PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 10, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ij-73e0
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0003
American Academy of Pediatrics Letter

Submitter Information

Name: Zach Laris
Organization: American Academy of Pediatrics

General Comment

Attached please find official comments from the American Academy of Pediatrics opposing the proposal to delay implementation of the 2016 final AFCARS rule. Thank you for the opportunity to provide input.

Attachments

AAP Letter AFCARS Delay

American Academy of Pediatrics
DEDICATED TO THE HEALTH OF ALL CHILDREN®

AAP Headquarters
345 Park Blvd
Itasca, IL 60143
Phone: 630/626-6000
Fax: 847/434-8000
E-mail: kidsdocs@aap.org
www.aap.org

Reply to
AAP Washington Office
601 13th St NW, Suite 400N
Washington, DC 20005
Phone: 202/347-8600
E-mail: kids1st@aap.org

April 10, 2018

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

RE: RIN 0970-AC47

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 write to share our strong opposition to the Administration for Children and Families' (ACF) decision to delay for two fiscal years the implementation of the 2016 final rule to update the Adoption and Foster Care Analysis and Reporting System (AFCARS). AAP strongly supported the final rule. Further delaying this update will negatively affect ACF's ability to address the health needs of vulnerable children in foster care.

Children in foster care experience disproportionate exposure to trauma and often have complex medical 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 key precepts that inform the work of ACF, state child welfare agencies, and professionals serving children in foster care, including pediatricians. Health and the work of health professionals play a critical role in promoting all three of those precepts. Well-being remains the most complex to define, measure, and improve. A child who has a parent with a substance use disorder may have safety and permanency through placement with a grandparent, but interventions to help them heal are vital for attaining 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 already-finalized AFCARS rule would include collection of critical new data regarding: the date of a child's health assessment; the timeliness of a child's health assessment; a child's physical and mental health conditions; information on state and tribal medical and financial assistance; and whether a child was a victim of sex trafficking. This information would significantly improve current child welfare data collection related to health. In turn, this would enable child welfare agencies to partner more efficiently and collaboratively with health care providers and provide children in out-of-home care the health services they need to heal.

ACF has implemented several landmark updates to federal child welfare law in the nearly twenty years since the last update to AFCARS. 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.

It is critical that ACF move forward with implementation of the 2016 final AFCARS rule, so that ACF can conduct robust examination of the implementation of these policies to support ongoing quality improvement. High-quality data will allow more efficient and effective child welfare policy implementation by states and oversight by ACF. Without these data, ACF will not have the proper tools to assess the impact of these critical child health laws. We are dismayed that ACF has decided to delay implementation of this final rule, as 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. We urge you to reinstate implementation of the 2016 final rule.

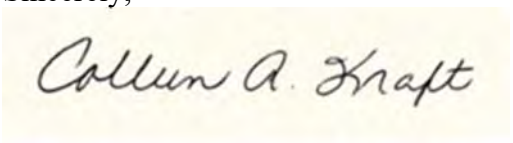
Further delaying this process by an additional two years will limit the ability of states to address issues related to access to health care for children in foster care. This is particularly concerning at a time when entries to foster care are continuing to rise each year, with a significant correlation with the ongoing opioid epidemic. In FY 2016, the number of children entering foster care increased to over 270,000, up from 251,352 in FY 2012. This is the fourth year in a row that removals of children from their homes into foster care have increased after declining over the past decade. Parental substance use was a factor for the removal in over a third of those cases, second only to neglect as a factor for placement in foster care. Of note, infants represented nearly a fifth of all removals, totaling 47,219 in FY 2015. A total of 437,465 children were in foster care on the last day of FY 2016.[i] ACF needs to collect data on the health needs of children in foster care and whether states are meeting them in order to help children heal, such as by best understanding the timeliness with which children receive health assessments. A timely and comprehensive assessment can identify the trauma a child has experienced and enable service providers to connect them to the appropriate interventions, thereby reducing the likelihood of instability in their foster care placement and improving their chances of permanency.

Child welfare systems across the country are facing a public health crisis in the form of rising entries to foster care, many of which are tied to parental substance use. It is more critical than ever that ACF have sufficient health data for children in out-of-home care, to understand children's health needs and basic information about their access to health assessments. ACF needs to collect this information to be able to ensure effective implementation and oversight of policies and programs designed to ensure children in out-of-home care receive the health services they need. It is also vital for crafting effective programs and policies that are responsive to the specific needs of children in out-of-home care, based on the best available data and evidence. In addition to promoting better child health outcomes, this improved data collection would enable efficiencies within child welfare systems and contribute to cost reductions associated with fragmented access to care.

Given this need, it is seriously concerning that ACF has decided to delay this rule for two years, and is also considering making further changes to any update to AFCARS to reduce the extent of that data collection. These data would improve the Children's Bureau's ability to analyze information about the health of children in foster care and the health services they receive. In addition, these data would better equip the Children's Bureau to examine the extent to which states are complying with the health-related requirements of federal law, and particularly the Health Oversight and Coordination Plan requirements in *Fostering Connections*. AAP also applauded the final rule's collection of AFCARS data allowing longitudinal and cohort analysis, which would further support those efforts. Delaying this rule will only hinder these efforts and make it more difficult for ACF to ensure that states are able to meet the health needs of children in out-of-home care. We strongly urge you to not delay or scale back implementation the 2016 final rule, and oppose this proposed two-year delay.

Thank you for the opportunity to provide input on this important issue. 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/zml

[i] U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth, and Families, Children's Bureau (2017). The AFCARS Report FY 2016. Retrieved from https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf

As of: September 15, 2020
Received: April 12, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92jn-u3fy
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0004
Comment on FR Doc # 2018-05038

Submitter Information

Name: Anonymous Anonymous

General Comment

CCWIS
As federally mandated, we are in the beginning stages of creating a new CCWIS to replace the old NH SACWIS . This new federally mandated child welfare model will modify how we do business and needs to predicate the new AFCARS elements being proposed.

ICWA Elements
The reporting burden of adding the ICWA elements to our system would impose costs that exceed benefits since our state does not have any Indian tribes nor do we currently collect this information.

Foster Care Elements
In addition to the new foster care elements that are proposed, there are several existing foster care elements that will require changes/modifications at the report level per the new proposal.

Adoption Elements
There are several existing adoption elements that are proposed to be moved from the adoption file to the foster care file. Modifications at the report level will be required.

