sincerely,

Lynne A. Valenti
Cabinet Secretary

CC: Virgena Wieseler, Division Director of Child Protection Services
Tonia Bogue, SACWIS Project Director
Susan Nichols, ACF Child Welfare Specialist, Region VIII

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0202
Comment on FR Doc # 2018-05042

Submitter Information

Name: Cynthia Kelly
Address: 27522
Email: RELYT2500@YAHOO.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.

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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-2018-0003-0203
Comment on FR Doc # 2018-05042

Submitter Information

Name: Joshua Ziegler

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.

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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-2018-0003-0204
Comment on FR Doc # 2018-05042

Submitter Information

Name: A D

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.

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PUBLIC SUBMISSION

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-2018-0003-0205
University of North Dakota and multiple orgs

Submitter Information

Name: Melanie Sage
Address: 58201
Email: melanie.sage@und.edu
Organization: University of North Dakota and multiple orgs

General Comment

We are writing as tribal ICWA stakeholders, child welfare scholars, researchers, educators, practitioners, and community leaders and members of North Dakota who have been actively working with stakeholders across the state to improve ICWA compliance. North Dakota is in the top ten states for disproportionality across several outcomes for American Indian children, including the number of American Indian children in foster care.

We are empathetic to the burden of states related to data collection. The data systems in our state are fragmented and it is very difficult to use data for evidence-based decision-making in its current forms, especially in cross-system data but also in exporting basic outcomes such as the cost of care for particular children (this data outcome requires a programmer and can take days of work to collect). Although the state is collaborative with stakeholders in supporting research and best practices, data access is too cumbersome to provide timely and thorough feedback related to child outcomes. The system is due for a rehaul.

We also know that data elements that are counted get attention, from practice to policy to funding, and that the requirement of the new ICWA data elements will expedite the demand for new data sharing and data management. The inefficiencies created by the current system will likely linger until federal mandates require updates, especially with no carrot or stick connected to meeting the data expectations. The states current proposal is to collect some of the elements from the court system and some from the child welfare system (although there are no shared case numbers across systems), and this piecemeal solution is also not likely to lead to quality data. Instead, we encourage our federal stakeholders to provide whatever resources are possible to help the state with guidance in implementing a new cloud-based data collection system that allows easy data sharing. In a small and stretched system like ours, the best way to innovate is likely through bringing in an existing data collection program that meets the federal requirements.

Currently, we know that American Indian children comprise about 40% of the children in state foster care in

North Dakota, although they make up only about 10% of the child population. The rate of disproportionality of children of most races and ethnicities has fallen in the last several years but continues to rise for Native children. We do not know how many of these children are ICWA-eligible. The tribes receive poor data about outcomes for native children, and especially enrolled/enrollable tribal citizens, in state care. We know that data collection is, itself, an intervention, and that new data elements will provide workers with opportunities to consider steps associated with appropriately identifying and noticing in ICWA cases. Not collecting this information diminishes opportunities for analysis, funding, and understanding outcomes and changes related to interventions. We also miss opportunities for targeted interventions.

The non-fiscal costs involved when cases do not meet ICWA compliance standards (which rose above 80% in our last count) are impossible to articulate, as they include loss of family, loss of culture, and in the long run, potentially loss of whole tribal bands. These are the problems that the forty-year-old ICWA legislation was written to address, and it is time that ICWA cases and their outcomes are counted. Data collection expectations, we expect, will help improve data compliance.

Although a concern about the final rule is that ACF has not historically overseen the legal issues related to ICWA compliance, and child welfare systems are not mandated to capture some of this information, solving the cross-system data and practice collaborations are exactly an intervention needed to fully implement ICWA.

We hope DHHS will consider the burden to children and families in further extending the application of data element collection, the implications of further delaying opportunities for use of data, and the burden absorbed by our systems and tribal citizens when American Indian children do not receive the services due to them under the 1978 ICWA legislation. We hope these considerations will lead to the timely application of ICWA data collection requirements.

Thank you,

Vincent Roehr, ICWA Representative
Mandan, Hidatsa, & Arikara Nation Social Services

Marilyn Poitra, ICWA Coordinator
Turtle Mountain Band of Chippewa

Ina Olson, Director of Social Services
Turtle Mountain Band of Chippewa

Rebecca Grey Bull
ICWA Coordinator
Standing Rock Sioux Nation

Stephanie DoCoteau, MSW
Executive Director, Native American Training Institute

Jessi Lenaugh, MA
ICWA QEW Training Coordinator, Native American Training Institute

Melanie Sage, PhD, LICSW
Child Welfare Researcher
University of North Dakota/University at Buffalo

Harmony Bercier, MA
ICWA Trainer, University of North Dakota

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0206
Comment on FR Doc # 2018-05042

Submitter Information

Name: Lisa Moss

General Comment

As a social worker, 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.

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0207
Maryland DHS Social Services Administration

Submitter Information

Name: Rebecca Jones Gaston
Address: 21201
Organization: Maryland DHS Social Services Administration

General Comment

Please see attachment.

Attachments

Maryland

Larry Hogan, Governor | Boyd K. Rutherford, Lt. Governor | Lourdes R. Padilla, Secretary

June 13, 2018

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: 45 CFR Part 1355; RIN 0970-AC42; Fed Reg No: 2018-05042 (Submitted Electronically)

Dear Ms. McHugh:

We appreciate this second opportunity to provide input on ACF's proposed changes to AFCARS. We agree that child welfare foster care services must be accountable, however, based on our experience over the last decade, implementing the current AFCARS, Caseworker Visitation, and NYTD continues to make us very concerned about the added burden that these new AFCARS rules will bring. Maryland has also launched its new continuous quality improvement system that was developed and implemented with federal approval in support Maryland's CFSR Round 3. Our greatest concern is that the burden of additional data requirements falls squarely on our caseworkers and supervisors. The growing burden of attaining accountability, in the form of doubling the AFCARS required data elements, seriously threatens to degrade the quality of services provided by our workforce.

Maryland does agree with the intent of the proposed rule, in that the new data requirements pertaining to ICWA are important to understanding how ICWA is being implemented and to identify more effective ways for tribes, states and the federal government to work together to advance the well-being of Indian children and families. While Maryland has no federally recognized tribes, and has very limited interaction with children and families associated with federally recognized tribes, we agree with the need to assure that information is gathered to assure that ICWA is properly implemented.

Accountability can be monitored in a number of ways, and the federal government will certainly gain considerable, and we believe sufficient, information about state and local accountability for child welfare efforts through CFSR Round 3, including efforts focused on serving Native Americans. We would like to recommend that, as final decisions are made, AFCARS contain only a minimal but most meaningful set of new data elements, in order to shed light both on the implementation of ICWA, and the outcomes of children and families served. We also recommend that a well-rounded implementation or process study for ICWA should also include surveys, focus groups, interviews with stakeholders, in addition to any statistical analysis that the new AFCARS data makes available.

In addition to these concerns, we also would like to take an opportunity to note concerning the newly passed federal legislation—is it possible the current and proposed AFCARS data elements will not capture the expanded expectation of prevention and placement quality and success? Should there be a review and update of AFCARS in relation to the new legislation to be implemented in phases starting later this year?

Maryland is dedicated to being accountable for all children and families we serve in child welfare. This AFCARS proposed rule we believe risks overburdening staff, state and local administrators. Thank you for considering our urgent recommendation to minimize the ICWA related data, to provide a prudent plan for assessing ICWA implementation that balances the additional burden of data collection locally.

Sincerely,

Rebecca Jones Gaston
Executive Director
Social Services Administration

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0208
Comment on FR Doc # 2018-05042

Submitter Information

Name: Sian Binney

General Comment

There is no reason to ask questions about sexual orientation of either at risk youth, or potential foster parents. All this does is allow them to be potential targets for others.

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0209
Arizona

Submitter Information

Name: Katherine Guffey
Email: Katherine.Guffey@azdcs.gov
Organization: Arizona

General Comment

See attached file(s)

Attachments

Arizona

The Arizona Department of Child Safety (DCS) is thankful for the opportunity to submit comments regarding the burden and benefits of the AFCARS elements described in the Final Rule published on December 14, 2016. DCS is responsible for statewide administration and delivery of child protection and permanency services in Arizona, including child abuse and neglect investigations; child safety assessments; family support, preservation, and reunification services; family foster care and kinship care services; services to promote the safety, permanence, and well-being of children with foster and adoptive families; adoption promotion and support services; and health care services for children in out-of-home care.

The Arizona Department of Child Safety is a proponent of data to identify areas for improvement, analyze causes, measure outcomes, and produce evidence of effective practices and programs. Given the extensive data already gathered and available, DCS is concerned about the collective burden of 153 new data elements, for the following reasons:

- Caseworkers are typically responsible for the collection and entry of data into a SACWIS or CCWIS system. When the data to be collected does not fit naturally into family engagement activities and is not directly supportive of casework practice, it places demands on caseworkers that leave less time to interact with families. Parents who are successful in making behavioral changes often say that the relationships with their caseworkers were the most influential factor in their success. Further, Arizona recently recovered from a backlog of open reports for investigation and reversed a trend of out-of-home care population growth that had occurred, in part, because workload exceeded staff capacity. Having recently witnessed the real effects to children and families when workload exceeds capacity, DCS vigilantly protects caseworker time. As an example, entering whether a report to law enforcement of sex trafficking was made and the date [1355.44(d)(7)(i) and (ii)] supports quality assurance but does not directly support casework practice.

- Caseworker initial training currently includes approximately 25 hours on documentation in the State's SACWIS system, much of which pertains to AFCARS elements. DCS estimates that this training time would increase by more than 60%, to more than 40 hours. This projection may underestimate the actual hours of classroom training needed to achieve data quality in elements requiring knowledge and judgement, such as identification of the reason for a change in school enrollment [1355.44(b)(16)]. DCS estimates that the total cost of caseworker wages for new employee training on documentation in the State's SACWIS system with the new AFCARS elements added would have been $290,000 in 2017. This estimate is the product of the hourly starting wage for a DCS caseworker, 40 hours of training, and the number of newly hired staff trained in 2017. Each hour of classroom training carries additional costs of trainer salaries, curriculum development, scheduling, employee travel, physical space, and training materials.

- Expanding the AFCARS elements by 56% will increase the AFCARS related workload of information technology (IT) staff who support AFCARS data quality and file transmission. The state pays roughly $90 for each hour of employee time to develop and maintain code for AFCARS, and currently employs one full time equivalent (FTEs) to do this work and another FTE to support data quality and file transmission. With the expansion, additional IT staff would be required to review and distribute data quality reports and answer Help Desk calls related to data entry.

DCS is also concerned that several proposed new AFCARS data elements extend the scope of measurement into procedural compliance. This information will be most reliable and useful when

obtained through a case review conducted by quality assurance staff or external parties (such as through the Child and Family Services Review).

The following proposed non-ICWA-related elements will be particularly burdensome due to the issues described above and because the data is not currently or completely captured in Arizona's SACWIS system:

- 1355.44(b)(13)(i) through (xi) pertaining to health, behavioral or mental health conditions
- 1355.44(b)(16)(i) through (vii) pertaining to educational stability and reasons for changes in school enrollment
    - These data elements require that the caseworker complete data fields to document information that is typically already recorded in the case record in hard copy or narrative form. The additional data entry does not add immediate value in the casework process.
    - The data elements require a level of knowledge and judgement that will diminish data accuracy unless there is extensive investment in training and quality assurance. Continued support to States to develop CCWIS systems and successful data exchanges between the child welfare agency and educational, behavioral health, and court systems should occur so that data is obtained from the source agency and errors from caseworker interpretation are avoided.

- 1355.44(d)(7)(i) and (ii) pertaining to report to law enforcement and date when a child has been a victim of sex trafficking prior to entering foster care
- 1355.44(d)(8)(i) and (ii) pertaining to report to law enforcement and date when a child has been a victim of sex trafficking prior to entering foster care
    - These data elements require that the caseworker complete data fields to document information that is typically already recorded in the case record in hard copy or narrative form. The additional data entry does not add immediate value in the casework process.
    - These data elements extend the scope of measurement into procedural compliance that is better measured through a qualitative case review process in order to understand the reasons why a procedure was, or was not, followed.

- 1355.44(f)(8) and (9) pertaining to a child's transition plan and date of the plan
    - These data elements require that the caseworker complete data fields to document information that is typically already recorded in the case record in hard copy or narrative form. The additional data entry does not add immediate value in the casework process.
    - These data elements extend the scope of measurement into procedural compliance that is better measured through a qualitative case review process in order to understand the reasons why a procedure was, or was not, followed; and whether standards of quality were met.

- 1355.44(e)(18), (e)(19), (e)(24), (e)(25), (h)(7), (h)(8), (h)(13), and (h)(14) pertaining to the gender identity and sexual orientation of foster parents, adoptive parents, and guardians
    - These data elements require that the caseworker complete data fields to document information that is typically already recorded in the case record in hard copy or narrative form when it is important to decisions affecting a child. The additional data entry does not add immediate value in the casework process.

- DCS is concerned this data element will require caseworkers or foster/adoptive licensing staff to ask about the caregiver's gender identity and sexual orientation and that this may be perceived as intrusive to all caregivers, and worrisome to those who have experienced trauma and discrimination as a result of their gender identity or sexual orientation.

There are 21 American Indian tribes in Arizona, and an estimated 920 American Indian children were placed in out-of-home care in Arizona on June 11, 2018. DCS supports the expansion of data about the tribal affiliation of American Indian children in foster care, and their living arrangements and permanency outcomes. DCS is currently involved in a project with the Capacity Building Center for States to improve relations with American Indian tribes in Arizona, including a goal of improving data pertaining to American Indian children. While DCS is generally supportive of this expanded data collection, the following data elements will be burdensome in relation to their usefulness toward improving outcomes for American Indian children due to the issues described above, and because the data is not currently or completely captured in Arizona's SACWIS system:

- 1355.44(b)(3)(1) through 1355.44(b)(3)(v) pertaining to inquiry about the reason to know a child is an "Indian child" as defined in the Indian Child Welfare Act.
- 1355.44(b)(4)(i) through 133.44(b)(7) pertaining to application of ICWA.
- 1355.44(c)(6) and (7) pertaining to involuntary and voluntary termination/modification of parental rights under ICWA
- 1355.44(d)(3) pertaining to removals under ICWA
- 1355.44(e)(8) pertaining to available ICWA foster care and pre-adoptive placement preferences
- 1355.44(e)(9), (10), and (11) pertaining to foster care and pre-adoptive placement preferences under ICWA, and good cause under ICWA
- 1355.44(f)(10) pertaining to active efforts
- 1355.44(h)(20)(i) through (iv) pertaining to available ICWA adoptive placements 1355.44(h)(21), (22), and (23)(i) through (v) pertaining to adoption placement preferences under ICWA and good cause under ICWA
    - These data elements require that the caseworker complete data fields to document information that is typically already recorded in the case record in hard copy or narrative form. The additional data entry does not add immediate value in the casework process.
    - Several of these data elements extend the scope of measurement into procedural compliance that is better measured through a qualitative case review process in order to understand the reasons why a procedure was, or was not, followed.
    - Several of the data elements require a level of knowledge and judgement that will diminish data accuracy unless there is extensive investment in training and quality assurance. Continued support to States to develop CCWIS systems and successful data exchanges between the child welfare agency and educational, behavioral health, and court systems should occur so that data is obtained from the source agency and errors from caseworker interpretation are avoided.

DCS recommends that the instructions for current AFCARS element 56, Date of Discharge from Foster Care, be revised so that the date of exit is the date of a court order that the child is placed in the care of a parent, regardless of whether the child remains in the placement and care responsibility of the state agency via continued dependency court orders. Including children in the total out-of-home care population who are, in fact, living with a parent provides an inaccurate description of the number of children experiencing a living arrangement of out-of-home care and underestimates the rate of re-entry into out-of-home care

The Arizona Department of Child Safety appreciates the opportunity to comment on these AFCARS rules and is available to provide further input.

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

Document: ACF-2018-0003-0210
Oregon

Submitter Information

Name: Tammy Freeman
Address: 97304
Email: Tammy.freeman@dhsoha.state.or
Organization: Oregon

General Comment

See attached file(s) for Oregon's response.

Attachments

Oregon

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

RE: RIN 0970-AC72

Comments on the ANPRM

The following comments are in response to the invitation for public comment on the Adoption and Foster Care Analysis Reporting System (AFCARS) ANPRM published on the Federal Register on March 15, 2018. Thank you for the opportunity to provide our comments and feedback.

Oregon supports both the move toward a longitudinal file and the inclusion of ICWA related data elements in the Final Rule, as we recognize that more comprehensive data allows us to better understand the children and families we serve.

Although we applauded those changes, there were still concerns with some elements in the final rule and more with how this will be implemented.

Burden of and System changes needed for new AFCARS elements:

Oregon would like to reiterate our comments from February 9, 2015 that the change to a longitudinal file structure, while important for implementing a more progressive reporting technique, is going to be more significant than presented and that the cost estimates for the implementation of that rule were entirely inaccurate.

We had proposed making the change to the longitudinal file structure using the existing core elements of AFCARS and that other additions on the list of data elements be suspended until the longitudinal structure was in place. Instead, the Final Rule was released in 2017 without any technical guidance for the new file structure, but we were advised to begin making changes to our system to meet the data requirements. Considering the resources necessary to make these changes the State felt it was inadvisable to move forward until we had received clear technical guidance for the format of the file itself, with the exception of changes we were already working on to meet legislative requirements such as tracking Sex Trafficking Victims or to help our Indian children and families receive ICWA identification and culturally appropriate care.

As stated in our previous comments, Oregon feels confident in its ability to provide data for a longitudinal file based on the core data elements of AFCARS but is not able to comment on the ability to provide data on the additional fields until the final file structure is designed, developed, and validated.

Our technical staff have spent an estimated 9,735 hours on developing changes to the system to comply with AFCARS requirements since 2012. We have not formally submitted the changes for estimate, but based on previous work efforts it will require another 20,000 hours of technical time at a minimum. It may require significantly more than that, as it is hard to estimate the work needed without being given guidance for the file structure.

DRAFT

Oregon averages between 10,000-11,000 children in every AFCARS submission. There are 158 new elements that we do not currently capture as needed for the new requirements. Even without being able to predict how much increased time for data entry on new cases will increase, we can see that there will be a backlog of data entry on existing cases.