Ways to make things easier:
Remove all ICWA related elements from the proposal if they do not apply to the State.
Allow ICWA related data elements in the AFCARS data file default to null for those states that are non-tribal and do not collect ICWA data
Provide federal funding to support these federally mandated efforts

As of: September 15, 2020
Received: April 12, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92jt-2ft2
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0005
CA DSS Letter

Submitter Information

Name: Gregory Rose
Address: 95814
Organization: California Department of Social Services

General Comment

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

Attachments

CA DSS Letter

CDSS
WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
744 P Street • Sacramento, CA 95814 • *www.cdss.ca.gov*

EDMUND G. BROWN JR.
GOVERNOR

April 11, 2018

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

Dear Ms. McHugh:

SUBJECT: NOTICE OF PROPOSED RULEMAKING (NPRM); DELAY OF COMPLIANCE AND EFFECTIVE DATES, ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM (AFCARS) – RIN 0970-AC47

The California Department of Social Services (CDSS) is pleased to have the opportunity to submit comments in response to the NPRM to revise the implementation dates in 45 CFR part 1355.40 (published on March 15, 2018 and 83 FR 11450). The CDSS Children and Family Services Division (CFSD) has the state oversight responsibility for child welfare. More specifically, the development and implementation of policies, guidance, training and technical assistance to counties and tribes with whom the state has an IV-E Agreement regarding administration of Title IV-B/Title IV-E programs in California.

The NPRM proposes to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-47) by two years until October 1, 2021 and to extend the reporting of AFCARS data in accordance with the current AFCARS regulations until September 30, 2021.

As indicated in response to the June 30, 2017 Administration for Children and Families (ACF) Notice of Proposed Information Collection Activity; Comment Request for the Adoption and Foster Care Analysis and Reporting System for Title IV-B and Title IV-E, CDSS fully appreciates that the December 2016 final rule incorporates many new data elements, including numerous data elements relating to our most vulnerable populations, which include Indian children subject to the Indian Child Welfare Act (ICWA) and lesbian, gay, bisexual, transgender and questioning youth (LGBTQ).

This letter is submitted to reiterate California's steadfast and unequivocal support for the data collection set forth in the final rule, including the proposed collection of ICWA and

LGBTQ information as necessary for the proper performance of the functions of the agency. We wholeheartedly believe that this information will have practical utility both in facilitating child welfare practice and in informing policy decisions and program management.

While implementing state and federal law, including preparation for implementing the AFCARS, we have and continue to update many policies, practices and curricula to incorporate both ICWA standards and a framework that reflects sexual orientation and gender identity expression. Prompted by the Comprehensive Child Welfare Information System (CCWIS) Final Rule (published on June 2, 2016 and 81 FR 35450), we are making strides in improving our data collection processes, both as to data that we will collect directly as well as data accessed via interfaces that we are negotiating with partner agencies such as courts and education agencies.

We applaud the groundbreaking initiative of ACF in interjecting the power of 21st century technology into the work of protecting children and strengthening families. Comprehensive data is essential to assuring adherence to laws protecting children and to maximizing provision of services and beneficial outcomes. That said, we are cognizant of the fact that a Title IV-E agency's CCWIS must support the efficient, economical, and effective administration of the Title IV-B and IV-E plan. While uniform and complete collection of this data will ultimately facilitate and enhance all facets of our work, implementing the system throughout a large and diverse state is challenging. Maximizing resources in this instance warrants an extension of the implementation time frame as proposed.

We look forward to continuing to work with ACF to implement the very important data requirements.

For further information, you may contact me at (916) 657-2614.

Sincerely,

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

As of: September 15, 2020
Received: April 11, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ju-fskr
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0006
NACAC AFCARS letter re RIN 0970-AC47

Submitter Information

Name: Mary Boo
Address: 55114
Organization: North American Council on Adoptable Children (NACAC)

General Comment

See attached

Attachments

NACAC AFCARS letter re RIN 0970-AC47

NACAC
North American Council on Adoptable Children

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

April 11, 2018

Kathleen McHugh
US Department of Health and Human Services
Director, Policy Division
Administration for Children and Families
Office of Planning, Research and Evaluation
330 C Street SW
Washington DC 20201

Re: RIN 0970-AC47

Dear Ms. McHugh:

The North American Council on Adoptable Children (NACAC) is writing to oppose the proposed two-year delay in the implementation of the already-finalized 2016 rule related the Adoption and Foster Care Analysis and Reporting System (AFCARS).

We at NACAC strongly support the immediate implementation of new data collection as proposed in 2016 rule. There have already been many delays in the past, and we think it is now time to implement these important improvements to data collection. This data is needed to continue to ensure that the US and state governments are meeting the needs of children in foster care, adoption, and guardianship. Without data, it will be difficult for the Department of Human Services to successfully oversee key child welfare policies and for states to seek ongoing outcome improvements.

There are several areas of the AFCARS revisions that NACAC was particularly interested in seeing move forward in a timely way:

- **Longitudinal Data —** While AFCARS point-in-time data is useful for the field, having more longitudinal data will certainly allow for a better understanding of a child's experience in care and provide invaluable information for use in decision-making regarding policy and practice in child welfare. Longitudinal data tends to provide both clarity and quality when examining what a child's experience is in care, and can be used to shed light on where new policies and practices may be needed. This change will enhance efforts to achieve improved outcomes for children and families.
- **Indian Child Welfare Act —** Currently, there is little useful data collected at either the state or federal level related to American Indian and Alaska Native (AI/AN) children who are under the custody of state child welfare authorities. Native children are overrepresented in many state foster care systems—in some places by as much as 10 times the general population. The federal protections that ICWA provides these children and their families have the potential to help reduce disproportionality and achieve permanency for more of these children.

970 Raymond Avenue, Suite 106 • St. Paul, MN 55114-1149 PHONE 651.644.3036 FAX 651.644.9848 WEB www.nacac.org E-MAIL info@nacac.org

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

- **Sexual Orientation and Gender Identity —** Several studies have shown that lesbian, gay, bisexual, transgender, and questioning (LGBTQ) children and youth are over-represented in foster care—in part due to their family's rejection of them. We also know that these children and youth may face bias in foster care and lack placements where their safety and dignity is assured. To address these core issues, it is critically important that we collect data on the sexual orientation of children and youth in care and determine how their outcomes differ from other children. (We recommend that data on gender identity be collected as well.)

  This data has great utility. It can be used to explore whether certain states' policies or practices are shaping the experiences LGBTQ youth are having and identify areas of attention for the federal government to encourage any necessary changes to ensure the well-being of these young people.

We also believe that states and the federal government can benefit from collecting and analyzing data on health, behavioral or mental health conditions; prior adoptions; sibling placements; environment at removal and child and family circumstances at removal; foster family home type and other living arrangements; and location of living arrangements. By collecting data on these key areas, we can determine if certain states are succeeding in ensuring safety, permanency, and well-being for children and how their successes can be replicated in other communities.

Given the importance of making decisions based on accurate information, it is deeply concerning that HHS is considering delaying this rule for two years, and is also considering making further changes to AFCARS to reduce the extent of data collection.

Although we know that data collection has costs, the costs of not knowing what is happening in our child welfare systems is far greater. We are spending billions of dollars to care for and protect children, and can learn much from the revised data about what is working and where further policy and practice changes are needed.

Delaying this rule will make it more difficult for HHS to ensure that states are able to meet the needs of children in out-of-home care. We strongly urge you to not delay or scale back implementation of the 2016 final rule, and oppose this proposed two-year delay.

Sincerely,

Mary Boo
Executive Director

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 11, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ju-m4ii
Comments Due: April 16, 2018
Submission Type: E-mail

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0007
NCAI AFCARS Comments 04.11.2018

Submitter Information

Name: Jacqueline Pata
Address: 20005
Organization: National Congress of American Indians (NCAI)

General Comment

See attached

Attachments

NCAI AFCARS Comments 04.11.2018

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
Jefferson Keel
Chickasaw Nation

FIRST VICE-PRESIDENT
Aaron Payment
Sault Ste. Marie Tribe of Chippewa Indians of Michigan

RECORDING SECRETARY
Juana Majel-Dixon
Pauma Band Mission Indians

TREASURER
W. Ron Allen
Jamestown S'Klallam Tribe

REGIONAL VICE-PRESIDENTS

ALASKA
Rob Sanderson, Jr.
Tlingit & Haida Indian Tribes of Alaska

EASTERN OKLAHOMA
Joe Byrd
Cherokee Nation

GREAT PLAINS
Larry Wright, Jr.
Ponca Tribe of Nebraska

MIDWEST
Roger Rader
Pokagon Band of Potawatomi

NORTHEAST
Lance Gumbs
Shinnecock Indian Nation

NORTHWEST
Leonard Forsman
Suquamish Tribe

PACIFIC
Willie Carrillo
Tule River Tribe of California

ROCKY MOUNTAIN
Darrin Old Coyote
Crow Nation

SOUTHEAST
Nancy Carnley
Ma-Chis Lower Creek Indians

SOUTHERN PLAINS
Zach Pahmahmie
Prairie Band of Potawatomi Nation

SOUTHWEST
Joe Garcia
Ohkay Owingeh Pueblo

WESTERN
Franklin Pablo, Sr.
Gila River Indian Community

EXECUTIVE DIRECTOR
Jacqueline Pata
Tlingit

NCAI HEADQUARTERS
1516 P Street, N.W.
Washington, DC 20005
202.466.7767
202.466.7797 fax
www.ncai.org

April 11, 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

RIN 0970-AC47

Dear Director McHugh:

On behalf of the National Congress of American Indians (NCAI), an organization committed to the well-being of American Indian and Alaska Native children, we write to oppose the delays suggested in the Administration for Children and Families' (ACF) March 15, 2018 notice in the Federal Register.

As you know, in 2016 the data requirements of the Adoption and Foster Care Analysis Reporting System (AFCARS) were amended to include a significant amount of data relating to state compliance with the Indian Child Welfare Act (ICWA), effective October 1, 2019. This took place largely because of the advocacy of tribes, as well as supportive organizations. Data collection for American Indian and Alaska Native children is essential to understanding how Indian children fare in the child welfare system and making system improvements to ensure the well-being of Indian children and their families. This is not an abstract concern. State child welfare systems continue to discriminate against Indian families and assert custody of our children at extremely high rates, sometimes without even the opportunity for a hearing. *See*, Oglala Sioux Tribe v. Van Hunnik, 993 F. Supp. 2d 1017 (D.S.D. Jan. 28, 2014).

Furthermore, incorporating data elements linked to ICWA requirements is intended to benefit tribes, states, and federal agencies in developing an understanding of the trends in out-of-home placement, time in care, and other barriers to permanency for American Indian and Alaska Native children. These issues persist absent accurate and reliable data. In addition, the data collection requirements are consistent with the Administration for Children and Families' (ACF) statutory mission since it facilitates the collection of national, uniform, and reliable information on children in state care as mandated by Section 479 of the Social Security Act.

The 2016 AFCARS amendments require the collection of data on American Indian and Alaska Native children in child welfare systems for several uses in the public interest including: assessing the current state of foster care and adoption of Indian children under ICWA to help develop future national policies concerning ACF programs that affect Indian children; and to better meet federal trust obligations under established federal policies. Including data regarding ICWA as part of state reporting requirements would also provide information necessary to improve federal assistance to states and tribes, help monitor challenges in implementation, and support improved tribal-state relations in child welfare. Further, the integration of ICWA related data also follows a very similar framework and use of data sources that have been a part of AFCARS requirements for many years.

Any delay of the 2016 regulations would frustrate years of work by tribes, advocates, and federal agencies intended to better understand, and ultimately improve, Indian children's experiences in the child welfare system.

Also, the current regulations went through extensive notice and comment periods and the Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action. In short, the Administration already provided all interested parties with ample notice and opportunities to be heard. In particular, states 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 process—where ACF is allotting 30 days to tribes for response—is inconsistent 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." Also, per Executive Order 12866, the typical comment period is 60 days. The failure by ACF to properly consult with tribes and the limited response time allowed in this instance are concerning and completely inconsistent with the federal trust relationship with Indian tribes.

Finally, states, tribes and the federal family have been on notice regarding these changes for some time now. Any delay will make waste of substantial resources placed into preparing for the new AFCARS requirements. 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.

For the aforementioned reasons, NCAI strongly opposes any further delay of these important regulations and urges ACF to move forward with current regulatory timeframes. Nothing has changed since ACF made clear in the 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. Again, we urge ACF to withdraw this proposal for all the reasons stated above. Thank you for your time and consideration.

Sincerely,

Jacqueline Pata
NCAI, Executive Director

As of: September 15, 2020
Received: April 11, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ju-w9my
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0008
Redwood Valley Little River Band of Pomo Indians Letter

Submitter Information

Name: Debra Ramirez
Address: 95470
Organization: Redwood Valley Little River Band of Pomo Indians

General Comment

See attached

Attachments

Redwood Valley Little River Band of Pomo Indians AFCARS - NPRM - Comments 4-11.18

April 11, 2018

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

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

Re: RIN: 0970-AC47 **Adoption and Foster Care Analysis and Reporting System;** Notice of Proposed Rulemaking; delay of compliance and effective dates (3/15/2018)

Dear Sir or Madam,

The Redwood Valley Little River Band of Pomo Indians 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 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.

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, this NPRM is open for a 30-day comment period. Per Executive Order 12866, the typical comment period is 60 days. 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 substaintail 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 failes 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."

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.

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

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,

Debra Ramirez, Tribal Chairperson
Redwood Valley Little River Band of Pomo Indians

As of: September 15, 2020
Received: April 10, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ju-v3ua
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0009
WI Comments AFCARS 45 CFR (1)

Submitter Information

Name: Eloise Anderson
Address: 53708
Organization: Wisconsin Department of Children and Families

General Comment

See attached

Attachments

WI Comments AFCARS 45 CFR (1)

WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES

201 East Washington Avenue, Room G200
P.O. Box 8916
Madison, WI 53708-8916
Telephone: 608-422-7000
Fax: 608-261-6972

Governor Scott Walker
Secretary Eloise Anderson

Secretary's Office

April 4, 2018

Ms. Kathleen McHugh, Director
Division of Policy, Children's Bureau
Administration on Children, Youth, and Families
Administration for Children and Families
1250 Maryland Ave SW, Suite 800
Washington, DC 20024
CBComments@acf.hhs.gov

Re: **Wisconsin Comments on AFCARS 45 CFR Part 1355 RIN 0970-AC47**

Dear Ms. McHugh:

Wisconsin supports the delay of the compliance and effective dates in the AFCARS 2016 final rule for an additional two fiscal years as proposed by the Administration for Children and Families in the Federal Register notice referenced above. This will allow our state to incorporate any required changes into our planning timelines and cost estimates for the Comprehensive Child Welfare Information System (CCWIS). The delay will also give us the opportunity to analyze fully the potential state practice and policy changes required to meet the changes.