A two-year timeline for implementing the new requirements in the system, training staff on the changes, and entering new data elements on existing cases is too restrictive; and if the technical guidance for implementing these changes is not ready at the point that the clock begins ticking, then meeting the two-year deadline would not be possible.

Training and Administrative tasks

State staff receive a basic, high-level overview on what AFCARS requirements are during their introductory training as most training is focused on how to best perform their job duties. Approximately 20 work hours went into the development of an AFCARS guide that instructs workers on what exceptions mean and what work needs to be done to clear them.

Data Extraction and Submission

Our analysts and technical staff spend approximately 12 hours annually extracting and transmitting the AFCARS reports to ACF. If validation of the data is taken into consideration then another 20 hours for reporting and support staff would be added to that total.

Data Elements to keep, simplify or remove:

Gender. Add. We had previously recommended that **a**ll gender fields should include additional response option(s) to capture transgender, gender fluid, and other non-binary individuals. Based on direction from the Human Rights Campaign on how to collect transgender-inclusive gender data, the simple addition of an “Other” category may be sufficient.

Sexual Orientation. **Keep**. It is important for the Agency to develop a better understanding of the experiences of LGBQT youth in foster care, and this data is an important component to helping us improve our services.

Health Assessment. **Simplify or Remove**. The definition of a timely health assessment may vary from jurisdiction to jurisdiction, or even from case to case, which threatens the validity of any measure derived from this data element. Data elements must have clear and consistent definitions that can be used by all submitting jurisdictions, otherwise the information is essentially worthless. The Health Assessment as presented in the Final Rule allows the agency to determine the timeliness of an assessment, even if it is limited to the placement episode that definition is still too broad to be useful.

Medical and Educational Data. Simplify or Remove. Oregon has previously stated its concerns regarding the inclusion of educational and health-related data in the AFCARS file. The collection of this data in particular is complicated by issues with data sharing across multiple agencies and the complex web of federal regulations governing this information. It has long been the goal of child welfare advocates – Oregon included – to develop a rich cross-section of data from multiple sources to help better understand the diverse and multifaceted issues of the children and families in our care. While this information has always been readily available on a case-by-case basis for the purposes of individual case practice, Oregon and other jurisdictions have long strived to improve the cross-collaborations with

DRAFT

schools, healthcare providers, and other partners to develop technical solutions for mass data collection that would enrich the data available on our service populations as a whole. As stated by other commenters, relying on child welfare caseworkers as the source for information maintained by other data systems is an inefficient process that results in inaccuracies, and locally we are working to employ technical solutions that will bypass this type of time-intensive and duplicative data entry by caseworkers.

That being said, in many ways these efforts are still in their infancy. They require the cooperation of multiple agencies, and in the face of competing priorities there is never a guarantee that others will be willing and able to cooperate on our timetable. There is an optimistic viewpoint that says that perhaps the changes to the AFCARS requirements would provide some additional leverage to help move these cross-agency collaborations forward. However, this would be a false hope. The AFCARS rule is not the appropriate vehicle to make these changes happen. The proposed rule as written would place all of the liability, responsibility, and potential for penalties squarely on child welfare programs, without giving these programs any power to compel cooperation from other agencies.

Caseworker Visit and Placement Information. We had previously stated our concerns about trying to implement a new file structure along with the additional data elements. Our system already captures this information, but without further information on the file structure we're going to be asked to submit, we have no way of knowing if we currently capture this information in a way that is sufficient for AFCARS reporting and if changes will be needed. This is the kind of issue that would make it impossible to meet an already tight timeline if the two-year implementation plan is kept in place.

Thank you again for the opportunity to provide comment and for taking our concerns into consideration. We look forward to working with ACF in further improving AFCARS and ultimately better serving the children in families in our care.

DRAFT

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

Document: ACF-2018-0003-0211
Pennsylvania Department of Human Services

Submitter Information

Name: Susan Stockwell
Address: 17105
Organization: Pennsylvania Department of Human Services

General Comment

See attached file(s)

Attachments

Pennsylvania

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

June 13, 2018

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

Re: 45 CFR Part 1355
Adoption and Foster Care Analysis and Reporting System
RIN 0970-AC72

Dear Ms. McHugh:

The Pennsylvania Department of Human Services (DHS), Office of Children, Youth and Families (OCYF) respectfully submits these comments in response to the Advance Notice of Proposed Rule Making (NPRM) on the Adoption and Foster Care Analysis and Reporting System (AFCARS) published in the *Federal Register* on March 15, 2018, for the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services.

Pennsylvania welcomes the opportunity to comment on streamlining the AFCARS data elements and removing any undue burden related to AFCARS reporting. As a state-supervised, county-administered child welfare system, Pennsylvania gathered information regarding the proposed rule from both state and county agencies.

DHS/OCYF Comments:

Non-ICWA data elements

- There are two data elements related to siblings of a child in foster care. A sibling is defined as they are brother or sister by biological, legal, or marital connection. The first element asks if a child's siblings are also in foster care and the second element asks if the siblings are placed in the same placement setting as the child. As guidance has not yet been provided by the Children's Bureau on these elements it is unclear if the elements relate only to siblings removed from the same home. If the elements are limited to sibling groups that are removed from the same home, these elements are not overly burdensome; however, if these elements require reporting on siblings that were removed from separate homes, we consider this to be burdensome. In the latter situation, the children would likely be part of two or more separated family case records and not identified easily within a case management system. Additionally, in Pennsylvania the children may be in family case records in different counties adding to the complexity of logically identifying the children as siblings.

ICWA data elements

- The majority of the ICWA related elements are viewed as overly burdensome for Pennsylvania and its 67 local jurisdictions. As there are no federally recognized tribes in Pennsylvania, we have few children placed into foster care that meet the ICWA criteria. In federal fiscal years 2010 – 2014 American Indian/Alaskan Native children comprised less than one percent of the total number of children served in foster care. We understand that this is not the case for many other states and there may be a need to collect some level of data on ICWA. The 2016 AFCARS Final Rule added 65 new data elements related to ICWA. Pennsylvania proposes reducing the number of ICWA related data elements by eliminating those that relate to procedural information, such as notifications and transfers, and focus on those that provide information on proper identification of children covered under ICWA and information related to permanency and well-being outcomes.

Removal of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression ("SOGIE")

The core objectives of safety, permanency, and well-being apply to all children in the custody of state child welfare systems, including LGBTQ children, and the Social Security Act requires collection of data regarding characteristics of all children in care. 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.

County Children & Youth Agency Comments:

Currently, county data systems do not collect the additional data elements which will result in additional costs to update each county system. County children and youth agency staff are responsible for investigation of reports of abuse and neglect, assessment of general protective services reports, as well as the provision of on-going services to children and families. Given the nature of their work to ensure the safety, permanency and well-being of Pennsylvania's children, the expansion of the required AFCARs data would increase their workload. Additional staff may be needed to assist with data entry. Consideration should be given to ensuring that only data necessary to ensure outcome related to child safety, permanency and well-being is collected to prevent increasing the workload of staff who are already overburdened. Retaining quality staff is currently an issue as a result of documentation requirements that prevent staff from working with children and families.

Sincerely,

Cathy A. Utz
Deputy Secretary

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Document: ACF-2018-0003-0212
Children's Defense Fund

Submitter Information

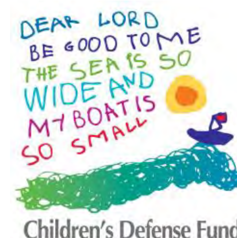
Name: Stefanie Sprow
Address: 20001
Organization: Children's Defense Fund

General Comment

See attached file(s)

Attachments

Children's Defense Fund



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: Comments to the Administration for Children and Families regarding the ANPRM (RIN 0970-AC72) to streamline the data reporting requirements under the Adoption and Foster Care Analysis Reporting System 2016 Final Rule.

Dear Ms. McHugh:

The Children's Defense Fund (CDF) is pleased to have the opportunity to respond and provide input on streamlining the data reporting requirements under the Adoption and Foster Care Analysis Reporting System (AFCARS) 2016 Final Rule published in the Federal Register on March 15, 2018 (Federal Register Vol. 83, No. 51, page 11449). CDF is very concerned about possible modifications to the AFCARS 2016 Final Rule (Final Rule) and strongly urges that you continue moving forward with implementation of the Final Rule without changes and without delay.

CDF has worked for more than four decades to improve outcomes for children who are at risk of placement in foster care or already in the care of public child welfare systems. CDF worked with others to establish the original federal mandate for a national data collection system that was included in federal law in the Omnibus Budget Reconciliation Act of 1986 and then kept the pressure on to get it finally operational in 1994. We believed then and continue to believe that the federal government has an important role in ensuring children are benefitting from federal child welfare laws. Over the years CDF, like many others, has responded to the numerous requests for public input on ways to update and improve AFCARS, including the 2008 Notice of Proposed Rulemaking (NPRM) for AFCARS, the 2010 Request for Public Comment on AFCARS, and the 2015 NPRM for AFCARS and 2015 SNPRM on the new data elements related to the Indian Child Welfare Act (ICWA). After advocating for nearly 25 years – spanning four Administrations – for updates to the original regulations published in 1993, we are very supportive of the AFCARS Final Rule released in 2016. Given numerous past notices, and the robust consultation and public comment that resulted from past requests for comment, we strongly recommend that implementation of the 2016 AFCARS Final Rule proceed as published without further delay and without further changes. The Final Rule reflects the improvements and changes in data requirements agreed upon and advocated for by the broad child welfare community to better reflect and inform us all about experiences of children involved in the child welfare system and ways to strengthen child outcomes and the system.

The Benefits of the AFCARS 2016 Final Rule Outweigh Any Burden from the New Data

The updates made to AFCARS in the Final Rule were long overdue. The rule from 1993 is outdated and does not reflect current child welfare practices or protections added to federal child welfare law over the past 25 years or new reporting required of states. The Administration for Children and Families (ACF) needs to know how children are faring. Prior to the Final Rule, the reporting system

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fell short in helping to clarify the needs of children who come to the attention of the child welfare system, the services and supports they and their families receive, the timeliness of those services, the stability of their placements when in foster care, permanence provided, and children's final outcomes. The Final Rule made a number of significant changes and improvements that will provide a more comprehensive picture of a child's time in care as required in Section 479 of Title IV-E of the Social Security Act. It is because of this that we strongly believe any consideration of burden with the Final Rule needs to be balanced with a corresponding examination and acknowledgement of the benefits of the Final Rule.

States and the public had ample opportunities to raise concerns about burden over the past four public comment periods – spanning 15 years – related to updating AFCARS. Information on the burdens related to updating the AFCARS regulations were specifically requested in the past comment periods and concerns should have been made and addressed during that time. In fact, the Final Rule represents a "streamlining" of the original proposed 2015 NPRM and 2016 SNPRM and the burdens identified by commenters were addressed and explained in the Final Rule. There will always be a rationale for delaying and reexamining revisions because of the ongoing progress to amend and improve child welfare policy and practice, and there will always be a cost and burden for any future revisions. However, cost and burden alone should not be the rationale for further delays to accommodate additional changes when they would deprive the community of the benefits of more comprehensive data on child and family outcomes and resulting policy and practice improvements needed to push the field forward for children.

Part of the rationale for this ANPRM is an overall directive by President Trump to reduce regulatory burdens on the American people. We feel this action must consider all people – and therefore go beyond just the potential burden on the child welfare agency – and include those families and children touched by the child welfare system. We believe delaying an update of the 25-year-old AFCARS standards will create a greater burden for these families because it will undercut evaluation and improvement of how these families and their children are supported.

Changes to the Final Rule Increase Uncertainty and Burden and Deny Children Long Overdue Reporting on Essential Benefits

The AFCARS 2016 Final Rule brought much needed clarity to data collection and reporting on behalf of children in the child welfare system, after many years of comments and input. To now continue this pattern of delay and request public input on AFCARS means further uncertainty for states – and burden related to this uncertainty – and the continued lack of beneficial information on children. States that already have started updating their data systems and working to meet the 2019 implementation deadline, now likely feel unease as to whether investments they already made may have to be diverted in new ways. Seeking additional information on burden, which has previously been reported on, nearly half way into a three-year implementation process, creates additional unnecessary confusion for state agencies and perhaps cost burdens for some.

In assessing burden, it is also essential to take into account the enormous advances that have been seen in technology over these many years that have made the task of data collection much easier. The recent improvements and updates to state data systems through the new Comprehensive Child Welfare Information System (CCWIS) removes some of the challenging requirements around a single comprehensive state system and allows for the use of cost-effective and innovative technologies to automate and stay up to date on the collection of high quality case management data. Rather than

focusing now on burden, ACF instead over this next year should assist states to use their CCWIS to meet the requirements in the Final Rule without any further changes or delays.

Responses to the Questions for Comment Provided in the ANPRM:

- **Question 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.**

  CDF strongly supports all of the new data elements included in the Final Rule and believes these data are critically important to understanding the unique needs and challenges facing children and families involved in care and helping identify the policy solutions that can address these challenges. While we support all of the new data elements included in the Final Rule, and ask that ACF not streamline or eliminate any of the new data elements, we wanted to express our strong support for several of the data elements below. In each area, we believe the benefits that will result for children far outweigh the burdens other may identify.

  New Data on Sexual Orientation, Gender Identity, and Gender Expression

  ACF should maintain the data elements in the 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") youth in care. Data on these youth at the state level are urgently needed to improve outcomes, reduce costs, and reduce disparities; data at the national level are necessary to inform federal law, policy and funding determinations, to identify best practices for replication and to enhance ACF's efforts to prevent removal and allow children to remain safely at home with their families. 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 believe such benefits resulting from information related to these new data elements outweigh any burden and cost associated with implementation.

  The sexual orientation and gender identity (SOGI) and expression data elements of foster youth can be administered safely, and ACF should provide training and resources to states and tribes to do so. Many public agencies already collect this information on youth, and increasingly more 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, saying that "information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." Additionally, the Final Rule directed agencies to guidance and recommended practices developed by "state and county agencies, advocacy organizations and human rights organizations."

We also believe it is important to retain the data element related to the reason for removal due to "family conflict related to child's sexual orientation, gender identity, or gender expression" as this information can help identify targeted family preservation services and help keep that child safely with their family, a priority of the current ACF administration. ACF should also retain the voluntary sexual orientation question for adoptive and foster parents and guardians, as 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.[1] National surveys find that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[2]

New Data on the Educational Needs and Achievement of Children in Foster Care

The new educational data are essential to understanding and measuring the educational progress and needs of children in foster care, and necessary to inform and improve states' practice and policies that can better support their unique educational challenges. The education data elements have already been open for extensive public comment and debate, and the education data in the Final Rule is the end result of identifying a finite number of basic education data elements that will yield critically important national level data. These data elements are easy to collect and report on, and more importantly, are information that child welfare agencies already can and should have. 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 to Success and Increasing Adoptions Act of 2008* (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 these data. The educational data elements included in the Final Rule – school enrollment, educational level, educational stability and special education – are unambiguous and straight-forward – qualitative review or case study is not required for accurate reporting. These are data states already should have.

The two elements of school enrollment and school stability are also directly related to federal requirements under Fostering Connections. Child welfare agencies are already required to ensure all children in foster care receiving Title IV-E funding are enrolled in school; documentation of this does not create a burden and in fact most already do so. Similarly, documenting whether children have moved school placements and for what reasons is also required under Fostering Connections as part of the child's case plan. As such, reporting should not create an unnecessary burden, and will allow for better analysis about the challenges of students in foster care related to education stability.

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[1] [1] 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/

[2] [2] The Williams Institute & The Urban Institute, Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States, (2007).

New Data on the Title IV-E Guardianship Assistance Program

CDF was very pleased with the new data elements in the Final Rule that capture information on children who exit care receiving Title IV-E guardianship assistance. CDF – along with our partners at Casey Family Programs, the American Bar Association Center on Children and the Law, and Generations United – has provided technical assistance over the years to states to help them implement their Title IV-E Guardianship Assistance Programs (GAP), and have struggled for years to collect reliable and consistent data across the states on GAP. These new data are critically needed to help with the assessment of the new program, which was created under the *Fostering Connections to Success and Increasing Adoptions Act of 2008*, including how children are benefitting from GAP, the fiscal impact of GAP on the states, and ways to strengthen the program to reach more children and guardians. Given the important structural changes made to AFCARS in the Final Rule, specifically the shift to a national longitudinal data system that will help collect and report data in a way that provides a more comprehensive picture of a child's experience in care, we believe there will be significant benefits with this data since it will allow ACF better understand who and how GAP is being used. The new GAP data elements are easy to collect and report on and are information that child welfare agencies already can and should have.

- **Question 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.**

CDF is very supportive of the new data elements included in the Final Rule that ensure American Indian and Alaska Native (AI/AN) children are afforded the protections assured to them in the Indian Child Welfare Act (ICWA). Although progress has been made as a result of ICWA, AI/AN children still are at great risk of being removed from their families and tribes and placed in non-Indian homes where they are at risk of being denied their identity and culture. For too long these children have not had the full benefit of federal protections in ICWA that were designed to reduce their numbers in care and help maintain their identity and culture.

The Impact of ICWA is Currently Not Being Tracked

The Final Rule requests Title IV-E state agencies to provide the number of children in foster care who are considered Indian children as defined in ICWA. This data element 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 identify 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 agencies, states, Congress, and tribes with little information to address issues impacting this population.

Indian tribes and tribal organizations were very supportive of the Final Rule following decades of requests to modify AFCARS to address the lack of actionable data on AI/AN children for whom

state agencies receive federal funds under Title IV-E. Some states have involved and collaborated with tribes and other relevant stakeholders as they implement policies and practices needed to provide protections for AI/AN children in ICWA. This has included data sharing of child welfare information with the tribes recognizing that correct data can demonstrate what is working and further steps needed to ensure the safety, permanency and well-being of Indian children. However this data sharing has not happened at a national level and there are concerns around variability in the current state data collection. ACF should have a strong interest in improving the availability of national data that are accurate and reliable for this population.