Please feel free to contact Fredi-Ellen Bove, the state child welfare director, at (608) 422-6891 or via e-mail at FrediEllen.Bove@wisconsin.gov with any questions regarding our state's comments.

Sincerely,

Eloise Anderson
Secretary

As of: September 15, 2020
Received: April 11, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92jv-uhdu
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0010
CATG Ltr AFCARS 041018

Submitter Information

Name: Will Micklin
Address: 91901
Organization: California Association of Tribal Governments (CATG)

General Comment

See Attached

Attachments

CATG Ltr AFCARS 041018

CATG Drop Sheet Member Tribes

CATG
4054 Willows Road
Alpine, CA 91901
619.368.4382
619.684.3619 fax
www.catg.us

CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS

Via Email:
CBComments@acf.hhs.gov

April 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

Re: RIN: 0970-AC47

Dear Director McHugh,

The California Association of Tribal Governments (CATG), the state-wide, inter-tribal, non-profit association of California Indian tribal governments, 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, which the Administration on Children and Families (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.

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.

Unlike the previous sequence of comments and review, this NPRM is open for a 30-day comment period. Per Executive Order 12866, the typical comment period is 60 days. 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.
>
> 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.[1]

[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.

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

In closing, 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.

Should you have any questions, please contact me by telephone at (619) 368-4382 or by email at wmicklin@leaningrock.net. Thank you.

Sincerely,

_____

Will Micklin, Executive Director

CALIFORNIA ASSOCIATION OF TRIBAL GOVERNMENTS
Member Tribes

- Big Lagoon Rancheria
- Big Pine Rancheria
- Big Sandy Rancheria
- Cahuilla Band of Mission Indians of the Cahuilla Reservation
- Cher–Ae Heights Indian Community of the Trinidad Rancheria
- Cloverdale Rancheria
- Enterprise Rancheria of Maidu Indians of California
- Ewiiaapaayp Band of Kumeyaay Indians
- Greenville Rancheria of Maidu Indians of California
- Habematolel Pomo of Upper Lake
- Hoopa Valley Tribe
- Hopland Band of Pomo Indians of the Hopland Reservation
- Ione Band of Miwok Indians of California
- Jamul Indian Village
- Karuk Tribe of California
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria
- Los Coyotes Band of Cahuilla and Cupeno Indians
- Mesa Grande Band of Kumeyaay Indians
- Morongo Band of Mission Indians
- Northfork Rancheria of Mono Indians of California
- Pit Rive Tribe
- Ramona Band of Cahuilla Indians
- Resigini Rancheria
- Scotts Valley Rancheria Band of Pomo Indians of California
- Smith River Rancheria
- Soboba Band of Luiseno Indians
- Susanville Indian Rancheria
- Sycuan Band of the Kumeyaay Nation
- Washoe Tribes of California and Nevada
- Wiyot Tribe
- Yurok Tribe of the Yurok Reservation

Northern District

1. Big Lagoon Rancheria
2. Big Valley Band of Pomo Indians of the Big Valley Rancheria
3. Hoopa Valley Tribe
4. Karuk Tribe of California
5. Pit River Tribe
6. Resighini Rancheria
7. Smith River Rancheria
8. Susanville Indian Rancheria
9. Cher-Ae Heights Indian Community of the Trinidad Rancheria
10. Wiyot Tribe
11. Yurok Tribe of the Yurok Reservation

Southern District

1. Cahuilla Band of Mission Indians of the Cahuilla Reservation
2. Ewiiaapaayp Band of Kumeyaay Indians
3. Jamul Indian Village
4. Los Coyotes Band of Cahuilla and Cupeño Indians
5. Mesa Grande Band of Kumeyaay Indians
6. Morongo Band of Mission Indians
7. Pauma Band of Luiseno Mission Indians
8. Ramona Band of Cahuilla Indians
9. Soboba Band of Luiseno Indians
10. Sycuan Band of the Kumeyaay Nation

Central District

1. Big Pine Reservation
2. Big Sandy Rancheria
3. California Valley Miwok Tribe
4. Cloverdale Rancheria
5. Enterprise Rancheria of Maidu Indians of California
6. Greenville Rancheria of Maidu Indians of California
7. Habematolel Pomo of Upper Lake
8. Hopland Band of Pomo Indians of the Hopland Rancheria
9. Ione Band of Miwok Indians of California
10. Northfork Rancheria of Mono Indians of California
11. Scotts Valley Rancheria Band of Pomo Indians of California
12. Kashia Band of Pomo Indians of the Stewarts Point Rancheria
13. Washoe Tribes of California and Nevada

California Association of Tribal Governments ♦ www.CATG.us ♦ ed1.catg@gmail.com
c/o Ewiiaapaayp Tribal Office ♦ 4054 Willows Road ♦ Alpine ♦ CA ♦ 91901 ♦ phone (619) 368-4382 ♦ fax (619) 684-3619

As of: September 15, 2020
Received: April 13, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ke-uyzg
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0011
Tanana Chiefs Conference

Submitter Information

Name: Victor Joseph
Address: 99701
Organization: Tanana Chiefs Conference

General Comment

See Attached

Attachments

TCC AFCARS Delay Comment letter

Tanana Chiefs Conference
122 1ST Ave. Suite 600
Fairbanks, AK 99701
907-452-8251

April 16, 2018

VIA ONLINE SUBMISSION
CBComments@acf.hhs.gov

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

Re: Notice of Proposed Rulemaking; Delay of compliance and effective dates; AFCARS 2016 Final Rule; RIN 0970-AC47.

Dear Ms. McHugh,

We appreciate this opportunity to comment on the proposed delay of compliance and effective dates regarding the final Adoption and Foster Care Automated Reporting System ("AFCARS") rule promulgated on December 14, 2016. 83 Fed. Reg. 11450 (Mar. 15, 2018). The Administration for Children and Families ("ACF"), provided an implementation period of two years and is now seeking to extend that period for another two years. The Tanana Chiefs Conference ("TCC") opposes any delays in implementing the 2016 Rule.

The proposed delay in compliance and effective dates is extremely concerning to TCC and appears to be a tactic to allow ACF time to change and significantly limit the data reporting requirements in the 2016 Rule. Since the final rule was issued, ACF has already once sought a "Supplemental Notice of Public Rulemaking" questioning whether ICWA data collection will have practical utility and should be collected. *See* 82 Fed. Reg. 29866 (June 30, 2017). Public comment was only open for 30 days and Indian tribes, including TCC, and others worked within that timeframe to submit comments supporting the 2016 Rule. It now appears that ACF did not get the comments it desired. *See* 83 Fed. Reg. at 11451 ("[t]he Supplemental Notice . . . was only open for comment for 30 days. This was an insufficient amount of time for states . . . ."). And in conjunction with the proposed delay of the 2016 Rule, ACF is again seeking public comment on whether the 2016 Rule should include ICWA data. *See* 83 Fed. Reg. 11449 (Mar. 15, 2018).

Further delay of the 2016 Rule is unnecessary and only seeks to undermine implementation of the 2016 Rule, which has already gone through substantial public notice and comment. For the first time, the AFCARS rule includes elements related to the Indian Child Welfare Act of 1978 ("ICWA"), and requires the collection of data on American Indian and Alaska Native children in state child welfare systems. This is a significant and positive step forward in ensuring that the federal government fulfills its trust responsibility to Indian tribes and recognizing the agency's role with respect to ICWA compliance.

122 1ST Ave. Suite 600
Fairbanks, AK 99701
907-452-8251

ICWA was enacted because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted of their children . . . and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions."[1] However, since ICWA's enactment over 35 years ago, Indian children have continued to be represented disproportionally in state foster and adoptive proceedings across the country. Prior to the 2016 Rule there was no mechanism to comprehensively collect data relating to ICWA compliance by state agencies.[2] The 2016 Rule now provides a mechanism by which ACF can track ICWA compliance across states.

The federal register notice attempts to justify the delay on the basis that the new ICWA data collection elements will take time to implement and understand by states and the Department of Health and Human Services ("HHS"), and suggests that there will be questions from states on the reporting requirements. 83 Fed. Reg. at 11451. But since 2016, HHS and states have had time to work through implementation questions. Nothing in the federal register notice indicates that ACF has received requests by states to delay implementation; rather, it only speculates that states may not know how to report on the ICWA data elements. Moreover, ensuring that HHS implements the 2016 Rule consistent with the Department of the Interior's ICWA regulations and the litigation positions taken by the Department of Justice should not be a cause for delay. Effective April 1, 2016, all three agencies entered into a Memorandum of Understanding creating an interagency partnership to strengthen ICWA compliance.[3] HHS has the ability and responsibility to coordinate with these agencies. As such, the TCC sees no reasonable basis for delaying the 2016 Rule except to give ACF time to rollback the important achievements made in the Rule for tracking ICWA compliance.

Thank you for your consideration of these comments.

Sincerely,
Tanana Chiefs Conference

Victor Joseph,
President/Chairman

[1] 25 U.S.C. § 1901(4).

[2] Information pulled in 2007 from those self-identifying as American Indian nationally showed that Indian children were overrepresented in foster care at more than 1.6 times the expected level and even more significantly overrepresented in foster care in certain states with larger American Indian populations. "Time for Reform, A Matter of Justice for American Indian and Alaska Native Children," at 5 NICWA, available at: http://www.nicwa.org/government/time-for-reform.pdf. *See also* 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) (documenting the need for better data regarding state implementation of ICWA).

[3] https://www.bia.gov/sites/bia.gov/files/assets/public/press_release/pdf/idc1-033728.pdf.

As of: September 15, 2020
Received: April 13, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ki-oz14
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0012
Washington Children's Administration

Submitter Information

Name: Stephanie Sarber
Address: 98504
Email: stephanie.sarber@dshs.wa.gov
Organization: Washington Children's Administration

General Comment

Dear Ms. McHugh:
After review of the recently released Notice of Proposed Rule Making (NPRM) on the Adoption and Foster Care Analysis
and Reporting System (AFCARS), the State of Washington Children's Administration (CA), respectfully submits the
attached comments in response to the proposed delay in the compliance and effective dates of the Adoption and Foster Care
Analysis and Reporting System (AFCARS) 2016 final rule, adding an additional two fiscal years.

Attachments

RIN 0970-AC47 Washington State Children's Admin Comments

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

April 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

RE: Adoption and Foster Care Analysis and Reporting System (AFCARS)
Department of Health and Human Services
Administration for Children and Families
45 CFR Part 1355
RIN 0970-AC47

Dear Ms. McHugh:

After review of the recently released Notice of Proposed Rule Making (NPRM) on the Adoption and Foster Care Analysis and Reporting System (AFCARS), the State of Washington Children's Administration (CA), respectfully submits the following comments in response to the proposed delay in the compliance and effective dates of the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule, adding an additional two fiscal years.

The State of Washington, Department of Social and Health Services, Children's Administration, applauds the ACYF for its focus on collection of the data related to the Indian Child Welfare Act (ICWA) and recognizes data is necessary in understanding and promoting compliance, outcomes, and guidance toward improving outcomes for AI/AN children in foster care, adoption, and guardianship programs. In order for the successful collection and reporting of that data, we are in support of this proposed delay in implementation and compliance of the December 2016 AFCARS final rule. As noted in our comments submitted during open comment periods for both the 2015 NPRM and the 2016 SNPRM, if the proposed rules were adopted, Washington would need time beyond that proposed for compliance to construct the system changes, develop and implement new standards, and complete social service staff training.

- Previous estimates included in the NPRM and SNPRM focused on entry of data regarding out-of-home placement, placement change, and placement end. Estimates did not include the additional amount of time that will be required by social service staff to enter all of the new data elements this rule would require, nor did they include the costs incurred by the state in making system modifications to meet the requirements of the rule changes. System modification will be

extensive, adding 153 new data points, modifications to accommodate the longitudinal reporting of certain elements, and development of a completely new extraction batch to include mapping of system data to the correct values identified in each of the data points.

- Estimates were insufficient to account for the necessary development and delivery of training for staff to consistently gather, collect, and enter (sometimes manually as Washington does not yet have interfaces with either our Education or Court systems) into the case management system.

Washington also supports the proposed rule to delay the implementation date of the December 2016 file rule due to concerns regarding the penalties for non-compliance (penalties previously have not been assessed against states as long as states continued to work on their AIP) that would negatively impact our ability to complete modifications by further reducing our resources.

- Submissions that are found to be in non-compliance, based on allowable error rates, will have six months to re-submit the corrected file(s) for that submission period.
- If standards are not met after corrective action, ACF will apply the penalties required in statute.
- Penalties will be imposed through reduction in IV-E payments to the state.

The October 1, 2019 implementation date of the December 2016 Final Rule is not feasible for Washington within our current SACWIS system. System modifications to the case management system, due to the system architecture, are complex and resource intense. Washington will be submitting our declaration within the next 2 months to move from SACWIS to CCWIS and will need to secure funding and focus resources on this work over the next 2 – 3 years in order to develop a system that better meets the needs of our state, is more easily able to be maintained and modified as needs change, and includes all state and federal reporting requirements.

Thank you for your consideration of these comments supporting the proposed rule to delay the December 2016 final rule from October 1, 2019 to October 1, 2021.