HHS has the Responsibility to Ensure Eligible Children are Benefitting from ICWA

Implementation of the protections in ICWA is an important responsibility for HHS and child welfare agencies to ensure child welfare practice as it relates to AI/AN children is consistent with federal law. Compliance with ICWA by states is erratic and state court decisions inconsistent. Requiring child welfare agencies to report data on practice as it relates to AI/AN children will help states and tribes to develop improved policies, technical assistance, training and resources, with the help of ACF, to better meet appropriately and comprehensively the needs of Indian children. This specific look at AI/AN children will help benefit their particular needs and complement benefits they share with other children so they can be addressed in policy and practice. The benefits of this information outweigh the burden related to data collection.

Furthermore, Section 422(b)(9) of the Social Security Act requires that Title IV-B state plans "contain a description, developed after consultation with tribal organizations…in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act." HHS has implemented the Title IV-B ICWA state plan requirement through a Program Instruction [ACYF-C B-PI-14-03 (2014)]. The Program Instruction detailed specific measures to be taken by the State to comply with ICWA. They included:

- Notification of Indian parents and Tribes of state proceedings involving Indian children and their right to intervene;
- Placement preferences of Indian children in foster care, pre-adoptive and adoptive homes;
- Active efforts to prevent the breakup of the Indian family when parties seek to place a child in foster care or for adoption; and
- Tribal rights to intervene in state proceedings, or transfer proceedings to the jurisdiction of the Tribe.

Certainly the inclusion of a requirement for such measures in the Title IV-B State Plan and the Program Instruction establish broad authority for including specific data elements related to ICWA in AFCARS. In fact, the Program Instruction instructs states to "identify sources of data to assess the state's ongoing compliance with ICWA" as part of meeting its Title IV-B requirement. Collecting such data in the AFCARS will presumably facilitate and make easier state compliance with the section 422(b)(9) requirement, as it has been explained in the Program Instruction.

It is also important that HHS recognize its responsibility for the well-being and outcomes of all children and how states are ensuring that children, taking into account their special needs of various groups, get the benefits they deserve. The Child and Family Services Reviews (CFSR), for example, examine states' performance for *all* children and families and some states' Performance Improvement Plans include action items related to ICWA. The new ICWA data in

the 2016 AFCARS Final Rule will help clarify how states are doing in improving outcomes and performance with regard to all children and families served, including American Indian and Alaska Native children.

There is Minimal Burden, and the Benefits Outweigh any Potential Burdens

The Final Rule only requires states to collect the ICWA data elements for AI/AN children that are ICWA eligible. Regardless of whether AFCARS data are 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 Final Rule data specific to AI/AN children are not required to be collected for non-Indian children so while there will be additional data collection for AI/AN children who are ICWA eligible, given the small number of AI/AN children in the vast majority of states this will not require a significant burden.

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. In addition, not having this information in a case file poses risk that court orders are not being properly implemented, placing children in jeopardy of not receiving the benefits of court oversight in child welfare.

ACF Provided Ample Notice and Opportunities to Comment on the Final Rule.

On February 9, 2015, ACF published an NPRM (80 FR 7132) to amend AFCARS, which included an acknowledgement that ACF received comments asking for additional data elements that would address ICWA requirements and provide a comprehensive picture of the well-being of tribal children. ACF stated it did not include information on ICWA in the 2015 NPRM because they interpreted the enabling statute of AFCARS as limiting data collection to information related to Title IV-B and IV-E program requirements.

On April 2, 2015, ACF announced in the Federal Register an Intent to Publish a SNPRM (80 FR 17713) and that ACF had determined that there is authority to collect ICWA. A year later, April 7, 2016, ACF published another SNPRM (81 FR 20283) proposing the addition of new AFCARS data elements related to federal requirements specific to ICWA and placements of AI/AN children.

The 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 for 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 Final Rule discussion, ACF engaged in several discussions with states regarding their perspectives on the proposed data 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 Final Rule is evidence that no additional collection of information is necessary.

- <u>Question 3:</u> **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 new data included in the Final Rule need to be retained in order to understand and assess at the national level the experiences and challenges children face while in foster care across the country. The new data elements reflect both critical missing information that helps us better understand the circumstances that brought these families to the attention of the system, but also help us track how policy changes made since 1993 have improved outcomes of children and states' compliance with those federal requirements. For example, the *Fostering Connections to Success and Increasing Adoptions Act of 2008* made many significant changes to Title IV-E and IV-B, however the old AFCARS data system did not reflect those changes so advocates have struggled to fully understand and assess the impact of these provisions at the national level. Specifically, the new data elements in the Final Rule help us understand how states policies and practices conform to the requirements in Fostering Connections:
  - The new educational data elements align with the educational requirements (see our response to Question 1 above for further detail).
  - The new health-related data elements are critical to monitoring compliance with the Health Oversight and Coordination Plans (HOCP) that are a part of states' five-year Child and Family Service Plans (CFSPs). CDF, and our health advocacy partners like the American Academy of Pediatrics, have been concerned about states' fidelity to the HOCP provisions and believe that individual case reviews have proven insufficient for tracking. National level data related to child health and wellbeing are critical to ensuring the effective provision, coordination, and oversight of health services for children in foster care. These data are also critical for identifying and addressing potential barriers to children accessing needed care.
  - The new data on siblings help us understand if a child has siblings and if they are placed together in care. This sustained connection to a child's birth family can help to alleviate the traumatic experience accompanying removal and placement into out-of-home care, and these data are important to understand how siblings in care are connected.
  - The new data on the Title IV-E Guardianship Assistance Program signal progress in placements with kin (see our response to Question 1 above for further detail).

  The Final Rule also reflects new data requirements from the *Preventing Sex Trafficking and Strengthening Families Act of 2014*, specifically the new data on victims of child sex trafficking and data on adoption and guardianship disruption and dissolution. The Preventing Sex Trafficking Act actually required that AFCARS be amended to include data on child sex trafficking and required HHS to release guidance on how states are to collect data on adoption and guardianship disruption and dissolution.

  All of the Indian Child Welfare Act data elements in the Final Rule are appropriate for a national data system like AFCARS. The related activities are required by federal law under 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. 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 these data for informing Congress on how best to address critical concerns for AI/AN children.

- **Question 4: 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.**

  CDF believes the Final Rule reflects an effective balance between the need for administrative simplicity and the need for reliable, consistent data that can support the work of ensuring the safety, permanency, and well-being of children in care. There were many data elements that CDF and others suggested for inclusion during earlier rounds of public comment leading up for the Final Rule, and ACF provided thoughtful responses and explanations as to why certain data elements were included or excluded in the Final Rule, including a look at burden and reliability. The decades-long ongoing delay of an update to AFCARS has itself contributed to inefficiencies in child welfare data systems and a lack of information states need to manage their programs and ACF needs to monitor their compliance with federal child welfare law. The continued delay of the implementation of the Final Rule creates significant administrative burden within ACF by limiting the agency's ability to ensure the effective implementation of federal laws designed to, among other things, ensure vulnerable children in foster care have access to needed health services.

  Concerns with variability will particularly worsen if the data on ICWA are eliminated or streamlined. The new national data on ICWA creates for the first time uniformity across the states to better understanding the implementation and impact of ICWA and how AI/AN children are faring in the system. Prior to the Final Rule only a few states were collecting any data specific to AI/AN children, and the AFCARS data questions used 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, all of which lead to vast variability in data collection.

- **Question 5: 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.**

  CDF does not recommend the removal of any data elements included in the Final Rule. We strongly believe all the data reflected in the Final Rule are critically needed for ACF to monitor the Title IV-B and IV-E programs. The new data in the Final Rule help ACF monitor the progress and impact on children of policies, practices and protections included in federal child welfare legislation enacted since 1993, including the *Fostering Connections to Success and Increasing Adoptions Act of 2008* and the *Preventing Sex Trafficking and Strengthening Families Act of 2014,* many of which had specific data or reporting requirements. Many of the new data elements will also assist states in implementing the recently passed *Family First Prevention Services Act.* The new ICWA data are all tied to existing federal law and regulation and necessary for the monitoring of Title IV-E and IV-B programs and ensuring utility and

reliability in the data at the national level. The Title IV-B plan requirement 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 ICWA data elements in the Final Rule will provide a complete picture of how AI/AN children are doing, however eliminating or streamlining some of these data elements could result in compromising the integrity of the data and ACF's ability to confidently inform policymakers and other stakeholders about the important data trends and explanations for these trends related to AI/AN children and ICWA.

Conclusion

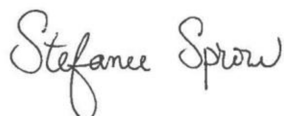
The Children's Defense Fund strongly urges ACF to maintain the existing AFCARS 2016 Final Rule without any additional changes. We also strongly oppose any potential delay in the Final Rule and urge ACF to continue moving forward with the October 1, 2019 compliance and effective date. Cost and burden alone should not be a rationale for further delays, as we need the updated data in the Final Rule to have better information on both federal and state changes in policy and practice. We appreciate the opportunity to respond to your request for input and urge you to abandon changes to the Final Rule given that the benefits – after multiple opportunities to comment on the rule – far outweigh burdens already reported on during consideration of the 2016 AFCARS Final Rule.

We recommend you follow through on implementation of these important new data requirements and provide necessary technical assistance to state child welfare agencies to help them enhance state data collection and implementation of AFCARS. In its totality, the AFCARS 2016 Final Rule represents significant progress in helping to ensure benefits for children intended in legislation enacted over the past two and a half decades and to better understand the experiences of children in the child welfare system nationally, the variation state to state and the impact of those experiences on child outcomes. The data improvements anticipated by the Final Rule will help inform policy and practice with the goal of making life better for children and their families.

We would be happy to discuss any of our comments in more detail with you or others on your staff.

Sincerely yours,

MaryLee Allen
Director of Policy
Children's Defense Fund



Stefanie Sprow
Deputy Director, Child Welfare and Mental Health
Children's Defense Fund

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PUBLIC SUBMISSION

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-2018-0003-0213
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

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.

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

Document: ACF-2018-0003-0214
Comment on FR Doc # 2018-05042

Submitter Information

Name: Marjory Keenan
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General Comment

I oppose the proposed rule to eliminate the question that protects the rights of LGBTQ foster children and parents. As a democracy, we protect the human rights of all people. I urge that the question remain.

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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-2018-0003-0215
The DC Center for the LGBT Community

Submitter Information

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Organization: The DC Center for the LGBT Community

General Comment

See attached file(s)

Attachments

The DC Center for the LGBT Community

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.

Dear Ms. McHugh:

On behalf of the DC Center for the LGBT Community 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 DC Center for the LGBT Community 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 DC Center for the LGBT Community, and more specifically our Youth Working Group, works to ensure that LGBT youth in the District of Columbia are provided with the appropriate and necessary means in order to live in a space where they feel safe, respected, and connected. The core priorities of the Youth Working Group within the DC Center are: providing safe shelter, freedom from bullying, affirming law policies and practices, and avenues to success. This means that the Youth Working Group continuously works towards providing LGBT youth with the same basic standards that all children should be given.

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. Often times LGBT youth are placed with foster families that are less than welcoming, and are therefore not given the necessary care and support all children should receive. Therefore, removing data elements related to sexual orientation and gender identity and expression will do more harm than good as these youth will be even more likely to be placed in a home where they are not accepted for who they are.

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.[1] In April 2011, ACF confirmed

[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

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."[2] 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.[3] 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.

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.[4] 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.[5] They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[6] 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.

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. For LGBT youth it is already difficult to feel safe in the community, and being placed in a home where they are unwanted will only lead to more challenges that they may not be equipped to deal with. 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.[7] That same year, adoption

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[2]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
[3] *Ibid.*
[4] Same as 4 above.
[5] *Ibid.*
[6] *Ibid.*
[7] 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

subsidies for children whose parents received subsidies and administrative costs for an adopted child averaged IV-E agencies $10,302 in costs.[8] 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.[9] Based on average annual foster care maintenance payments per child of $19,107 in FY2010,[10] 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[11], 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.

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[8] *Ibid.*
[9] 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
[10] Same as 11 above.
[11] Same as 4 above.

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.[12] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[13] 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."[14] 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.[15] 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."[16] Because of the particular challenges faced by transgender foster

[12] 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/
[13] 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/
[14] Same as 2 above.
[15] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/
[16] 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)."

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.[17] 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.[18] 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.[19] 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

[17] 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
[18] 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).
[19] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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,

David Mariner
Executive Director
The DC Center for the LGBT Community

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

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Comment on FR Doc # 2018-05042

Submitter Information

Name: Nara Rasnavad

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.

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Comment on FR Doc # 2018-05042

Submitter Information

Name: Ilene Moyher
Address: 06477
Email: mimoy@optonline.net

General Comment

All kids should live in a safe home! LGBTQ kids and families need our support. 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.

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Document: ACF-2018-0003-0218
Georgia

Submitter Information

Name: Andrew Barclay
Organization: Georgia Office of the Child Advocate

General Comment

Comments of Andrew Barclay, Melissa Carter, Christopher Church, Kaitlyn Barnes, Kevin White, Vivek Sankaran and Tom Rawlings attached.

Attachments

Georgia

Case 3:20-cv-06018-MMC Document 52-3 Filed 12/23/20 Page 1076 of 1234

Kathleen McHugh, Director, Division of Policy, US DHHS, ACF
330 C Street SW
Washington, DC 20024

RE: Request for Public Comments on streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements [Docket # 2018-05042 / RIN # 0970-AC72]

Dear Ms. McHugh:

The comments below derive from statistical research and policy and field implementations based on AFCARS and NCANDS data. Andy Barclay is a biostatistician working in child welfare for 20 years. Christopher Church is a mathematician and lawyer working in child welfare for 10 years. Melissa Carter is a clinical professor of law who has worked in child welfare as a lawyer and policy advocate for 16 years. Kaitlyn Barnes is a post-graduate fellow with two years of experience in the field of child welfare. Kevin White has worked as a case manager and assistant professor of social work for 8 years. Vivek Sankaran is a clinical professor of law who has worked in child welfare for 17 years. Tom Rawlings has worked as a lawyer, judge and child advocate for over 15 years. He is the state of Georgia's official ombudsman for children. These are the informed responses of individuals. With the exception of Mr. Rawlings, they do not represent the responses or opinions of any organizations, including organizations with which the individuals are affiliated.

Our responses will be confined to questions 3 through 5 of the ANPRM and, largely, to the 34 fields under the final rule heading "Child and family circumstances at removal" (1355.55(d)(6) i through xxxiv). However, we wish to express our strong support for all fields relating to all caretakers of foster children. The data concerning living arrangements, family structure, relationships to the child and demographics of caretakers are consistently strong predictors of primary foster care outcomes and reliably inform conceptual frameworks and field work.

Due process and family integrity are constitutional rights that merit the highest priority for data tracking.

Policy decisions (especially rulemaking) should weigh societal impact versus cost (a/k/a public health approach). Applying this premise to decisions to add or subtract AFCARS elements, we should use an objective, data-driven approach to evaluate each element's potential to inform policies that affect rights (due process and family integrity, among others) and outcomes.

Policies that influence efforts to prevent removal and the decision to petition a court for removal of a child from a home impact 100% of AFCARS and Family First Prevention Services Act (FFPSA) populations, and the individual effects are high-impact. Therefore, the measurement of reasonable efforts to prevent removal (a/k/a preserve family integrity) and protection of due process rights (procedural and substantive, by judicial and other branches) impact the largest proportion of the population with high-impact effects. Therefore, measurement of reasonable efforts merits the highest priority for data tracking.

Measurement should derive from a conceptual framework that posits testable links between the causes and effects that lead to removals and the reasonable efforts that modify them.

We are not aware of a useful conceptual framework describing efforts to prevent removal to foster care. We can only offer three basic, high-level research questions that might drive AFCARS element selection choices in 1355.55(d)(6):

1. Was there any evidence of efforts to prevent removal?
2. Were the efforts reasonable?
3. Why were the efforts unsuccessful?

In addition, we can offer some concrete examples of indicators of unsuccessful efforts to prevent removal (many of these have been implemented from AFCARS and NCANDS):

1. Absence or timing (same day? 3 days prior? 1 day after?) of a maltreatment report leading to removal.
2. Absence or timing of a maltreatment response leading to removal.
3. Absence or timing of a maltreatment investigation leading to removal.
4. Absence or timing of a substantiated or indicated maltreatment finding leading to removal.
5. Absence or timing of a petition to a court for removal.
6. Petitions for removal to foster care not originating with the state IV-E agency.
7. Judicial review of removal orders delegated by a judge to a court officer.
8. Dates and times of removal court orders.
9. Incomplete caretaker information (e.g. year of birth, race, marital status) on either or both caretakers at removal.
10. Placement into a trial home visit, relative or pre-adoptive home on the day of removal.
11. Relative proportions of weekday (on Monday to Friday, as well as Tuesday to Thursday) and business hours (9 to 5) removals.
12. Short time (measured in business days) from maltreatment report to removal.
13. Short time (measured in business days) from removal to placement with or discharge to a permanent family.
14. Sudden increases in rates of discharge at predetermined judicial review and hearing intervals.
15. Proxies for risk and protective factors with strong associations to removal.

The 34 fields under the circumstances at removal heading (1355.55(d)(6) i through xxxiv) in the final rule should be redesigned to inform policies aimed at improving the success of efforts to prevent removal to foster care.

This might also be an opportune time to replace the 19 fields currently in AFCARS related to "Circumstances associated with removal"[1] with a set of fields designed from the ground up to inform

[1] https://www.acf.hhs.gov/sites/default/files/cb/afcars_elements_comparison.pdf visited 6/13/2018.

Case 3:20-cv-06018-MMC Document 52-3 Filed 12/23/20 Page 1078 of 1234

policies that support effective efforts to optimize the use of removal to foster care in promoting safety and permanence. Absent evidence that the 19 fields currently in AFCARS inform such policies, and absent a literature review and exploratory analysis, we suggest 6 fields that would make practical the implementation of the example indicators above:

1. Report ID of the NCANDS report record that led directly to this AFCARS removal episode.
2. Court filing date and time of successful or most recent petition for removal (the petition for removal).
3. Approval status of the petition for removal.
4. Role of the petitioner.
5. ID of court officer adjudicating the petition for removal.
6. Role of court officer adjudicating the petition for removal.

We thank you for your consideration of these comments.