Sincerely,

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

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 13, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92kk-4g8e
Comments Due: April 16, 2018
Submission Type: API

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0013
Comment on FR Doc # 2018-05038

Submitter Information

Name: Ron Wyden
Address: 20510
Email: Laura_Berntsen@finance.senate.gov
Organization: United States Senate

General Comment

See attached file(s)

Attachments

Wyden NPRM Letter re_AFCARS 2 yr delay 04_13_2018

RON WYDEN
OREGON

RANKING MEMBER OF COMMITTEE ON FINANCE

221 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244

United States Senate
WASHINGTON, DC 20510-3703

COMMITTEES:
COMMITTEE ON FINANCE
COMMITTEE ON BUDGET
COMMITTEE ON ENERGY & NATURAL RESOURCES
SELECT COMMITTEE ON INTELLIGENCE
JOINT COMMITTEE ON TAXATION

April 13, 2018

Kathleen McHugh
ACYF/Children's Bureau
Department of Health and Human Services
Administration for Children and Families
Washington, DC 20013

Dear Ms. McHugh:

This letter responds to the request for comment on the Notice of Proposed Rulemaking (2018-05038) to delay the implementation of the updated Adoption and Foster Care Analysis and Reporting System (AFCARS) by two additional years to September 20, 2021. I *strongly* oppose the proposal by the Children's Bureau to delay the collection of this critical data on children, youth and families involved with the foster care system. The revisions to AFCARS (which has not been updated since its inception in 1993) are long overdue. This delay would prevent policymakers, service providers, and advocates from effectively serving children and families or evaluating and improving the foster care system. Furthermore, this delay would increase the risk of harm to foster children that are not adequately accounted for in the current, outdated system. The Children's Bureau should reverse its course of action and move forward to implement the changes to the AFCARS data elements as previously planned in the 2016 Final Rule[1].

First, the collection of this information should not be delayed given that states, tribes, and child welfare agencies have had numerous and sufficient opportunities to comment on the critical questions the AFCARS update would answer, including the level of burden answering those questions would impose on their agencies. Over the past ten years, numerous requests for comment (e.g. 2008[2], 2010[3], 2015[4]) have allowed the Children's Bureau to gain a significant amount of information regarding the questions that should be included in this data set. And as a reminder, these are questions related to critical issues like whether or not a foster child was trafficked for sex, a data element Congress mandated. This process was exceptionally thorough.

[1] *Federal Register,* Adoption and Foster Care Analysis Reporting System, December 14, 2016, p. 90524-90597 (Final Rule).
[2] *Federal Register,* Adoption and Foster Care Analysis Reporting System, January 11, 2008, p. 2082-2142 (NPRM).
[3] *Federal Register,* Request for Public Comment and Consultation Meetings on the Adoption and Foster Care Analysis and Reporting System, July 23, 2010, p. 43187.
[4] *Federal Register,* Adoption and Foster Care Analysis and Reporting System, February 9, 2015, p. 7132-7221 (NPRM).

In reading the public comments, there is overarching State and agency support for the inclusion of these updated data elements. A few states submitted concerns regarding specific components of the Rule and the Children's Bureau appropriately addressed these concerns within the publication of the 2016 Final Rule. This iterative process is documented within the 2016 Federal Register notice of the Final Rule and details the Children's Bureau's incorporation of public comments in addition to its rationale for moving forward with the 2016 Final Rule. This process was conducted diligently and with appropriate solicitation of comment from agencies and states. I do not believe states, tribes, and agencies need additional opportunities to comment, yet again, on this update to the AFCARS.

Next, yet another delay regarding this finalized rule would be extremely poorly timed. Agencies that administer/oversee use of funding through Title IV-E of the Social Security Act are already 15 months into the original two-year implementation period for the finalized 2016 AFCARS rule. States were planning to begin collection of these new data elements on October 1, 2019. Initiating a delay at this stage in the process is unacceptable. If the original plan were implemented, it would still initiate new data collection over 10 years after the initial public comment period on changing the AFCARS data elements occurred in 2008. With this additional proposed two-year delay, the Children's Bureau is blocking efforts to bring our foster care data collection system into alignment with what is currently taking place in the field. Given the proposed timeline in the Advance Notice of Proposed Rulemaking, the earliest possible date this rule would be implemented is October 1, 2021, with data collection commencing in 2023. It is *indefensible* for the Children's Bureau to take 15 years to implement data element changes that shed light on how to improve policies that affect a highly vulnerable population like foster children.

Third, Congress has done significant work in the past 15 years to improve the lives of children and families involved with the child welfare system. Realizing the full potential of Congress' work demands a modernized data system that can appropriately track the implementation of new policies and enable oversight of changes in the child welfare field. Numerous landmark laws have passed since the establishment of AFCARS including the *Fostering Connections to Success and Increasing Adoptions Act of 2008*, the *Child and Family Services Improvement and Innovation Act*, and the *Preventing Sex Trafficking and Strengthening Families Act* that included statutory changes to child welfare policy and also included new data elements that should be collected in AFCARS. By delaying implementation of the final rule, the agency would further delay statutorily directed changes to AFCARS.

As highlighted by the recent enactment of the *Family First Prevention Services Act,* Congress is not going to suspend its oversight and legislative responsibilities in the child welfare space. There will need to be policy changes in the future as legislators continue to work to improve laws and oversee programs based on new data, research and best practices. The Children's Bureau is currently working with willing states and tribes to assist them in the adoption and

development of state and tribal Comprehensive Child Welfare Information Systems (CCWIS) as part of the June 2016 Final Rule[5]. As implementation of these systems moves forward, I hope that the Children's Bureau will work more diligently to promote intrastate and interstate alignment of data systems. Select states and tribes are moving forward with this data system work on their CCWIS systems right now and I believe AFCARS implementation and integration could be done concurrently. AFCARS is outdated and not comprehensive. Given the wide variety of changes that have been made in the child welfare world, it is unacceptable to delay the collection of updated data elements any longer particularly when many states and tribes are already in the process of updating CCWIS data systems.

I will close by saying, **it is not too late**. I strongly encourage the Children's Bureau to rescind its proposal to delay the implementation of AFCARS updates. The Children's Bureau has taken sufficient time to implement needed changes to this outdated system and it is not acceptable to implement yet another delay. This critical new information will be used to enable the appropriate oversight of the child welfare system to better the lives of vulnerable children in foster care. It is our job to ensure that children in foster care receive quality services, supports, and paths to permanency and it is through data and oversight that policymakers can promote positive changes to the child welfare system in the United States.

Sincerely,

Ron Wyden

Ron Wyden
Ranking Member
U.S. Senate Committee on Finance

[5] *Federal Register,* Comprehensive Child Welfare Information System, June 2, 2016, p. 35449-35482 (Final Rule).

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 15, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ls-xpij
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0014
NM Children Youth and Families Department

Submitter Information

Name: Karla Young
Address: 87108
Email: karla.young@state.nm.us
Organization: NM Children Youth and Families Department

General Comment

See attached file(s)

Attachments

Comment Delay AFCARS

New Mexico supports the proposal to delay compliance and effective dates for the AFCARS 2016 final rule for an additional two fiscal years. We appreciate the opportunity to provide feedback on issues related to data collection, particularly with respect to the difficulty of collecting and coding qualitative data elements. New Mexico's current case management system is a 20+ years old legacy system. Modifications to our SACWIS are technically difficult, expensive, and time consuming. Our state is currently exploring options for modernization and transition to a CCWIS. The proposed delay will enable our team to fully integrate new data reporting requirements into our CCWIS plan, and minimize potential duplicative development. In addition, as part of CCWIS planning and our AFCARS Improvement Plan, we are updating and expanding our state's data quality plan. The delay will afford the agency needed time to plan for effective data governance. Many of the new data elements described in the final rule will not only require extensive planning and coding changes on the technical side, but also procedure updates, additional field training, staff support, and quality oversight. Additional time supports a coordinated agency effort and will facilitate a seamless transfer of AFCARS functionality to the proposed CCWIS system.