Andrew B. Barclay, MSME, MSEE
Melissa D. Carter, JD
Christopher E. Church, JD, MS, CWLS
Kaitlyn E. Barnes, JD
Kevin R. White, PhD
Vivek S. Sankaran, JD
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Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

I urge HHS to retain the questions for foster youth about sexual orientation and gender identity. LGBTQ children and teens may be in foster care due to an untenable situation in their home lifeabuse targeted at them precisely because of their sexual orientation or gender identity. We need to protect these youthand collect this important data that reflects their experiences.

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Santa Ynez Band of Chumash Indians

Submitter Information

Name: Kenneth Kahn
Address: 93460
Organization: Santa Ynez Band of Chumash Indians

General Comment

See Attached

Attachments

Santa Ynez Band of Chumash Indians

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GARY PACE, COMMITTEE MEMBER

June 6, 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*

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 Santa Ynez Band of Chumash Indians (Chumash) 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 and, pursuant to Section 474(f) requires HHS to impose penalties for non-compliance. Under Section 1102 of the Act, the Secretary is 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 the above-referenced 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 collect historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to the fulfillment of 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. As such, the initial rules were changed due to comments by tribal entities and others to the February 9, 2015 proposed rule. On April 2, 2015 the Agency issued a Supplemental Notice of Proposed Rulemaking (SNPRM) changing certain data elements. And, yet another SNPRM was issued on April 7, 2016. Both the April 2015 Intent to Publish a SNPRM and the April 2016 SNPRM sought comments on the inclusion of the ICWA data points. Ultimately, the Final Rule, published on December 14, 2016, (Final Rule) 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 during the rulemaking process, 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.

As these regulations have been effective for approximately fifteen months, all states should be in the process of implementing them. The Tribe is aware 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 the Tribe, its 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.

This ANPRM arbitrarily seeks information only on the burdens of reporting.

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 burdens 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 provides 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.

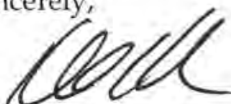
In the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements, frustrating a stated purpose of the 2016 BIA ICWA Regulations, to establish uniformity of application throughout the nation. The need to eliminate the data variability is precisely 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 and are all 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.

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 with this federal law. It is in the interest of protecting our children and families that we respectfully submit these comments and provide our strong support for each of the ICWA-related data points. As your agency did in publishing the Final Rule in 2016, Chumash strongly believes that any burden associated with date collection is far outweighed by the benefits.

Sincerely,



Kenneth Kahn,
Tribal Chairman

PUBLIC SUBMISSION

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

Document: ACF-2018-0003-0221
Federated Indians of Graton Rancheria

Submitter Information

Name: Greg Sarris
Address: 94928
Organization: Federated Indians of Graton Rancheria

General Comment

See Attached

Attachments

Federated Indians of Graton Rancheria

June 8, 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

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

The Federated Indians of Graton Rancheria 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.

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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.

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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

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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.

<u>The foregoing are responses to the Questions for Comment provided in the ANPRM:</u>

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.

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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.

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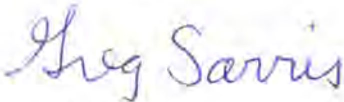
Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points are critical.
Further, as discussed above, ICWA is the "gold standard" of child welfare and ensuring compliance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



Greg Sarris,
Chairman, Federated Indians of Graton Rancheria

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AFCARS 2018-2020

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

Document: ACF-2018-0003-0222
Denver Family Resource Center

Submitter Information

General Comment

See attached

Attachments

Denver Fam Resc Center

June 10, 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

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

Dear Ms. McHugh:

The Denver Indian Family Resource Center, Inc. (DIFRC) 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). Our 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). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

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 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.

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.

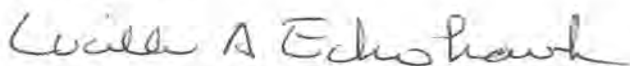
Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points is critical. The Title IV-B plan requirement for states that requires that states consult with tribal governments 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 yours,



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

Document: ACF-2018-0003-0223
Kawerak Inc

Submitter Information

General Comment

See attached

Attachments

Kawerak Inc

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June 6, 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

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

Dear Ms. McHugh:

Kawerak, Inc. is the tribal consortium in the Bering Strait region of Alaska, which encompasses 20 federally recognized tribes and 16 communities. Our service area is approximately 26,000 square miles or roughly the size of West Virginia. The region's population is about 9,000 people, of which 75% are Alaska Native. The cost of living in rural Alaska is astronomical and we are plagued by a myriad of social conditions attributed to historical trauma. Kawerak, Inc. 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). Our 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). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

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

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.

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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.

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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,

KAWERAK, INC.

Melanie Bahnke, President

PUBLIC SUBMISSION

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Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Protect America Children and Families, Stop China Import dumping. All imports should be tested for Toxic materials.
China, 70 per cent of Chinese rivers and lakes are polluted from industrial facilities like chemical and textile plants. 300 million Chinese in rural areas lack access to safe drinking water. Thousands of dead, wildlife floating down the river that supplies Shanghai with its drinking water. chemical accident leaked benzene, a known cancer-causing agent, into a tributary of the Huangpu River . Country's most industrial regions are some of the driest, with 45 per cent of the country's gross domestic product produced in water-scarce provinces such as Hebei, Shandong and Shanxi. Some 24,000 villages have been abandoned because of the desertification effects of the Gobi desert factory spill in Shanxi province that resulted in nine tonnes of the potential carcinogen aniline being dispersed in the Zhuozhang River. 90 per cent of Chinese cities are tapped into polluted groundwater supplies; groundwater in two-thirds of those cities is considered "severely polluted". About 40 percent of China's farmland relies on underground water for irrigation, and an estimated 90 percent is polluted, 60 percent of the groundwater beneath Chinese cities is described as "severely polluted". mud-choked rivers and eroded topsoil are often the result of desertification. of habitat loss and the resulting drop in biodiversity. heavily polluted Lake Tai. As vast areas of forest are cleared for farmland, bamboo plantations, timber and fuel wood, endangered animals like pandas struggle to survive. entire towns that have been written off as so polluted that simply living there is a cancer risk. the high rates of stomach, liver, kidney and colon cancer in certain areas, Shangba, a city in southern Guangdong province, the river that flows through town changes from white to a startling shade of orange because of varying types of industrial effluent, Many of the river's contaminants, like cadmium and zinc. chemicals and heavy metals banned in other countries are found throughout China. government's recent admission that cancer villages exist "shows that the environment ministry has acknowledged.

China supports 20 per cent of the world's population on only 6 per cent of the world's water; Beijing, the amount of water available per person is just one-tenth of the UN standard of 1,000 cubic metres; across the country more than two-thirds of cities have water shortages.

Yangtze River basin There are in total 378 known species of fish living there, as well as more than 280 species of mammals, 145 known species of amphibians, and 166 known reptile species (World Wildlife Fund WWF). As

the longest river in China, it flows through very varied landscapes, both in terms of nature and economy. Significant amount of pollution discharge putting great pressure on drinking water safety. Conflicts between ecological protection and development are prominent in some areas, and eutrophication persists in key lakes , emphasized tackling heavily polluted "black and odorous water" wastewater discharge in the Upper Reaches .. is carried downstream. Pollution anywhere along the river poses a significant threat to drinking water .. According to the Yangtze River Water Resources Commission, of the 329 drinking water resources monitored, only 193 of them or 59% met relevant water quality standards all year round. pollutants discharged into the water can also either seep into sediment or soil, leading to groundwater pollution and soil contamination. rice contaminated with heavy metals . Groundwater quality continues to worsen for 5th year; 'very bad' .
Hunan and Hubei, the two Middle Reaches provinces, account for a lion's share of the YREB's discharge of Cadmium, Arsenic, Lead at 69%, 71% and 63% respectively. 38% of Cadmium, 33% of Arsenic, 30% of Lead and 20% of Mercury emissions.

Air pollution in Beijing so impenetrable the U.S. Embassy's air quality measuring station can only call it "beyond index . Public outcry over the thick blanket of toxic smog that covered Beijing earlier this year.
According to the Environmental Protection Agency's air quality scale, pollution rating above 300 means the air is unsafe to breathe. stay indoors with an air purifier running and remain as motionless as possible, according to U.S. Embassy Beijing guidelines.

Chinese cities like Urumqi, Lanzhou and Linfen on lists of the world's most polluted places.

CHINA Beijing, Last update: March 2018
Air pollution data from World Health Organization Info
PM10 108 Red , Bad
PM2.5 85 Red, Bad
PM10 Pollution Level: Very High , Red, Bad
Pollution Index: 89.78 Bad, Red
Air Pollution 85.26 Very High Bad, Red
Drinking Water Pollution 70.45 High Bad, Red
Water Pollution 73.65 High Bad, Red
Air quality 14.74 Very Low Bad, Red
Water Quality 26.35 Low Bad, Red

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PUBLIC SUBMISSION

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-DRAFT-0002
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Ban China Import dumping and test items for Toxic materials. Protect America Children, Billions of taxpayer money wasted based on Activist Environmental groups attacking America with Fake and flawed reports. They must be backed by China since China is the polluter with 70 per cent of Chinese rivers and lakes are polluted from industrial facilities like chemical and textile plants.

China should added to conflict minerals law of 2010 and UN and international rights groups should apply conflict-sensitive approaches to imports from china.

300 million Chinese in rural areas lack access to safe drinking water. Thousands of dead wildlife floating down the river that supplies Shanghai with its drinking water. Chemical accident leaked benzene, into a tributary of the Huangpu River . Country's most industrial regions are some of the driest, with 45 per cent of the country's gross domestic product produced in water-scarce provinces such as Hebei, Shandong and Shanxi.

Some 24,000 villages have been abandoned because of the desertification effects of the Gobi desert factory spill in Shanxi province that resulted in nine tonnes of the potential carcinogen aniline being dispersed in the Zhuozhang River. 90 per cent of Chinese cities are tapped into polluted groundwater supplies; groundwater in two-thirds of those cities is considered "severely polluted".

About 40 percent of China's farmland relies on underground water for irrigation, and an estimated 90 percent is polluted, 60 percent of the groundwater beneath Chinese cities is described as "severely polluted". mud-choked rivers and eroded topsoil are often the result of desertification. of habitat loss and the resulting drop in biodiversity. heavily polluted Lake Tai. As vast areas of forest are cleared for farmland, bamboo plantations, timber and fuel wood, endangered animals like pandas struggle to survive.

Entire towns that have been written off as so polluted that simply living there is a cancer risk. the high rates of stomach, liver, kidney and colon cancer in certain areas, Shangba, a city in southern Guangdong province, the river that flows through town changes from white to a startling shade of orange because of varying types of industrial effluent, Many of the river's contaminants, like cadmium and zinc. chemicals and heavy metals banned

in other countries are found throughout China. government's recent admission that cancer villages exist "shows that the environment ministry has acknowledged.

China supports 20 per cent of the world's population on only 6 per cent of the world's water; Beijing, the amount of water available per person is just one-tenth of the UN standard of 1,000 cubic metres; across the country more than two-thirds of cities have water shortages.

Yangtze River basin There are in total 378 known species of fish living there, as well as more than 280 species of mammals, 145 known species of amphibians, and 166 known reptile species (World Wildlife Fund WWF). As the longest river in China which gets significant amount of pollution discharge Eutrophication persists in key lakes , emphasizing heavily polluted "black and odorous water" wastewater discharge in the Upper Reaches which is carried downstream. Pollution anywhere on river poses a significant threat to drinking water. According to the Yangtze River Water Resources Commission, of the 329 drinking water resources monitored, only 193 of them or 59% met relevant water quality standards all year round. pollutants discharged into the water can also either seep into sediment or soil, leading to groundwater pollution and soil contamination. rice contaminated with heavy metals . Groundwater quality continues to worsen for 5th year; 'very bad' .
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Air Pollution 85.26 Very High Bad, Red
Drinking Water Pollution 70.45 High Bad, Red
Water Pollution 73.65 High Bad, Red
Air quality 14.74 Very Low Bad, Red
Water Quality 26.35 Low Bad, Red

American Regulation are tremendous waste of taxpayer money since they are against the wrong Nation

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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-DRAFT-0005
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Stop Data brokers that are putting Apps on phones,
that collect and aggregate our children information from a wide range of sources to create detailed profiles of individuals.
These companies then sell or share personal information with others. Industry that collects, analyzes and sells the personal information of millions of Americans with virtually no oversight. religion, ethnicity, political affiliations, user names, income, and family medical history. clubs you may be frequenting what bars and restaurants you're making purchases at, what other products you may be buying online. Etc, ,
this can end up in a file somewhere that's being sold maybe to a prospective employer. fairly vague about the methods use to collect information and who its customers are, they package some of our most sensitive personal information and selling it as a commodity...to each other, to advertisers, even the government, often without our direct knowledge. volume and nature of the data being mined from the Internet and our mobile devices, and the growth of a multibillion dollar industry that operates in the shadows. we are giving up more and more private information online without knowing that it's being harvested and personalized and sold to lots of different people...our likes and dislikes, our closest friends, our bad habits, even your daily movements. we have lost control of our most personal information. No one even knows how many companies there are trafficking in our data. But it's certainly in the thousands, and would include research firms, all sorts of Internet companies, advertisers, retailers and trade associations. data brokers have been flying under the radar for years, preferring that people know as little as possible about the industry and the information that's being collected and sold. all sorts of companies peddling sensitive personalized information. most of this has been completely opaque until just recently. The depths of this industry, the really darkest corners, have yet to be exposed to any light whatsoever. retailers are finding out that they have a secondary source of income. dozen third parties that a website allows in to observe our movements, measure people's behaviors on that site. doing your searching, you've got a whole crowd following you. most computers or browsers allow them in by default . apps to track your every movement and pass it along to other companies. smartphones are basically little mini tracking devices. And it's collecting information about where you are traveling. Consumers don't know who the data brokers are. They don't know the names of these companies. They have no way to know

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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-DRAFT-0006
Comment on FR Doc # 2018-05042

Submitter Information

Name: Mark Westfall
Address: 74344
Email: mwestfall@sctribe.com

General Comment

See attached file(s)

Attachments

AFCARS - Proposed Info Collection - Final 8 23 17

23701 South 655 Road Grove, Oklahoma 74344 | P: 918-787-5452 | F: 918-787-5521 | www.sctribe.com

8/28/17

Attn: ACF Reports Clearance Officer
Administration for Children and Families
Office of Planning, Research and Evaluation
330 C Street SW.
Washington DC 20201

Via electronic correspondence at: infocollection@acf.hhs.gov

Re: Adoption and Foster Care Analysis Reporting System for title IV– B and title IV–E (AFCARS)

Proposed Information Collection Activity; Comment Request – Federal Register (June 30, 2017)

Dear Sir or Madam,

The Seneca-Cayuga Nation submits these comments on the Proposed Information Collection Activity 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

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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, 2015proposed 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.

In contrast, this Proposed Information Collection Activity was not distributed to tribes in a timely manner and tribes were pressed for time to provide comment.

Unlike the previous sequence of comments and review, the pending Proposed Information Collection Activity was not widely distributed--indeed this tribe did not receive notice of it until August 20, 2017. Absent further explanation, it is unclear whether, or why the Agency needs a *third* set of comments on the previously vetted elements—but nevertheless tribes should have been notified and consulted about this request.

This collection activity in no way comports with the requirements of the ACF Tribal Consultation Policy, 76 Fed. Reg. 55678, 55685 which requires, "timely,

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respectful, meaningful, and effective two-way communication and consultation with tribes."

States are already in the process of implementing these changes.

Since these regulations have been effective for approximately seven 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. Any delay of the implementation of the ICWA-related data points would be contrary to the best interest of tribal children and families, a waste of finite state child welfare resources and creates confusion over whether to continue implementation.

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

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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.

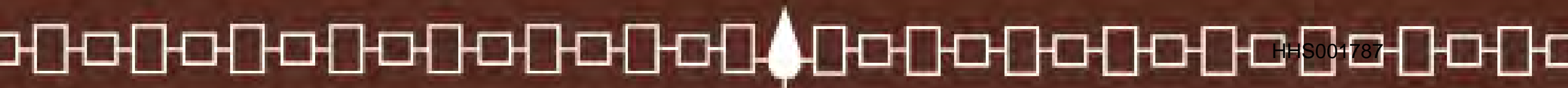
Nothing has changed since ACF made clear in its final rule that data collection is necessary to protect Indian children and families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions. And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

For the foregoing reasons, we request this proposed information collection activity be withdrawn by the agency.

Specific Comments:

The Department specifically requests comments on the following (a) – (d) items:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.



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Comment: Further collection of information related to the AFCARS at this stage is not necessary and will only serve to create uncertainty and confusion, waste child welfare resources, and delay the reporting of data for which benefits and burdens have been heard and a decision made that the benefits outweigh the burdens.

It is unclear why additional information is being sought, as comments have been provided multiple times with regard to the critical importance of having ICWA-related data points which served and continue to serve the agency and its functions.

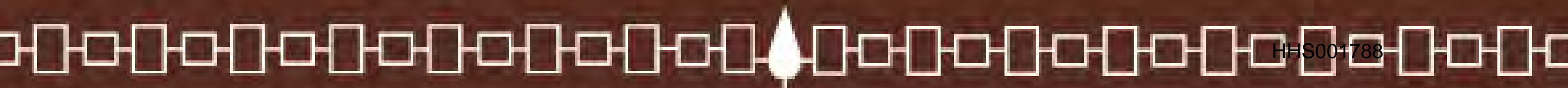
(b) The accuracy of the agency's estimate of the burden of the proposed collection of information.

Comment: Accuracy of the estimate of the burden of AFCARS data collection was addressed in comments to both the 2015 NPRM and 2016 SNPRM, some of which challenged the accuracy of the estimates. In response, the Final Rule addressed those comments by creating and explaining a new estimate for the burdens associated with changing data systems and collecting and reporting data. The new burden estimates are sufficient.

Additionally, to solicit information solely regarding the potential burden of the regulations without also soliciting information and comments on its potential benefits is arbitrary, capricious, an abuse of discretion, and not in accordance with the AFCARS authorizing statute.

(c) The quality, utility, and clarity of the information to be collected.

Comment: The Agency received comments for both the 2015 NPRM and the 2016 SNPRM regarding the specific data elements to ensure it would be quality data in keeping with the AFCARS authorizing statute. As already documented in prior comments and as highlighted by the Final Rule, the data to be collected will produce necessary information which



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will guide, clarify and improve outcomes for all children and families in state child welfare systems.

To reassess the data elements one more time does more harm than good where states have already begun, in some instances in consultation with tribes, to develop data systems in accordance with the 2016 Final Rule.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comment: Rather than change the 2016 Final Rule, we recommend the Agency conduct an evaluation of state case management systems to determine if there is technology sufficient to allow for a streamlined approach to data sharing between states and the Agency. Moreover, this is not the appropriate stage at which to be soliciting comments, since an in-depth investigation is required.

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 fact, the process driven delay impairs the child welfare system as a whole. There is no logical reason to change the regulations as currently in effect. Modifications at this stage of implementation will only create costly delays and confusion. **This proposed information collection activity is unnecessary and should be withdrawn.** In the interest of protecting our children and families, we respectfully submit these comments.
Sincerely,

Indian Child Welfare Director
Seneca-Cayuga Nation

PUBLIC SUBMISSION

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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-DRAFT-0007
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Ban Rare Earth from China, Of particular significance, one country (China) controls 98% of current supply (production) of neodymium. putting America mines out of business, Levels of market concentration are harming manufacturing firms.
The gearbox of a two-megawatt wind turbine contains about 800 pounds of neodymium and 130 pounds of dysprosium -- rare earth metals that are rare because they're found in scattered deposits, rather than in concentrated ores, and are difficult to extract.

The wind industry is dependent on rare earth minerals imported from China, the procurement of which results in staggering environmental damages. not one step of the rare earth mining process that is not disastrous for the environment. That the destruction is mostly unseen and far-flung does not make it any less damaging. Wind energy poses serious environmental risks availability of REEs appears to be at risk based on a number of factors. in 1978 Zaire controlled 48% of the cobalt supply and yet political unrest in Zaire resulted in a disruption to global supply that became known as the Cobalt Crisis REEs have come under global scrutiny due to environmental and social conditions under which they are mined, further increasing their supply risk.

NOT SAFE, Wind turbine requires an astounding amount of toxic rare earth minerals, primarily neodymium and dysprosium, which are key components of the magnets used in modern wind turbines. most common uses is in the generators . Environmental damages, consider that mining one ton of rare earth minerals produces about one ton of radioactive waste, according to the Institute for the Analysis of Global Security. 13,131 MW of wind generating capacity means that between 4.9 million pounds (using MITs estimate) and 6.1 million pounds (using the Bulletin of Atomic Sciences estimate) of rare earths were used in wind turbines installed in 2012. 2 megawatt (MW) wind turbine contains about 800 pounds of toxic rare earths called neodymium and 130 pounds of dysprosium. mined by children in Africa and Chile..

NOT SAFE, Between 4.9 million and 6.1 million pounds of radioactive waste were created to make these wind turbines. That means the U.S. wind industry may create more radioactive waste in year than our entire nuclear industry produced in spent fuel. few are paying attention to the wind industrys less efficient and less transparent use of radioactive material via rare earth mineral excavation in China.

NOT SAFE, Not only do rare earths create radioactive waste residue, but according to the Chinese Society for Rare Earths, one ton of calcined rare earth ore generates 9,600 to 12,000 cubic meters (339,021 to 423,776 cubic feet) of waste gas containing dust concentrate, hydrofluoric acid, sulfur dioxide, and sulfuric acid, [and] approximately 75 cubic meters (2,649 cubic feet) of acidic wastewater. .

Each Turbine needs 45 tons of steel rebar and 630 cubic yards of concrete, cast iron, turbine contains more than 8,000 different components , 116-ft blades atop a 212-ft tower for a total height of 328 feet. The blades sweep a vertical airspace of just under an acre. Vestas V90 from Denmark has 148-ft blades (sweeping more than 1.5 acres) on a 262-ft tower, totaling 410 feet. The tallest wind turbines in the U.S. have been installed in Texas the Vestas V90 turbines are 345 feet high, Gamesa G87 from Spain, with 143-ft blades (just under 1.5 acres) on a 256-ft tower, totaling 399 feet. steel tower is anchored in a platform of more than a thousand tons of concrete and steel rebar, 30 to 50 feet across and anywhere from 6 to 30 feet deep. Shafts are sometimes driven down farther to help anchor it. Mountain tops must be blasted to create a level area of at least 3 acres. model, the nacelle alone weighs more than 56 tons, the blade assembly weighs more than 36 tons, and the tower itself weighs about 71 tons a total weight of 164 tons. The corresponding weights for the Vestas V90 are 75, 40, and 152, total 267 tons; and for the Gamesa G87 72, 42, and 220, total 334 tons.
Health Hazards of Noise and vibrations are generated by these huge monster machines and topped with flashing lights.

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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-DRAFT-0009
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

USA should be careful on import material from China and India , Why is the Agency hurting the Poor and working class of America with unjust regulations.
China has passed United States in 2011 as the largest global GHG emitter and China, India, do not ascribe to international GHG reduction agreements. The emission of the nitrogen dioxide pollutant has gone up significantly in the South Asia region, Chhattisgarh region of India, largest increases occurred over Jamnagar (India), Dhaka (Bangladesh) had the largest increase (79 per cent) of any world city. Pollution in China's waterways remains 'grave, many of waterway tested in nearly 200 rivers was not safe to use. Dongying, near the mouth of the Yellow River, an aviary (bottom) sits silent and empty. The ecology of this regiona critical refueling stop for migratory birds along the East Asia-Australasia flywayhas been damaged .
CHINA; Shanghai only three percent of the water in the city's rivers and lakes was sufficient quality to be used as water resources for residents. The poor quality of the rest of Shanghais water resources is mainly due to discharges by local Shanghai. The Nature Conservancy in 2016 stated that 73 percent of the water catchment areas that supply surface water, which we depend on for daily consumption, to Shanghai and 29 other major Chinese cities were affected by medium to high pollution levels.
19 of the World's 20 most polluted cities are in Asia, and every year 2 millions of deaths are attributed to pollution.

Issue On October 30, 2009, the U.S. Environmental Protection Agency (EPA) promulgated a rule requiring annual reporting of greenhouse gas data from large greenhouse gas emissions sources in the United States.

ISSUE EPAs reliance on the IPCC AR4 for GHG Regulations, which violates the Agencys own internal policy. See Inspector General and GSO reports . EPA. Review Panel did not fully meet the independence requirements for reviews of highly influential scientific assessments because one of the panelists. was an EPA employee.

ISSUE EPA reliance on IPCC but the air pollution monitoring only available in one quarter of the population in China and only a few percent of the population in India, and in both countries, PM2.5 monitoring networks have only been created very recently, so long-term trends cannot be assessed. Indias pollution levels have kept creeping upwards, making 2015 the worst year on record. Out of Indias 89 cities only 17 are covered by the

continuous air quality monitoring system, Durgapur, Gorakhpur, Asansol, Shiliguri, Bareilly and Ludhiana are among the most polluted cities without.
Therefore, the 2009 Air rules on the USA should not apply since the report failed to account for all countries.

Example in Ludhiana India
PM 2.5 108 VERY BAD
PM 10 Pollution Level: 201 VERY BAD Extremely High
Pollution Index: 89.65 HIGH
Pollution Exp Scale: 162.21 Extremely High
Air Pollution 85.42Very High
Drinking Water Pollution 61.05 High , Bad
Water Pollution 70.24 High
Air quality14.58 Very Low
Drinking Water Quality38.95 Low
Water Quality 29.76 Low

Mexico, Mexico City
Air pollution data from World Health Organization Info Last update: March 2018
The air in Mexico City has an annual average of 20 g/m3 of PM2.5 particles. Thats 100% Worse than WHO safe level. (WHO recommends PM2.5 at 10)
PM10 42 Bad unhealthy
PM2.5 20 Red
Pollution Index: 85.32Bad unhealthy
Pollution Exp Scale: 153.63 high numbers for very polluted cities RED
Air Pollution 83.33 Very High
Drinking Water Pollution 61.02 High RED unhealthy
Water Pollution71.61 HighRedunhealthy
Air quality 16.67 Very Low Red unhealthy
Drinking Water Quality38.98 Low Bad unhealthy
Water Quality 28.39 Low Bad unhealthy

Compare to the USA
TEXAS HOUSTON The air has an annual average of 10 g/m3 of PM2.5 particles. Thats at the WHO safe level. Healthy, GREEN
ALABAMA, Birmingham The air quality has annual average of 11 g/m3 of PM2.5 particles. Thats 10% BETTER than WHO safe level. GREEN
KENTUCKY , Louisville annual average of 11 g/m3 of PM2.5 particles. Thats 10% BETTER than WHO recommended safe level. GREEN
PENNSYLVANIA, Pittsburgh, air quality has an annual average of 10 g/m3 of PM2.5 particles. Thats at the WHO safe level. GREEN
Agency needs to ensure only scientific studies with data available to the public are used when creating policy. increase transparency at the EPA and the BLM, boost confidence in the agencys decision making. improve transparency for the cost of each decision.
Tariffs are needed to protect America and resend and or cancel the 2009 GHG Regulations

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AFCARS 2018-2020

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

Document: ACF-2018-0003-DRAFT-0010
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

World Bank Report on global air pollution concerning findings; the most polluted countries in the world do not agree to the GHG emissions standards but are the number top polluters.
China has passed United States in 2011 as the largest global GHG emitter
China, India, Pakistan , do not ascribe to international GHG reduction agreements..
Pakistan, with a population of almost 180 million urban air pollution in Pakistan causes thousands of adult deaths each year.
Bangladesh Average Home to nearly 155 million people, the air quality has fallen nearly 60 per cent in the last 10 years. In fact three Bangladeshi cities are in the top 25 cities with the worst air quality.
Indias Center for Science and Environment (CSE) air pollution in New Delhi was 60 times higher than the level considered safe according to it had the highest rate of air pollution in the world according to WHO. Pollution from construction sites, industrial emissions, open fires, vehicle emissions and a staggering population of 1.2 billion put India at number nine on the list. found that outdoor air pollution alone causes more than 80,000 hospital admissions per year; nearly 8,000 cases of chronic bronchitis, and almost five million cases of lower respiratory cases in children under the age of five.
Chinese cities like Urumqi, Lanzhou and Linfen on lists of the world's most polluted places.
CHINA Beijing, Last update: March 2018
Air pollution data from World Health Organization Info
PM10 at 108 Red , Bad(as of 3.28.2018) Very Unhealthy
PM2.5 at 112 Red, Bad (3.28.18)
PM10 Pollution Level: Very High , Red, Bad
Pollution Index: 89.78 Bad, Red
Air Pollution 85.26 Very High Bad, Red
Drinking Water Pollution 70.45 High Bad, Red
Water Pollution 73.65 High Bad, Red
Air quality 14.74 Very Low Bad, Red
Water Quality 26.35 Low Bad, Red
China; in Yongledianzhen PM10 AQI 160 Very Unhealthy 3.28 .2018
PM2.5 AQI 147

China ; in Langfang PM10 AQI 220 Very Unhealthy 3.28 .2018

China should be added to Conflict Minerals Law of 2010. and UN and international rights groups should apply conflict-sensitive approaches to imports from china.
300 million Chinese in rural areas lack access to safe drinking water. Thousands of dead wildlife floating down the river that supplies Shanghai with its drinking water. Chemical accident leaked benzene, into a tributary of the Huangpu River . Country's most industrial regions are some of the driest, with 45 per cent of the country's gross domestic product produced in water-scarce provinces such as Hebei, Shandong and Shanxi.

America has Good Air and Good Water,.(Air Apps are everywhere now showing American as GREEN..) .. agency needs to stop Fake report are inappropriate as they contain errors of omission and/or commission and are neither convincing nor authoritative.
Many of the conclusions are incomplete, inaccurate, lack objectivity and consequently only serve to confuse the issue. Government initiate as a matter of priority thorough, should ban china imports, t engage across industry and community of real science , and include an advisory process representing the range of interests and concerns.

PUBLIC SUBMISSION

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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-DRAFT-0013
Comment on FR Doc # 2018-05042

Submitter Information

Name: Lyazidi Anouar
Organization: Lyazudi anouar

General Comment

FTC-I-6
System Name:
Public Records - FTC.
Security Rating:
Not applicable.
System Location:
Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.
See Annex III for sites a

As of: September 14, 2020
Received: May 18, 2018
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Tracking No. 1k2-937x-t8kq
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Submission Type: Web

PUBLIC SUBMISSION

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-DRAFT-0016
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Stop the violence in Schools, NO smart phones in schools, our children are too young to understand social media . French government is to ban students from using mobile phones in the country's primary, junior and middle schools. French education minister, said the measure would come into effect from the start of the next school year in September 2018. some education establishments already prohibited pupils from using their mobiles. Parents think It's probably a good idea when the kids are in school. student performance in exams significantly increases post mobile phone ban.
UK one successful example in the UK a Arts College , which reported soaring academic results following such a ban on Smart phones. Schools that ban students from carrying phones see a clear improvement in their test scores, according to a study by the London School of Economics
China , metal detectors are used to prevent students from bringing phones to school.
Nigeria: Bans came into effect in places like Nigeria in 2012,
Solomon Islands 2012 called for phones to be banned in their schools.
Health-related worries about potential impact on eyesight and about the role of phones (and other devices) in enabling 'cyber-addiction' (for what it's worth, such worries are often especially acute among many policymakers in East Asia). role that phones can play in so-called cyber-bullying is well known. In addition to the psychologically damaging role that phones can play, there are also worries about the potential use of such devices in certain places in helping foment unrest.
AUSTRALIA'S Federal Education Minister has called for smartphones to be banned in classrooms.
Uganda banned phones in schools in 2013,
Malaysia reaffirmed its own similar 2014 ban.
Belgium 2014 banned the sales and advertising of phones to children under seven
Child psychologist, internet safety working group, said smartphones must be banned in primary schools. children needing phones for "security purposes" should only be given "dumb phones" without internet access, he said.
Schools should Ban on mobile phones , in many parts of the world the bad started around 2008-2012 ..
Role of phones in classrooms are a digital distraction devices.
Indonesia considering bans on student use of phones inside and outside of schools
Harmful impact of heavy mobile phone use among children is an increasingly important issue for teachers, parents and government officials around the world.

Reduce on-line bullying via instant messaging apps. Soaring mobile phone use and rising bullying rates have prompted officials in a Japanese city are launching an ambitious campaign to ban children from using smartphones and mobile devices.

Cyberbullying is when children are bullied on technology devices such as phones and social media sites and includes being left out of groups or conversations, being called names or having mean things said about them, having lies or rumors spread about them, receiving repeated unwanted messages, being sent inappropriate content, and receiving violent threats. It is quite reasonable that they should be banned. There is so much research now about the negative impacts of social media on young people's development that I think we need to put a stop to it. A risked being sued by the parents of cyber bullying victims over messages sent in school hours. adults supported the ban, with the majority calling on schools to introduce guidelines to tackle the growing problem of online abuse.

Successful classrooms are those where teachers are in control and where there no distractions as students don't have the luxury of surfing the net, figuring out what to do on the weekend or updating their social networking sites

Students around the world have long been innovative in the ways they have utilized technologies to cheat on exams. The mobile phone is a device can be particularly helpful in this regard. many other reasons put forward in forth of banning phones in schools, and reasons for banning phones in schools might potentially apply in other contexts as well.

Technology curfew move reportedly aims to discourage children from spending an unhealthy amount of time on electronic devices

Claims of bullying relating to number of popular messaging apps.

PUBLIC SUBMISSION

As of: September 14, 2020
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Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0017
Comment on FR Doc # 2018-05042

Submitter Information

Name: Margaret Waynick
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General Comment

This is just another example of wasted money to act like something is being done, when in fact allows dismissing needed rules. This is already in effect & allows Tribal Nations to concentrate on more urgent areas.
There isnt any analysis of the benefits that will be lost. Just another one sided rule to make the rich richer.
I dont trust anything that someone with so much influence from Russia, Turkey, etc to guard American interest.

As of: September 14, 2020
Received: May 20, 2018
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Tracking No. 1k2-9396-u58y
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PUBLIC SUBMISSION

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-DRAFT-0018
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Social Media is the Problem that creates Violence in our schools, turn off the news and bulling propaganda, will stop the Viciousness , Schools must remove smart phones during classes.
Schools were safe before Social Media.
Bullies have gone from Playgrounds to cell Phone apps. Before 2000 you would never hear about these problems of todays violence. Reduce on-line bullying via instant messaging apps. Soaring mobile phone use and rising bullying rates should prompt officials to launching ambitious campaign to ban children from using smartphones and mobile devices.
All violence in our schools seem to have one thing in common; a Cell phone with Social media with push recommendations which kids are too young to understand the social engineering ideas being pushed at them.
Teachers unions should stop politics in school classrooms. In a study, The democratic political registration in most top Tier liberal arts colleges are at 61 percent, professors in top-tier liberal arts colleges is overwhelmingly Democratic, 78.2 percent of the academic departments are democratic. highest Democratic to republican ratio of all is for the most ideological field: interdisciplinary studies. Democratic to Republican ratios among the elite liberal arts faculty are 20 to 8:1 for females.
Protect our Children from Social Media bulling can be done very fast.
Child Psychologist said smartphones must be banned in primary schools. Children needing phones for "security purposes" should only be given "dumb phones" without internet access.
FRANCE; has ban students from using mobile phones in the country's primary, junior and middle schools.
French education minister, said the measure would come into effect from the start of the next school year in September 2018. Some education establishments already prohibited pupils from using their mobiles.
CHINA , Metal detectors are used to prevent students from bringing phones to school.
AUSTRALIA'S Federal Education Minister has called for smartphones to be banned in classrooms.
Uganda banned phones in schools in 2013,
Nigeria: Bans came into effect in places like Nigeria in 2012,
Solomon Islands 2012 called for phones to be banned in their schools.
Malaysia reaffirmed its own similar 2014 ban.
BELGIUM IN 2014 banned the sales and advertising of phones to children under seven

Parents think It's probably a good idea when the kids are in school. Successful classrooms are those where teachers are in control and where there no distractions as students don't have the luxury of surfing the net, figuring out what to do on the weekend or updating their social networking sites. Children are bullied on technology devices such as phones and social media sites and includes being left out of groups or conversations, being called names or having mean things said about them, having lies or rumors spread about them, receiving repeated unwanted messages, being sent inappropriate content, and receiving violent threats. It is quite reasonable that they should be banned. There is so much research now about the negative impacts of social media on young people's development that I think we need to put a stop to it. . adults supported a ban, with the majority calling on schools to introduce guidelines to tackle the growing problem of online abuse. Technology curfew move reportedly aims to discourage children from spending an unhealthy amount of time on electronic devices

In study student performance in exams significantly increases post mobile phone ban. UK one successful example in the UK a Arts College , which reported soaring academic results following such a ban on Smart phones. Schools that ban students from carrying phones see a clear improvement in their test scores, according to a study by the London School of Economics.