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 15, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92m1-dpy8
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0015
Comment on FR Doc # 2018-05038

Submitter Information

Name: Anonymous Anonymous

General Comment

There does not seem to be any need for opposition to this action. They are asking for an extra two years to comply with agency rules. By delaying the compliance and effective dates at the same time there should be no harm done. There should be no reason that this does not pass, it is purely for the best that it is delayed, specifically to comply with new agency rules.

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mc-fq9d
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0016
Comment on FR Doc # 2018-05038

Submitter Information

Name: John Sciamanna
Organization: Child Welfare League of America

General Comment

See attached file(s)

Attachments

AFCARS DELAY APRIL 16 2018

April 16, 2018

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

RE: 45 CFR Part 1355 RIN 0970-AC47 NPRM-Delay

Dear Ms. McHugh:

On behalf of the Child Welfare League of America, a coalition of private and public entities and individuals dedicated to ensuring the safety, permanency, and well-being of children, youth, and their families, we appreciate the opportunity to provide input on the proposed rule to delay the effective date of the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) Final Rule.

The CWLA National Blueprint for Excellence in Child Welfare promotes the principle that each entity should collect meaningful data to support its ability to make decisions; improve proactively; and help children, youth, and families to achieve identified outcomes. The proposed delay would negatively impact title IV-E agencies from being able to effectively achieve their desired outcomes for children and families. AFCARS are an important part of the accountability commitment expected of child welfare organizations. As a national leader in the field of child welfare for almost 100 years that sets the best practice standards we are concerned about the continued delay of the implementation of the revised AFCARS reporting elements. We believe that delaying compliance with the 2016 AFCARS Final Rule is unnecessary.

History of AFCARS

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

is always challenging. Governments at all levels are forced to make these spending decisions to support technology and data updates and their decisions are made even more difficult by the fact the benefit is not readily visible to the public. In this current environment of increased accountability on spending and program impact it is especially important that organizations have the information and data required to most effectively respond to both federal and state changes in policy and practice. Short term savings in cost and burden should not outweigh the value of good data for decision making. Ultimately, delaying compliance with the 2016 AFCARS Final Rule requires states to divert resources.

CWLA firmly believes that moving forward with the commitment to AFCARS is consistent with the spirit of the President's directive to reduce regularly burdens on the American people. Having better data ultimately improves the ability of the child welfare system to make decisions that ensure that families and children are served in the most efficient and effective manner.

The proposed delay is unnecessary because there is already a 15-year history of public comment on updating AFCARS, and the Final Rule has been properly promulgated addressing all concerns raised in public comment. The proposed delay would also require title IV-E agencies and the federal government to incur additional costs and would likely require title IV-E agencies to divert resources.

The Indian Child Welfare Act

Of particular concern to CWLA is the impact on the Indian Child Welfare Act (ICWA). States have already been putting in place the infrastructure needed to comply with the ICWA regulations such as revising processes and forms, adjusting their systems to capture the data needed and be able to monitor the safety, permanency and well-being of the children and families they are involved with, revising court processes, and training staff. The Capacity Building Centers funded through HHS have Indian Child Welfare Act (ICWA) as one of their 4 priority areas of focus for their work with the states, tribes, and courts. The staff at these centers have expended much effort to support these entities in their efforts. Delaying further means much of this effort might well be for not and or will require additional time and resources to address the delay and any changes that result from it. The proposed delay would also deprive the federal government, communities, and citizens of the benefits of data that reflects child welfare practice today. The proposed delay would leave in place a dataset that is outdated and does not meet the section 479 requirement that the data set be comprehensive.

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

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

Changes Since 1993

The basic purpose of AFCARS data is to address policy development and program management issues at both the State and Federal levels. In addition, the data collection will allow Congress, HHS, and the OMB to implement, evaluate, develop, and change policies to promote the welfare of all children in foster care or adopted. Collection of the data will enable policymakers to assess the reasons why children are in foster care and develop remedies to prevent it.

The AFCARS also provides ACF with data necessary to comply with congressionally-mandated reporting requirements, to measure the performance of state child welfare agencies, and to allocate incentive and formula grant funds (Pub. L.105–89, 1997, i.e., adoption incentive funds and Chaffee Foster Care Independence Program funds).

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

In 2003 the Children's Bureau requested public comments on improving the AFCARS data system. Two years later a GAO report that was the result of a congressional request on the impact of the Indian Child Welfare Act found that national data on children subject to ICWA was very limited if not unavailable altogether.

Since the original 1993 implementation several laws have been enacted requiring updates in addition to changes in practice and policy including the monitoring of children's access to health care and supervision, education rights and placement types such as "group homes." In 2008 and again in 2014, Congress enacted legislation for the addition of data elements to AFCARS through the Fostering Connections to Success and Increasing Adoptions Act (Public Law 110–351, 2008) and the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113–183, 2014). As a result of all these changes in policy and law as well as the need to revise provisions and data that were more than a quarter century old, HHS responded to new public comments by updating AFCARS regulation in 2016.

We also note that in 2015 the Children's Bureau published an important and significant update to state information systems. This new Comprehensive Child Welfare Information System (CCWIS) removed some of the onerous requirements around a single comprehensive state

system and now allows the use of cost-effective and innovative technologies to automate and stay up to date on the collection of high quality case management data. While Congress has not provided enhanced federal matching funds as it did with the original design, we would certainly work with you in seeking such additional support.

Important Data Added

We will provide further and more detailed comment on data elements in the related public comment request in June but for now the Child Welfare League of America supports a number of key new and revised changes to the 2016 AFCARS Final Rule. This includes: longitudinal data that will allow for better tracking and information on children in care; information regarding children who have been adopted; new data elements on a child's timely health assessment and diagnosed conditions; data that impacts on gender-equity and the treatment of LGBTQ youth, sibling placements, educational outcomes and new data elements related to the Indian Child Welfare Act (ICWA), including reason for removal of a child, child custody hearing notification, and transfers from state court to tribal court.

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

CWLA takes special exception to comments offered by HHS during a recent webinar. You state that, *"ICWA-related data points in the 2016 Final Rule are based on a statute and regulation that is not under HHS's purview, opening the potential for serious interpretation issues."*

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

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

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

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

Cost Concerns

ACF expresses concern for the potential added costs to states stating in the Delay NPRM that they "do not want states to incur these costs unnecessarily as we further assess burden under the rule." We feel the delay will require states to incur more costs, not less, and to divert resources. Delay creates uncertainty which is a burden on Title IV-E agencies, states, and tribes as they plan and execute critical updates to their child welfare information systems. Delaying compliance with Final Rule means that states will spend two years more time implementing the AFCARS update. In light of the 25-year history of the evolution of AFCARS, there is no assurance that additional delays will not result because of the next set of priorities, laws and changes in practice. In the interim, the child welfare system, which we believe is underfunded and under resourced, will continue to lack the latest data and information that can document the real needs of these children and families.