Stop Abuses by Social Media Data broker companies are collect and aggregate consumer information from a wide range of sources to create detailed profiles of individuals. by gathering data on people without their proper consent. includes tracking visitors to websites with an embedded apps. Problematic is the collection of data in places and moments where the user can't realistically expect that data is collected. This data to be used is no longer voluntary. Data Brokers sell or share your personal information with others. Industry that collects, analyzes and sells the personal information of millions of Americans with virtually no oversight. religion, ethnicity, political affiliations, user names, income, and family medical history. clubs you may be frequenting what bars and restaurants you're making purchases at, what other products you may be buying online.

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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-DRAFT-0021
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

As a signal of more and more Violence with our Schools and Children, that America government must take action against big data social media apps. And for Data Protection Regulation. The options are to do nothing and hope that things resolve themselves. Or take action, as EU New reg. called General Data Protection Regulation The European Data Protection Regulation will be applicable as of May 25th, 2018 , has, knowing that internet privacy is on wrong track , and that we must take a stand as a society against big data, that the current path of commercial enterprise is unacceptable. Social Media is the Problem that creates Violence in our schools, turn off the news and bulling propaganda, will stop the Viciousness , Schools must remove smart phones during classes. Schools were safe before Social Media.
Bullies have gone from Playgrounds to cell Phone apps. Before 2000 you would never hear about these problems of todays violence. Reduce on-line bullying via instant messaging apps. Soaring mobile phone use and rising bullying rates should prompt officials to launching ambitious campaign to ban children from using smartphones and mobile devices.
All violence in our schools seem to have one thing in common; a Cell phone with Social media with push recommendations which kids are too young to understand the social engineering ideas being pushed at them. Teachers unions should stop politics in school classrooms. In a study, The democratic political registration in most top Tier liberal arts colleges are at 61 percent, professors in top-tier liberal arts colleges is overwhelmingly Democratic, 78.2 percent of the academic departments are democratic. highest Democratic to republican ratio of all is for the most ideological field: interdisciplinary studies. Democratic to Republican ratios among the elite liberal arts faculty are 20 to 8:1 for females.
Protect our Children from Social Media bulling can be done very fast.
Child Psychologist said smartphones must be banned in primary schools. Children needing phones for "security purposes" should only be given "dumb phones" without internet access.
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AUSTRALIA'S Federal Education Minister has called for smartphones to be banned in classrooms.
Uganda banned phones in schools in 2013,

Nigeria: Bans came into effect in places like Nigeria in 2012,
Solomon Islands 2012 called for phones to be banned in their schools.
Malaysia reaffirmed its own similar 2014 ban.
BELGIUM IN 2014 banned the sales and advertising of phones to children under seven
EU understand the problem is Social Media with Violence. EU enacting New reg. called General Data Protection Regulation. The European Data Protection Regulation will be applicable as of May 25th, 2018 in all member states to harmonize data privacy laws across Europe.
(1) This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of personal data.
(2) This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.
(3) The free movement of personal data within the Union shall be neither restricted nor prohibited for reasons connected with the protection of natural persons with regard to the processing of personal data.

Parents think It's probably a good idea when the kids are in school. Successful classrooms are those where teachers are in control and where there no distractions as students don't have the luxury of surfing the net, figuring out what to do on the weekend or updating their social networking sites. Children are bullied on technology devices such as phones and social media sites and includes being left out of groups or conversations, being called names or having mean things said about them, having lies or rumors spread about them, receiving repeated unwanted messages, being sent inappropriate content, and receiving violent threats. It is quite reasonable that they should be banned. There is so much research now about the negative impacts of social media on young people's development that I think we need to put a stop to it. . adults supported a ban, with the majority calling on schools to introduce guidelines to tackle the growing problem of online abuse.
Technology curfew move reportedly aims to discourage children from spending an unhealthy amount of time on electronic devices

PUBLIC SUBMISSION

As of: September 14, 2020
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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-DRAFT-0059
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

What you are doing to these children who you are separating from their parents is unconstitutional and illegal. You have no right to deny amnesty to anyone who migrates here looking for refuge. You are committing crimes against humanity by placing innocent people in prison while their children are being kept at an old Walmart store in cages. What the fuck is wrong with you. Human beings dont belong in cages. You are a bunch of Nazis. The only difference is that you are targeting Mexicans and South Americans.

PUBLIC SUBMISSION

As of: September 14, 2020
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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-DRAFT-0068
Comment on FR Doc # 2018-05042

Submitter Information

Name: Kim Koza

General Comment

Please do not punish LGBTQ Americans by taking away their ability to be a family! Its so un-American!

PUBLIC SUBMISSION

As of: September 14, 2020
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Submission Type: 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-DRAFT-0070
Comment on FR Doc # 2018-05042

Submitter Information

Name: Kim Koza

General Comment

Please do not punish LGBTQ Americans by taking away their ability to be a family! Its so un-American!

PUBLIC SUBMISSION

As of: September 14, 2020
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Status: Pending_Post
Tracking No. 1k2-93nz-lxlb
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0074
Comment on FR Doc # 2018-05042

Submitter Information

Name: Karen Kirchen

General Comment

I can't imagine why the question about whether sexual orientation is relevant to the reason for needing foster care placement. Young LBGT kids are sometimes rejected by the their own family and have a high suicide rate. It really is critical that they have a supportive environment (and without asking, there is no way to know.) While everyone has a right to their religious views, the government's interest here is protecting the children. Placing children with sexual orientation conflict with their parents with families that are not supportive would not be in their best interest.

PUBLIC SUBMISSION

As of: September 14, 2020
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Tracking No. 1k2-93od-jrl1
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0090
Comment on FR Doc # 2018-05042

Submitter Information

Name: Jodi Roso
Address: 92028
Email: Omgitsjodi@outlook.com

General Comment

Most children were more than likely removed with false allegations and overly exaggerated personal opinion. I had my daughter moved from Oregon to California because they were trying to bond our daughter to the foster mother whom she did not care for. Reunification was the said plan on paper, however it hasnt been in reality and now case manager is pushing adoption with no foundation to said allegations. My case worker has lied in court blatantly to violate us more as if we havent suffered enough. Our bond with our daughter remains solid and steadfast despite their attempts at ripping us apart. Due to a spinal injury thats left me unable to walk until surgery my husband and I have not been able to do the services demanded of us as hes my caretaker. We are financially devestated and have lost everything including our vehicles and almost our sanity. If they move forward with adoption on the 21 in lane county we will have nothing left., least nothing worth living for. Sorry for crashing the party it wasnt intentional.

PUBLIC SUBMISSION

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Tracking No. 1k2-93oq-zy8q
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Submission Type: 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-DRAFT-0117
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

The placing of Indian children in foster care is both a failure to follow the rule of law and to protect children from identified and preventable harm. I stand opposed.

PUBLIC SUBMISSION

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Submission Type: 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-DRAFT-0121
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous
Address: 81601
Email: turboresists@outlook.com

General Comment

Any child regardless of sexual identity or orientation deserves not only the protection afforded to any child but the opportunity to thrive in an environment free of judgement.

PUBLIC SUBMISSION

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Tracking No. 1k2-93oy-xygb
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0128
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Native youth and LGBTQ youth are known to have worse outcomes in the foster care system than their non-Native and non-LGBTQ peers. For this reason it is important to continue to track them through the system.

PUBLIC SUBMISSION

As of: September 14, 2020
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Tracking No. 1k2-93p1-4nwx
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0142
Comment on FR Doc # 2018-05042

Submitter Information

Name: Anonymous Anonymous

General Comment

Everyone deserves the right to love a child. There arent even enough good foster parents as it is! Love is love and if the child is in a supportive loving home, why wouldnt you allow them to have that opportunity?

PUBLIC SUBMISSION

As of: September 14, 2020
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Status: Pending_Post
Tracking No. 1k2-93p5-c51k
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0172
WASHINGTON DUPLICATE - DON'T POST Comment on FR Doc # 2018-05042

Submitter Information

Name: Stephanie Sarber
Address: 98504
Email: stephanie.sarber@dshs.wa.gov

General Comment

Washington State Children's Administration respectfully submits the attached comments.

Attachments

State of Washington Comments - ANPRM

STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
CHILDREN'S ADMINISTRATION
PO Box 45040 • Olympia WA • 98504-5710

June 13, 2018

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

RE: Washington State's Comments on ANPRM
Adoption and Foster Care Analysis and Reporting System (AFCARS)
Docket number 2018-05042; RIN number 0970-AC72

Dear Ms. McHugh:

The State of Washington Children's Administration (CA) submitted responses to both the NPRM and SNPRM in 2015 prior to the issuance of the 2016 final rule and requests the ACF review those earlier responses. Washington recently submitted a response to RIN 0970-AC47 in support of the two-year implementation extension based on additional staff burden for training and data collection required in the 2016 Final Rule, and the costly and extensive changes to a fragile SACWIS system as we work toward a new/modernized Comprehensive Child Welfare Information System (CCWIS).

Washington now respectfully submits the following comments in response to the Advanced Notice of Proposed Rulemaking in the Federal Register issued by the Administration on Children, Youth and Families (ACYF) on March 15, 2018.

Washington has a strong relationship with our tribal partners and holds a very high value in complying with the Indian Child Welfare Act. Washington continues to support collection and reporting of essential Indian Child Welfare Act (ICWA) data and recognizes data is necessary in understanding compliance and technical assistance needs in an effort to improve outcomes for AI/AN children who are in foster care, adoption, and guardianship programs.

Washington also supports incorporating other federal data requirements into the AFCARS elements to simplify mandatory state reporting to the Children's Bureau (e.g. social worker monthly visits with children and commercially sexually exploited children data).

We sincerely hope our comments offer insight as to the challenges faced by state agencies in implementing these requirements, with the hope that ACYF might offer additional resources and greater system coordinated planning.

While Washington concurs with the need to ensure ICWA is consistently applied and that data is necessary to measure compliance as clearly outlined in the Department of Interior, Bureau of Indian Affairs NPRM issued in April 2015, we propose that AFCARS penalties should be waived for elements that rely on the action(s) and data of another entity. Data elements that fall in this category are:

- **18 – 20. (b.5) Court determination that ICWA applies**
- **24. (b.7) Request to transfer to tribal court – ICWA**
- **25 – 28. (b.8) Denial of transfer – ICWA**
- **166.(e.10) Good cause under ICWA**
- **167 - 171. (e.11) Basis for good cause**
- **267. (h.22) Good cause under ICWA**
- **268 – 272. (h.23) Basis for good cause**

As indicated in previous comments from 2015, Washington continues to have concerns with our ability to comply with reporting educational and medical data and information collected and maintained by other entities such as the WA Office of the Superintendent of Public Instruction (OSPI) and WA Health Care Authority (HCA).

Washington's Department of Social and Health Services Children's Administration and (OSPI) continue to work on a cooperative data share agreement, which has faced significant legal barriers related to federal law (e.g. Family Educational Rights and Privacy Act). We have recently reached agreement on a foundational data share agreement for a bidirectional interface to authorize an exchange of data to be used for individual child case management. However, we have yet to work through challenges/concerns regarding use of the data. In particular, OSPI and their legal counsel cite FERPA as restricting the use of these data by the public child welfare agency for summary reporting or to comply with federal reporting requirements (e.g. AFCARS). Washington recommends that the following data elements be removed from the AFCARS reporting requirements or that AFCARS penalties not be applied to these data elements until the Administration for Children Youth and Families and the federal Department of Education issue clear joint policy that grants child welfare agencies access to use data about foster children, which is currently interpreted by the education agency to be restricted from such use by FERPA.

Educational elements:

- **53. (b.14) school enrollment**
- **54. (b.15) Educational level**
- **55. (b.16) Educational stability**

- **66. (b.18) Special Education**

While new CCWIS rules require an educational data exchange, states should not incur penalties for information that they are unable to report until they are able to work through issues around FERPA interpretation and allowances. We recommend the ACF continue to work with the Department of Education to establish clear and consistent guidance at the federal level for all states.

Current AFCARS reporting, along with the 2016 Final Rule, also pose challenges due to HIPPA concerns the public child welfare agency's ability to access a child's medical information, particularly if the child is over the age of 12 and declines release of the information. There are no reporting options to account for this circumstance and can result in increased error rates, which under the new rules, will also result in penalties against the state.

- **41. (b.13) Health, behavioral or mental health conditions.**

In addition to reporting concerns, there are opportunities to streamline reporting. Unless there are specific business needs for higher specificity, elements like the health, behavioral or mental health conditions should be reviewed to determine if they could be streamlined:

- **42. (b.13.i) Intellectual disability**
- **47. (b.13.vi) Mental/emotional disorders**
- **49. (b.13.vii) Serious mental disorders**
- **50. (b.13.ix) Developmental delay**
- **51. (b.13.x) Developmental disability**

Could be streamlined to:

- Intellectual delay or disability
- Mental/Emotional disorder

- **(d.6) Child and family circumstances at removal.**
  - The existing Circumstances Associated with Removal currently has **17** identified circumstances, the 2016 Final Rules expand this under the Child and Family circumstances at removal to **34** separate circumstances. Each circumstance must be accounted for in the extraction code and mapped to "applies" or "does not apply".

- **136. (d.6.xxix) Parental Immigration detainment or deportation**
  The parent is or was detained or deported by immigration officials.
  - Incarceration of caretaker covers this sufficiently and is already an existing option under Circumstances Associated with Removal and continues to also be an option under the new 2016 final rules within the Child and Family Circumstances at

Removal. What is the reporting need to identify parental deportation separately from incarceration? Washington strongly disagrees with the collection and reporting of this information. In the 2016 proposed rules, Parental Immigration Detainment or Deportation was identified as a separate data element, which was opposed by many states. Unfortunately, in the 2016 rules, while it is moved as a selection under an overall data element of circumstances at removal, it still represents an attempt to collect this data.

- **(d.6.xxx) Family conflict related to child's sexual orientation, gender identity, or gender expression.**
    - Child sexual orientation is self-reported. We will address concerns regarding this data collection, however specific to circumstances at removal, we feel this can be captured as it currently is under the existing parent/child conflict option.

It is Washington's policy to record information about foster and adoptive parents that is relevant to our decision to approve a home study or that is a major determinant in the decision to place a child in the home. We do not consider a caregiver's sexual orientation, marital status, or gender in either of these determinations; therefore, the state is not supportive of asking about or recording this information in the electronic information system. The following is a list of the data elements that we recommend removing for this reason and other issues as noted:

- **184. (e.18) Gender of first foster parent**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **185. (e.19) First foster parent sexual orientation**
- **196. (e.24) Gender of second foster parent**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **197. (e.25) Second foster parent sexual orientation**
- **172. (e.12) Marital status of the foster parent(s)**
- **243. (h.7) Gender of first adoptive parent or guardian**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
- **255. (h.13) Sex of second adoptive parent, guardian, or other member of the couple**
    - WA now allows for Gender X, which is not accounted for in this reporting (only M or F).
    - We also question the wording inconsistency between h.7 and h.13.
- **256. (h.14) Second adoptive parent, guardian, or other member of the couple sexual orientation.**
    - We also question the wording inconsistency between e.25 and h.14.
- **24. (h.1) Marital status of the adoptive parent(s) or guardian(s).**

While we concur that the sexual orientation of the youth and that of the foster and/or adoptive parents may help agencies better understand the experiences and outcomes of LGBTQ youth, we feel that information can be discussed under case planning for individual youth and are concerned that questioning youth and caregivers could result in negative impacts and a perception of bias.

The Final Rule is admirable in its intent to use administrative data to improve outcomes for children and families, however the new AFCARS requirements pose a significant impact to states and creates an undue burden at a time when limited resources are needed to support casework practice. This impact is summarized in the table below, indicating that 60 percent of the data elements in the final rule will require system modifications just to be available for reporting and more than 60 percent will require new extraction code to be developed.

Analysis of the overall level of effort around changes specific to the data elements.

Level of Effort Required to Come into Compliance with New AFCARS Requirements	Number of NEW AFCARS Elements with NO Crosswalk to Current Elements	Number of NEW AFCARS Elements that Federal Crosswalk Linked to Current Elements	Total
Requires NEW fields and functionality to be added to system. Much of the information is only available in narrative.	102	21	123
Requires MODIFICATIONS to the system for existing information to be reported as required.	19	29	48
Currently AVAILABLE in the system; some will require new extraction code to meet new requirements.	30	90	120
TOTAL	151	140	291

In Summary, Washington concludes with the following overall recommendations:

- Concur with incorporating other reporting requirements under IVE in to AFCARS (e.g. SW visits), ICWA elements that fall under the child welfare responsibilities for compliance and adding in reporting elements related to newer federal legislation (e.g. commercially sexually exploited children). However, the extensive changes and additions that fall outside of these reporting responsibilities needs to be carefully reviewed and should be supported by an identified business justification.

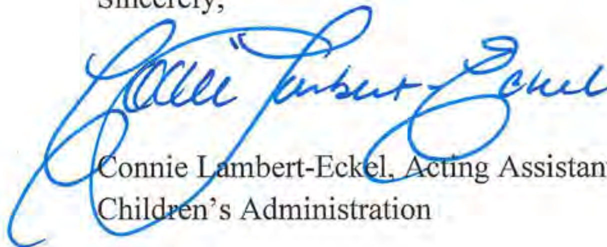
- Recommend further work between ACYF, states and tribes to thoroughly review all data elements, develop clear definitions and standards to ensure consistency in reporting and comparisons, and determine relevance of collecting each data element.
    - Recommend the convening of a special workgroup comprised of all states/tribes with direct AFCARS reporting responsibilities to work together with the ACF to review and streamline AFCARS data collection/reporting with a focus on federal requirements and outcomes. We believe there are a number of opportunities to streamline the data collection requirements under AFCARS to meet federal, tribal and state business needs in measuring compliance and outcomes.

- Penalties – Washington currently has an AFCARS improvement plan to address deficiencies identified during our most recent AFCARS review. Implementing the penalties section outlined in the proposed rules would negatively impact our ability to complete work timely by further reducing our resources.
    - Any data collection/reporting on elements that do not specifically fall into ensuring compliance around rules and outcomes, at the very least, should not be subject to penalties.
    - Should consider availability of the data, particularly when the data is based on the action or under the authority of a 3rd party.
    - Recommend that penalties be waived as long as the state is in compliance with an approved AFCARS Improvement Plan.

- Data collection should be assessed for negative impacts.

Thank you for your consideration of these comments.

Sincerely,



Connie Lambert-Eckel, Acting Assistant Secretary
Children's Administration

PUBLIC SUBMISSION

As of: September 14, 2020
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Comment On: ACF-2018-0003-0001
Adoption and Foster Care Analysis and Reporting System: Advance notice of proposed rulemaking.

Document: ACF-2018-0003-DRAFT-0185
Comment on FR Doc # 2018-05042

Submitter Information

Name: Debbie Knuth

General Comment

I'm asking HHS to keep the questions protecting the rights of LGBTQ foster children.

PUBLIC SUBMISSION

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

Document: ACF-2018-0003-DRAFT-0207
Comment on FR Doc # 2018-05042

Submitter Information

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General Comment

Please see the attached comment.

Attachments

Sign On to Comments on AFCARS Rule to Recommend Retaining New Data Elements- Multidisciplinary Scholar Letter

the Williams INSTITUTE

Bianca D.M. Wilson, Ph.D.
Senior Scholar in Public Policy
The Williams Institute
On Sexual Orientation and Gender Identity
Law and Public Policy

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 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.

Dear Ms. McHugh:

On behalf of scholars from various disciplines—social work, community psychology, demography, economics, law, medicine, public health, political science, public policy, psychology, social epidemiology, among others—who have extensive experience studying the experiences and outcomes of youth in foster care and/or sexual and gender minorities (SGM) in the United States, we write to strongly request that the 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 undersigned have published extensively on issues related to youth in out-of-home care, permanency risks and outcomes, and SGM youth and adults. Many of the undersigned are scholars at or affiliated with the Williams Institute, an academic research center at UCLA School of Law dedicated to conducting rigorous and independent research on sexual orientation and gender identity. Scholars at the Williams Institute were the first to publish a study documenting the high levels of overrepresentation of LGBT foster youth in child welfare, using data collected through traditional survey research methods. The absence of administrative data at a national level make it impossible to track whether the system is making improvements in the treatment and care of this very vulnerable, but significant proportion, of the population of youth in out-of-home care. 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. For these reasons and those explained in more detail below, we strongly recommend that the current data elements in the Final Rule are maintained.

A. 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

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.[1] 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."[2] 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.[3] 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 by the Williams Institute under the Administration of Children & Families Permanency Innovations Initiative.[4,5] 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 (an indicator related to gender expression), and 5.6% were

[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm
[2] 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
[3] *Ibid.*
[4] 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
[5] Wilson BDM, Kastanis AA. (2015). Sexual and gender minority disproportionality and disparities in child welfare: A population-based study. Child Youth Services Review, 58, doi:10.1016/j.childyouth.2015.08.016.

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transgender. Other studies have estimated similarly high numbers of sexual minority youth using national data.[6]

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded Los Angeles foster youth study showed that LGBTQ youth have a higher number of foster care placements and are more likely to be living in a group home, both risks to lower rates of permanency.[7] Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and they were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[8] Further, both the Los Angeles study and the study using nationally representative data showed that LGB youth were more likely to experience psychological distress than non-LGB youth.[9] 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.

B. 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. Over the years, 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*

[6] *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

[7] Same as 4 above.
[8] *Ibid.*
[9] *Ibid.*

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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.

C. The Data Elements in the Final Rule are Not Overly Burdensome as They Reflect a Now Longstanding History of Collecting Data in Sexual Orientation, Gender Identity and Gender Expression

The proposed data elements specific to sexual orientation, gender identity, and gender expression also represent advances in science over the last 25 years in which the feasibility and accuracy of data collection on these topics has been consistently demonstrated. Indeed, as the SMART report explained, "[s]exual orientation questions have been asked on large-scale school-based surveys of adolescents around the world since the mid-1980's."[10] For example, the Bureau of Justice Statistics' National Survey of Youth in Custody (NSYC) includes a measure of sexual orientation and has provided a wealth of important information about disproportionate incarceration and victimization of sexual minority youth in custody.[11] The CDC's National Youth Risk Behavior Risk Survey successfully includes respondents as young as 13 and has included sexual orientation measures since 2015. In 2015, more than 15,500 youth from across the country filled out the YRBS survey on their own, anonymously at school.[12] Even before that, an increasing number of jurisdictions included sexual orientation measures on their YRBSs since the mid-1990s.[13] The National Longitudinal Study of Adolescent to Adult Health (Add Health), a longitudinal study of a nationally representative sample of adolescents in grades 7-12 in the United States during the 1994-1995 school year, included sexual orientation attraction and partner gender questions in both the baseline wave and Wave II (1996), when respondents were largely below the age of 18. Analysis of Add Health data has indicated, for example, disparities in experiences of violence among adolescents reporting same-sex, both-sex, and other-sex romantic attraction.[14] The National Survey

[10] SEXUAL MINORITY ASSESSMENT RESEARCH TEAM (SMART), WILLIAMS INSTITUTE, BEST PRACTICES FOR ASKING QUESTIONS ABOUT SEXUAL ORIENTATION ON SURVEYS (2009), https://williamsinstitute.law.ucla.edu/wp-content/uploads/SMART-FINAL-Nov-2009.pdf [hereinafter SMART report]; GENDER IDENTITY IN U.S. SURVEILLANCE (GENIUSS) GROUP, WILLIAMS INSTITUTE, BEST PRACTICES FOR ASKING QUESTIONS TO IDENTIFY TRANSGENDER AND OTHER GENDER MINORITY RESPONDENTS ON POPULATION-BASED SURVEYS (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/geniuss-report-sep-2014.pdf [hereinafter GenIUSS Report].

[11] 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), https://www.bjs.gov/content/pub/pdf/flilcsvjf12.pdf.

[12] 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 (Mar. 3, 2011), https://www.cdc.gov/nchs/data/nhsr/nhsr036.pdf.

[13] Bianca D.M. Wilson et al., Williams Institute & UCLA Center for Health Policy Research, Characteristics and Mental Health of Gender Nonconforming Adolescents in California (2017), http://healthpolicy.ucla.edu/publications/Documents/PDF/2017/gncadolescents-factsheet-dec2017.pdf.

[14] Bianca D.M. Wilson et al., Williams Institute, Sexual and Gender Minority Youth in Foster Care: Assessing Disproportionality and Disparities in Los Angeles (2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.

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of Family Growth (NSFG), which includes respondents as young as 15, has included a sexual orientation behavior measure for many years.[15] The California Health Interview Survey has asked youth about their gender expression since 2015.[16] There are many more examples of surveys and studies that have successfully collected sexual orientation and gender identity data from youth, including the L.A. Foster Youth Study (which included adolescents as young as 12).[17] Each of the surveys and studies provides invaluable information about SGM youth that have impacted policy making and programming in a variety of settings.

And while the feasibility to do this has been demonstrated, numerous scholars and state and federal data science representatives still see a need to call for the increase in representative data of sexual and gender minorities because there is too little available. For this reason, the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys has cogently explained that "there remains a lack of data on the characteristics and well-being" of SGM populations, and that "[i]n order to understand the diverse need of SGM populations, *more representative and better quality data need to be collected.*"[18] Without such data, public policymakers, law enforcement agencies, and service providers—including federal agencies tasked with promoting the security and well-being of our nation's people—are hindered in their efforts to adequately serve SGM populations, including LGBT youth. This is no less the case for the child welfare system and the administrative data collected to better understand their demographics, needs, and outcomes.

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

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."[19] 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.[20] Recruitment of LGBTQ families could provide a source of affirming and supportive homes for LGBTQ foster youth.

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

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15 GARY J. GATES, GALLUP, IN US, MODE ADULTS IDENTIFYING AS LGBT (2017), http://www.gallup.com/poll/201731/lgbt-identification-rises.aspx.

16 *See also* SMART Report, *supra* note **Error! Bookmark not defined.**0, at 9.

17 *See generally id.* at 17-23, 26-27 (discussing privacy and other administration considerations when asking sexual orientation questions); GenIUSS Report, *supra* note **Error! Bookmark not defined.**0, at 19-26 (discussing privacy and other administration considerations when asking gender identity questions).

18 FEDERAL INTERAGENCY WORKING GROUP ON IMPROVING MEASUREMENT OF SEXUAL ORIENTATION AND GENDER IDENTITY IN FEDERAL SURVEYS, TOWARD A RESEARCH AGENDA FOR MEASURING SEXUAL ORIENTATION AND GENDER IDENTITY IN FEDERAL SURVEYS: FINDINGS, RECOMMENDATIONS, AND NEXT STEPS, 2 (2016), https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/SOGI_Research_Agenda_Final_Report_20161020.pdf

19 Same as 2 above.

20 *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/

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parents than their different-sex counterparts.[21] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[22] Data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will likely 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.

E. 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.

Youth who are transgender and or gender nonconforming specifically have a difficult time in child welfare systems.[23,24] 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 adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

F. 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.[25] 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

[21] 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/

[22] 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/

[23] Robinson, B. A. (2018). Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality. CHILD WELFARE, 96(2), 29-45.

[24] Choi, S. K., & Wilson, B. D. (2018). Gender Diversity and Child Welfare Research: Empirical Report and Implications of the Los Angeles County Foster Youth Study. CHILD WELFARE, 96(1), 79-101.

[25] 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

numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.[26] 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.[27] 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."

G. 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 and feasibility of these data elements outlined in the Final Rule.

Sincerely,

Bianca D.M. Wilson, Ph.D., Rabbi Barbara Zacky Senior Scholar of Public Policy

KerithConron, ScD, MPH, Research Director and Distinguished Scholar

Ilan Meyer, Ph.D., Distinguished Senior Scholar of Public Policy

Jody Herman, Ph.D., Scholar of Public Policy

Adam P. Romero, J.D., Arnold D. Kassoy Scholar of Law and Director of Legal Scholarship and Federal Policy

Nanette Gartrell, M.D., Williams Distinguished Visiting Scholar

Soon Kyu Choi, MPP, MSc, Project Manager

I am lending my support to this letter my adding my name and affiliation (for identification purposes). *Listed by order of time of endorsement:*

[26] 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).
[27] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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

Document: ACF-2018-0003-DRAFT-0223
Comment on FR Doc # 2018-05042

Submitter Information

Name: Sam Brinton
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Organization: The Trevor Project

General Comment

Please find the document "Trevor Project Comments (ACF-2018-0003)" attached with our comment.

Attachments

Trevor Project Comments (ACF-2018-0003)

Founders
Peggy Rajski
Randy Stone (1958-2007)
James Lecesne

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Amit Paley
CEO & Executive Director

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 Regulations.gov

Dear Ms. McHugh:

On behalf of The Trevor Project 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 Trevor 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.

As you know, the Trevor Project is the nation's largest provider of crisis intervention and suicide prevention services to lesbian, gay, bisexual, transgender and questioning young people ages 13-24. Every day, we save countless young lives through our phone, text and instant message crisis intervention services. As a leader and innovator in suicide prevention, The Trevor Project offers the largest safe social networking community for LGBTQ youth, best practice suicide prevention educational trainings, resources for youth and adults, and advocacy initiatives.

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

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.[1] In April

[1] https://www.ssa.gov/OP_Home/ssact/title04/0479.htm

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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."[2] 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.[3] 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.[4] 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.[5] 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.[6] 57% of the foster youth over 14 who identify as LGBQ, or between 8,100 and 11,300 youth, are youth of color.[7]

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.[8] 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

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[2] 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
[3] *Ibid.*
[4] 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
[5] *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
[6] 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.
[7] Same as 5 above.
[8] Same as 4 above.

involvement.[9] They were also more likely to have become homeless, with many citing lack of acceptance in foster care as the reason they experienced homelessness.[10] 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.[11] 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.[12] 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

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[9] *Ibid.*
[10] *Ibid.*
[11] 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
[12] *Ibid.*

care.[13] Based on average annual foster care maintenance payments per child of $19,107 in FY2010,[14] 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[15], 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.

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[13] 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
[14] Same as 11 above.
[15] Same as 4 above.

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.[16] National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.[17] 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."[18] 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.[19] 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 "youth 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."[20] 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

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[16] 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/
[17] 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/
[18] Same as 2 above.
[19] *ECDF Act Facts*, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/
[20] 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)."

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.[21] 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.[22] 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.[23] 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 "information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." Additionally,

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[21] 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

[22] 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).

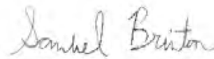
[23] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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,



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Submitter Information

Name: Anonymous Anonymous

General Comment

Discrimination by any other name is still Discrimination. And none of your damn business.

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Comment on FR Doc # 2018-05042

Submitter Information

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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 keep asking if children were removed from their home due to family conflict related to childs sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents.

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.

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Comment on FR Doc # 2018-05042

Submitter Information

Name: Terrelene Massey
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General Comment

Good afternoon. See attached file(s) from President Russell Begaye, Navajo Nation President. I am submitting this for the Navajo Nation.

Please let me know if there are any questions at 928-871-6851 or tmassey@navajo-nsn.gov. Thank you.

Terrelene Massey, Esq.
Executive Director
Navajo Division of Social Services.

Attachments

Letter to K. McHugh Re-Adoption Foster Care Analysis Reporting System

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

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.* Include [docket number and/or RIN number] in subject line of the message.

• *Mail:* Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please be aware that mail sent in response to this ANPRM may take an additional 3 to 4 days to process due to security screening of mail.

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

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Division of Policy, Children's Bureau at (202) 401–5789.

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

I. Background

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

• Demographic characteristics of adopted and foster children and their biological and adoptive or foster parents;

• Status and characteristics of the foster care population;

• Number and characteristics of children entering and exiting foster care, children adopted or for whom adoptions have been terminated, and children placed in foster care outside of the state which has placement and care responsibility for them;

• Extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance; and

• Number of foster children identified as sex trafficking victims before entering and while in foster care.

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

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

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

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

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

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

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

II. Questions for Comment

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

a. Recordkeeping hours spent annually:

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

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

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

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

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

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

b. Recordkeeping hours spent annually:

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

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

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

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

3. Previously, we received comments that particular data elements did not lend themselves to national statistics and were best assessed with qualitative methods such as case review. Please provide specific recommendations on which data elements in the regulation to retain that are important to understanding and assessing the foster care population at the national level. Also, provide a rationale for your suggestion that may include its relevance to monitor compliance with the title IV–B and IV–E programs or another strong justification for using the data at the national level.

4. Previously we received comments noting concerns with variability in some of the data elements across states and within jurisdictions. Please provide specific suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data. Also, provide a rationale for each suggestion and how the simplification would still yield pertinent data.

5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with the child welfare system or are not needed for monitoring the title IV–B and IV–E programs. Please be specific in identifying the data elements and provide a rationale for why this information would not be reliable or is not necessary.

Dated: February 27, 2018.

Steven Wagner,

Acting Assistant Secretary for Children and Families.

Approved: March 8, 2018.

Alex M. Azar II,

Secretary.

[FR Doc. 2018–05042 Filed 3–13–18; 8:45 am]

BILLING CODE 4184–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970–AC47

Adoption and Foster Care Analysis and Reporting System

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

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

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

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

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

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Email: CBComments@acf.hhs.gov*. 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

As of: September 14, 2020
Received: June 12, 2018
Status: Pending_Post
Tracking No. 1k2-93op-aiyr
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0250
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 keep asking if children were removed from their home due to family conflict related to childs sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents.
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.

PUBLIC SUBMISSION

As of: September 14, 2020
Received: June 12, 2018
Status: Pending_Post
Tracking No. 1k2-93oq-k8vr
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0252
Comment on FR Doc # 2018-05042

Submitter Information

Name: Wendy Wilson

General Comment

Greetings. On behalf of Georgia's Division of Family and Children Services, I respectfully submit the attached comments for review and consideration.

Attachments

AFCARS Comments_GA Response to ANPRM_June 2018

On behalf of Georgia Division of Family and Children Services we respectfully submit the following comments for consideration in response to the March 2018 AFCARS ANPRM.

1. Reporting each prior year seems unduly burdensome to the state. In effect, the state will subsequently be reporting for multiple years during a single reporting period. This will impact the ability of the state's resources to manage the collection and storage of data.

2. There is a large increase in the number of data elements, moving from a point-in-time file of 66 data elements to 272 data elements and iteratively nested longitudinal data. The requirement to collect so many data elements will impede a case manager's ability to interact and work with families.

3. There are 272 separate data elements that are child specific, point-in-time, and longitudinal rolled into a single file in XML format. Due to the number of data elements, it is unrealistic to expect states to have an extraction code available within a limited preparation period. Managing error rates will create quality control challenges. Additionally, the complexity to develop extract logic to meet ACF requirements will likely result in an AFCARS Improvement Plan.

4. A large portion of the new data elements pertain to ICWA. Georgia reports approximately 50 children per reporting period who have tribal heritage. Of the total population of children in foster care, this is a small percentage of children serviced by the state. To make application changes to support the collection of data associated with ICWA, is not cost effective for the state, as there are no federally recognized tribes in Georgia. Being assessed for penalties for collecting and reporting data for a small population seems unduly burdensome to the state. Georgia would request that the Department of Interior, that oversees ICWA, financially support the cost (at 100%) associated with any application changes.

5. ACF provided some estimates of costs and effort; however, the basis of the estimates remains unclear and may be understated. The actual cost is dependent on:

   - Extent of changes to the current child welfare information system
   - Time spent by case managers and supervisors entering and updating additional data for the purposes of data collection
   - Time updating assessment and monitoring tools
   - Time obtaining additional data and getting it to acceptable levels of accuracy
   - Willing cooperation from other agencies with whom we work, to obtain data, and the uncertainty of retrieving data

6. The Final Rule allows as a 10% allowable error rate for non-trivial elements. However, it is not clear what would be considered errors for elements as opposed to data that is unavailable, or whether errors would be identified by internal consistency checks within the file or by review at a later AFCARS or CCWIS audit.

7. Our case managers would be expected to know of and obtain documentation for currently diagnosed disabilities or medical limitations; however, obtaining a detailed medical history

of each child going back to birth might be problematic. In many cases, there may be uncertainty regarding the medical histories.

8. (Elements 67-71) Capturing additional data elements would require functional changes to the state's child welfare information system. This would require extensive training of case managers on retrieval and case documentation, including person history data that may not be readily available. Some history of prior exits from foster care, guardianship and adoption can be obtained from records existing in the child welfare information system. However, data elements require dates for:
   - "public, private or independent adoption in the United States or adoption in another country"
   - "any public, private or independent guardianship(s) in the United States…"

   to include "any judicially created relationship between a child and caregiver which is intended to be permanent and self-sustaining as evidenced by the transfer of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making."

   Trying to obtain thorough and accurate data for these elements could become a vast research project. It is unclear to what extent case managers would be required to go to obtain accurate data and the extent to which uncertainty in the data could be resolved for some families even with the most exhaustive research.

9. (Elements 108, 109) The distinction between "Runaway" and "Whereabouts unknown" is unclear. There may be better phrasing that will capture the distinction that would not be confusing to case managers.

10. (Elements 87 – 89) The state frequently encounters families with multiple overlapping sibling groups, uncertain parentage, and mixed biological, legal, and stepparent relationships. The elements as described seem to require a precise account of all family relationships and divide children neatly into sibling groups. The state doubts that these relationships can be established so precisely for all families within its jurisdiction. There is a deep understanding and appreciation of the importance of preserving sibling relationships for children in foster care and accounting for performance in this regard. However, the state is concerned that the reporting requirement does not take into account the complexity inherent in this data for a proportion of families.

11. For states that have an open AFCARS Improvement Plan (AIP), will those states have to complete/close out the AIP prior to initiating work to support AFCARS 2.0 – including modifying or developing a new extract file and making functional changes? Or, will that work have to occur simultaneously? If simultaneously, will the Children's Bureau assist states with prioritizing work – specific to AFCARS?

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General Comment

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

Attachments

AFCARS Elements Estimate for Public Comment

ANPRM Public Comment June 2018 (Final)

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 Appendix to 45 CFR part 1355
1. IV-E Agency	1. IV-E Agency
2. Report date	2. Report date
3. Local agency	3. Local agency
4. Child record number	4. Child's Record number
(b) Child information	**Child's Demographic Information**
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 *-intercountry*	N/A not in the current AFCARS collection
70. Prior Guardianship (b.20i)	N/A not in the current AFCARS collection
71. (b20.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
(c) Parent or legal guardian information	**Principal Caretaker Information**
90. (c.1) Year of birth of first parent or legal guardian	45. Year of Birth (1st Principal Caretaker)
91. (c.2) Year of birth of second parent or legal guardian	46. Year of Birth (2nd 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
(d) Removal Information	**Removal/Placement Setting Indicators**
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
(d)(6) Child and family circumstances at removal	**Circumstances Associated with Removal**
108. (d.6.i) Runaway	N/A not in the current AFCARS collection

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

AFCARS Out-of-Home Care Data Elements as Published in the Final Rule Issued 12/14/16 (81 FR 90524) (1355.44)	**AFCARS Foster Care and Adoption Data Elements as Published in the Appendix to 45 CFR part 1355**
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
(e) Living arrangement and provider information.	**Current Placement Settings**
148. (e.1) Date of living arrangement	23. Date of Placement in Current Foster Care Setting
149. (e. 2) Foster family home	41. Current Placement Setting
150. (e.3.i.) Foster family home type: Licensed home	N/A not in the current AFCARS collection

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

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 (1st 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 1st Foster Caretaker
183. (e.17) Hispanic or Latino ethnicity of first foster parent.	53. Hispanic or Latino Ethnicity of 1st 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 (2nd Foster Caretaker)
187. (e21) 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 2nd 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
(f) Permanency planning	**Most Recent Case Plan Goal**
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
(g) General exit information	**Discharge Data**

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
(h) Exit to adoption and guardianship information	**Adoption Data File Data Elements – for adoptions only, guardianship not collected currently**
224. (h.1) Marital status of the adoptive parent(s) or guardian(s).	22. Adoptive Parents' Family Structure
(h.2) Child's relationship to the adoptive parent(s) or guardian(s).	**29 – 32. Relationship to Adoptive Parent (Adoption only)**
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

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

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

BA Estimates	**1,382**
Developer Estimates	**6,290**
	Total Hours = 7,672

e-by-Side Comparison

Changes Needed to OASIS and/or Code for the new	BA Estimates	Development Estimates
Add to OASIS & Report Question with picklist that has 6 options.	Requirements – 8 hrs. Testing – 10 hrs.	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & report 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	Requirements – 20 hrs Testing -32 hrs	OASIS - 80 hrs. Report - 50 hrs. Unit Testing - 8 hrs.
Add to: OASIS & report Add 2 questions - one with date field and one with radio buttons (Yes/No/NA)	Requirements – 8 hrs Testing – 10 hrs	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & report Add 2 questions - one with date field and one with radio buttons (Yes/No/NA)	Requirements – 8 hrs. Testing – 10 hrs.	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & report Add 2 questions - both with radio buttons (Yes/No/NA) and add picklist of tribes	Requirements – 8 hrs. Testing – 10 hrs.	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & report	Requirements – 8 hrs.	OASIS - 40 hrs.

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

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 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.
Add to: OASIS & Report Add check box on placement screen.	Requirements – 7 hrs Testing – 8 hrs	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Items 92 and 93	Requirements – 7 hrs Testing – 8 hrs	OASIS - 40 hrs. Report - 50 hrs. Unit Testing - 5 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.
Changes Needed to OASIS and/or Code for the new		
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.

Add to: Report Items 150-151	Requirements – 6 hrs Testing –7 hrs	Report - 60 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Modify OASIS pick list and add to the report.	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Add a question field and radio yes/no or n/a buttons	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Add a picklist to placement screen	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Add a picklist to placement screen	Requirements – 8 hrs Testing – 10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
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)	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 60 hrs. Unit Testing - 5 hrs.
Items 165 Add to: OASIS and Report	Requirements – 8 hrs Testing – 9 hrs	OASIS - 30 hrs. Report - 30 hrs. Unit Testing - 5 hrs.

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 Add two question with Yes/No radio buttons	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Add a question and pick list	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS & Report Add a question and pick list	Requirements – 7 hrs Testing – 8 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.
Add to: OASIS and Report Add question with Yes/No/unknown radio buttons	Requirements – 7 hrs Testing – 8 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 and 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 Add fields for yes/no/unknown	Requirements – 8 hrs Testing –10 hrs	OASIS - 50 hrs. Report - 50 hrs. Unit Testing - 5 hrs.

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.

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

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

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.

As of: September 14, 2020
Received: June 12, 2018
Status: Pending_Post
Tracking No. 1k2-93oh-shfn
Comments Due: June 13, 2018
Submission Type: Web

PUBLIC SUBMISSION

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-DRAFT-0254
Comment on FR Doc # 2018-05042

Submitter Information

Name: Tom Joseph
Organization: County Welfare Directors Association of California

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General Comment

Attached are comments from the County Welfare Directors Association of California supporting the rule.

Attachments

AFCARS 06-12-2018

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 should you have any questions.

Sincerely,

Frank J. Mecca | Executive Director

PUBLIC SUBMISSION

As of: September 14, 2020
Received: June 12, 2018
Status: Pending_Post
Tracking No. 1k2-93ol-66cc
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0255
Comment on FR Doc # 2018-05042

Submitter Information

Name: Kari Wenger

General Comment

HHS needs 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. Having worked with foster youth, recognizing their needs without judgement is imperative.

PUBLIC SUBMISSION

As of: September 14, 2020
Received: June 12, 2018
Status: Pending_Post
Tracking No. 1k2-93op-j3md
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0256
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 keep asking if children were removed from their home due to family conflict related to childs sexual orientation, gender identity, or gender expression. I also urge HHS to retain voluntary sexual orientation questions for foster youth & foster or adoptive parents.
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.

PUBLIC SUBMISSION

As of: September 14, 2020
Received: June 13, 2018
Status: Pending_Post
Tracking No. 1k2-93p7-fmtj
Comments Due: June 13, 2018
Submission Type: 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-DRAFT-0257
Comment on FR Doc # 2018-05042

Submitter Information

Name: Maura McInerney
Address: 19107
Email: mmcinerney@elc-pa.org
Organization: Education Law Center-PA

General Comment

Education Law Center-PA urges the US 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 education, LGBTQ children, and ICWA. The requirements were included in the Rule after robust and thoughtful discussion and are tailored to address areas of weakness and need in current data collection and reporting. These long-awaited updates will be instrumental in the ongoing efforts to better serve foster children and their families, particularly as they relate to education, ICWA and serving LGBTQ youth. Please see more detailed comments in the attached file.

Attachments

2018 06 13 ELC Public Comment AFCARS Data Elements Education LGBT AIAN

WWW.ELC-PA.ORG

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Response to Request for Public Comments on Proposed Rule by the Children and Families Administration on the Adoption and Foster Care Analysis and Reporting System (AFCARS) Regarding New Data Elements

Submitted By
Education Law Center-PA

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, DC 20024

Re: Notice of Proposed Rulemaking at 83 Fed. Reg. 11449

Dear Ms. McHugh,

On behalf of the **Education Law Center-PA**, 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. Education Law Center-PA 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 education, LGBTQ children and youth, and the Indian Child Welfare Act (ICWA). The data elements in the Final Rule previously were subject to a thorough notice and comment period, during which comments on the burden of data elements were addressed and data elements adjusted as described in the Final Rule.

I. Who We Are

The **Education Law Center – PA ("ELC")** is a non-profit education advocacy organization that advocates on behalf of Pennsylvania's most educationally "at risk" children, including children living in poverty, children of color, children with disabilities, English Language Learners, students experiencing homelessness and children in the child welfare system. Over its almost

forty-year history, ELC has helped thousands of individual children in foster care obtain the educational services they desperately need to achieve life-long stability. We have also advanced effective state and national legislative and policy reforms to improve educational outcomes for children in foster care. Along with the Juvenile Law Center and the American Bar Association Center on Children and the Law, ELC co-founded the ***Legal Center for Foster Care and Education***[1] and is a founding member of the ***National Working Group on Foster Care and Education***.[2] Through the Legal Center, we advocate for better educational opportunities for youth in care in Pennsylvania and nationwide. The Legal Center has been instrumental in helping jurisdictions implement the educational requirements of the *Fostering Connections to Success and Increasing Adoptions Act* of 2008, and the school stability requirements of the *Every Student Succeeds Act* of 2015. In addition, ELC also plays a leadership role at the state level. ELC was an active member of the **Pennsylvania State Roundtable on Educational Success and Truancy Prevention** which focused on improving educational outcomes for our state's children in the dependency system.[3] In addition, ELC is currently an active member of **Pennsylvania's Child Welfare Council** and recently participated in a statewide workgroup initiated by Pennsylvania's Department of Human Services which proposed specific amendments to the state's child welfare regulations regarding education and other issues.

Education Law Center-PA previously submitted comments related to AFCARS in 2008, 2010, 2015, and 2017 in support of updating AFCARS requirements to better reflect new and changing federal laws and improve the quality of data collected about children in foster care. In April 2018, we submitted comments opposing the Proposed Delay of the AFCARS Final Rule.

II. Importance of Collecting Education Information

It is well-documented that youth in foster care are among the most educationally at risk of all student populations. They experience lower academic achievement, lower standardized test scores, higher rates of grade retention, and higher dropout rates than their peers who are not in foster care.[4] Based on a review of studies conducted between 1995 and 2005, one report estimates that about half of foster youth complete high school by age 18 compared to 70% of youth in the general population.[5] Other studies show that as few as 11% attend college.[6]

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[1] See *Legal Center for Foster Care and Education* website at http://www.fostercareandeducation.org/
[2] *See* http://fostercareandeducation.org/OurWork/NationalWorkingGroup.aspx.
[3] *See, e.g.*, 2014 Report to Pennsylvania State Roundtable (May 2014), *available at* http://www.ocfcpacourts.us/assets/upload/2014%20Educational%20Success%20Report%282%29.pdf.

[4] National Working Group on Foster Care and Education, *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care* (January 2014), http://fostercareandeducation.org/ (under "Research and Statistics").

[5] Wolanin, T. R. (2005). *Higher education opportunities for foster youth: A primer for policymakers.* Washington, DC: The Institute for Higher Education Policy.

[6] Burley, M. (2009). *Foster Care to College Partnership: Evaluation of education outcomes for foster youth.* Washington State Institute for Public Policy, *available at* http://www.wsipp.wa.gov/rptfiles/09-12-3901.pdf.

Experience and research tell us some of the specific barriers facing youth in care – high rates of school mobility; delays in school enrollment; inappropriate school placements; lack of remedial support; failure to transfer or recognize credit for coursework; and inadequate special education services. We know that these challenges are exacerbated and sometimes even created by the inability of child welfare agencies and local educational agencies to access and share education records and data at a state or local level, as well as the inability of foster parents, unaccompanied youth, surrogate parents and caseworkers to access education records at an individual level. For example, delays in school enrollment for this highly mobile population often occur when a child's initial entry into foster care or a subsequent placement change leads to changing schools.[7]

As reflected in our prior comments, the addition of education-related data elements to AFCARS is a critical step towards ensuring a quality education for vulnerable children in foster care. In addition to being a recognized "well-being outcome" under federal law, educational success is imperative for positive life outcomes. Maintaining key education data is also essential to monitoring states' compliance with the education requirements of the *Fostering Connections to Success and Increasing Adoptions Act* ("*Fostering Connections*") and the *Every Students Succeeds Act*, passed in December 2015 which requires state and local child welfare and education agencies to ensure school stability for all children in foster care and requires states for the first time to disaggregate data regarding the educational status and achievement of children in foster care.

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 better 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.

Although educational information was not part of AFCARS prior to the 2016 Final Rule, several of the 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

[7] Smithgall, C., Jarpe-Ratner, E. & Walker, L. (2010). *Looking back, moving forward: Using integrated assessments to examine the educational experiences of children entering foster care*; Choice, P., D'Andrade, A., & Gunther, K. (2001). *Education for foster children: Removing barriers to academic success.* Berkeley, CA: University of California, Berkeley. School of Social Welfare. Bay Area Social Services Consortium.

educational data elements included in the Final Rule are unambiguous and straight-forward – qualitative review or case study is not required for accurate reporting.

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, educational stability, 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).

B. The 2016 Final Rule Represents Exemplary Changes that Are Long Overdue

The requirements within the 2016 Final Rule represent a shift away from "point-in-time" data towards longitudinal data systems which better reflect the experiences of children in foster care. Furthermore, the data collection requirements outlined within the 2016 Final Rule are necessary for the proper performance and function of child welfare agencies. Information collected can guide agencies to improve practice and programs to more effectively address families' needs. With the new data elements, agencies will have more comprehensive information about system-involved children and families, such as the circumstances which bring families into contact with agencies and data elements on medical needs, living arrangements, older youth, and behavioral and mental health. Although there were many significant changes included in the 2016 Final Rule, three particular areas of importance are the changes to education, LGBTQ, and Indian Child Welfare Act (ICWA) data collection requirements. The inclusion of these data elements is long overdue and is crucial to improving the quality of collected child welfare data and our capacity to provide programs and services that match the needs of children and families.

- **EDUCATION:** The new education data elements in the 2016 Final Rule are basic, critically important, and not overly burdensome. Education Law Center has submitted comments in response to numerous NPRMs, emphasizing the importance of including elements relating to education in AFCARS. Maintaining key educational data is essential to monitoring states' compliance with the education requirements of the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections), which were further supported by the Every Student Succeeds Act (ESSA), and most importantly, to ensuring that the well-being needs of children in foster care are being met. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. Having this limited data in AFCARS is necessary to inform and improve states' practice and policies and enable them to measure and track the education progress of children in care.

As such, Education Law Center enthusiastically supports retaining the four basic education-related data elements included in the 2016 Final Rule; this includes data pertaining to school enrollment, educational level, educational stability, and special education.

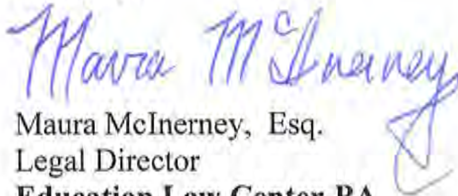
- **LGBTQ-IDENTIFIED YOUTH:** There is evidence that LGBTQ-identified youth are over-represented in the child welfare system, and that their specific needs are best served when child welfare agencies have information about which children fit into this category. Education Law Center opposes the removal of data elements related to foster youth sexual orientation and gender identity and expression as this would negatively impact the safety, permanency, and well-being of LGBTQ children. Removing these data elements would also eliminate cost savings associated with finding affirming, supportive pre-adoptive families for an LGBQ child – which would be impossible to do if the child's sexual orientation was unknown. The Final Rule noted that this information should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality. 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 LGBTQ children and youth in foster care.

- **ICWA:** The data in the 2016 Final Rule is vital to the federal government, Congress, states, and tribes to effectively address the needs of American Indian and Alaska Native (AI/AN) children and families. Education Law Center opposes any streamlining, modification, or elimination of the AFCARS data pertaining to the Indian Child Welfare Act (ICWA) for AI/AN children. 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. 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.

In conclusion, for the reasons outlined above, ELC urges 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 education, LGBTQ children, and ICWA. The requirements were included in the Rule after robust and thoughtful discussion and are tailored to address areas of weakness and need in current data collection and reporting. These long-awaited updates will be instrumental in the ongoing efforts to better serve foster children and their families, particularly as they relate to education, ICWA, and serving LGBTQ youth.

Thank you for the opportunity to comment.

Sincerely,



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