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

Sincerely,

Christine James Brown

Christine James-Brown
President/CEO, Child Welfare League of America

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mf-83q3
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0017
Comment on FR Doc # 2018-05038

Submitter Information

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

General Comment

Dear Ms. McHugh,
Attached please find Power to Decide's comments on Notice of Proposed Rulemaking RIN 0970-AC47.

If you have questions, please feel free to contact me at 202-478-8554 or akane@powertodecide.org.

Sincerely,

Andrea Kane

Attachments

Power To Decide Comments on AFCARS NPRM 04.16.18

POWER TO DECIDE
the campaign to prevent unplanned pregnancy

April 16, 2018

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

Subject: Notice of Proposed Rulemaking RIN 0970-AC47

Dear Ms. McHugh:

Power to Decide appreciates the opportunity to provide comments on the Notice of Proposed Rulemaking (NPRM) (RIN 0970-AC47) to delay by two fiscal years the compliance and effective dates of the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule.

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

On March 15, ACF published the above-referenced NPRM in the Federal Register that would push back the date by which states will be required to report data under the revised AFCARS regulations from October 1, 2019 to October 1, 2021. Given our mission, Power to Decide is especially interested in the full and timely implementation of the new AFCARS data collection requirement about pregnant and parenting teens. We urge HHS to implement the AFCAR regulations on their original schedule, without further delay.

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

capacity of juvenile and family courts to address these issues; and adapting an evidence-based teen pregnancy prevention program for youth in foster care and working with APHSA to integrate that into child welfare programs (for example, see https://powertodecide.org/what-we-do/opportunity/key-initiatives/child-welfare).

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

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

We urge the federal government to work with states to implement the data collection requirements called for in the AFCARS final rule without further delay, including the requirement regarding pregnant and parenting youth. We believe these data are vital to child welfare agencies being able to better understand the experience of young people in each state and to being able to carry out their responsibilities on behalf of the young people in their care.

At the same time, recognizing that data collection can be complex, we encourage HHS to provide necessary support and technical assistance to states to ensure data are collected as efficiently as possible, and that these efforts result in high quality and meaningful information.

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

Sincerely,

Andrea Kane

Vice President for Policy & Strategic Partnerships

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mh-9k3z
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0018
Education Law Center

Submitter Information

Name: Maura McInerney
Address: 19107
Email: mmcinerney@elc-pa.org
Organization: Education Law Center-PA

General Comment

See attached letter from Education Law Center-PA opposing further delays to implementation of AFCARS requirements because delay will cause harm to our most vulnerable children who benefit from data collection supporting program improvement and accountability.

Attachments

2018 ELC AFCARS Comments April162018

EDUCATION LAW CENTER
WWW.ELC-PA.ORG

PHILADELPHIA
1315 Walnut Street, Suite 400
Philadelphia, PA 19107-4717
T 215-238-6970
F 215-772-3125

PITTSBURGH
429 Fourth Ave, Suite 702
Pittsburgh, PA 15219
T 412-258-2120
F 412-467-8940

April 16, 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 Proposed Delay to the Effective Date of the Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule, RIN 0970-AC47

Dear Ms. McHugh,

Pursuant to the notice published in the Federal Register on March 15, 2018 (83 Fed. Reg. 11450), the Education Law Center hereby submits these comments on the proposed rule amending the Adoption and Foster Care Analysis and Reporting System (AFCARS). We respectfully oppose further delays to implementation and believe delays will cause harm to our most vulnerable children who benefit when we collect data that supports program improvement and accountability. There has been ample time for discussion and comment that has resulted in excellent policies that should proceed in accordance with the 2016 Final Rule.

The Education Law Center (ELC) is a nonprofit legal advocacy organization dedicated to ensuring that all of Pennsylvania's children have access to quality public education. For over 40 years, ELC has successfully advocated on behalf of students historically underserved by public education, including students in poverty, students of color, students involved in the juvenile justice and foster care systems, English Learners, students with disabilities, and those experiencing homelessness. ELC works to remove barriers to school stability and high quality education facing students in foster care. Education Law Center is also a partner in the Legal Center for Foster Care and Education.

Previously, the Education 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 on children in foster care. There have been multiple opportunities for public comment prior to the proposed delay; the current Final Rule from December 2016 is the product of these many rounds of public comment. The 2016 Final Rule is crafted to ensure that child welfare agencies are collecting data on critical child and family related outcomes and brings data collection in line with several decades of statutory changes and requirements enacted since 1993. The Department of Health and Human Services has not updated AFCARS since this time. ELC supports the implementation of the Final Rule, and the changes within. A two-year delay will result in postponement of the required implementation date from 2019 to 2021. Delays to implementation will cause unnecessary and

costly uncertainty for jurisdictions that are contemplating updates to information systems in accordance with the Final Rule.

Delays will also cause harm to our most vulnerable children who benefit when we collect data that supports both program improvement and accountability. 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 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:** ELC has repeatedly submitted comments regarding the importance of including education-related data elements, which is essential to monitoring compliance with the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) and the Every Student Succeeds Act (ESSA). States should already have begun 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, including an emphasis on the importance of data elements and interoperability between child welfare agencies and schools.
- **LGBTQ:** There is evidence that LGBTQ-identified youth are over-represented in the child welfare population, and that their specific needs are best served when child welfare agencies have information about which children fit into this category. A delay in implementation will result in a lack of information about this vulnerable population.
- **ICWA:** Currently, jurisdictions may collect racial and ethnic data, yet race and ethnicity are not the best sources to show compliance with ICWA. The Final Rule created, for the first time, a standardized requirement for Title IV-E jurisdictions to collect data on cases that fall under ICWA. Without the data collected pursuant to the Final Rule, it will be more difficult to monitor whether jurisdictions are compliant with ICWA.

At this time, states are moving forward with plans to comply with the requirements set out within the Final Rule. Postponing the effective date more than one year into the implementation process delays states' current efforts to move forward in revising their data collection systems and creates burdens and unnecessary confusion for state agencies. Any burden on agencies that results from implementation of the Final Rule could be alleviated or mitigated by robust technical assistance and support from the Department of Health and Human Services.

The Education Law Center continues to support the new data requirements as they are set out in the Final Rule and opposes any delay to the effective date. 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 are tailored to address current areas of weakness in data collection and reporting and should not be delayed.

Sincerely,

Maura McInerney

Legal Director
Education Law Center-PA

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mh-j0jn
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0019
Comment on FR Doc # 2018-05038

Submitter Information

Name: David Eppstein
Address: 20036
Organization: American Bar Association

General Comment

See attached file(s)

Attachments

AFCAR 4-18 Comments

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
1050 Connecticut Avenue, NW - Suite 400
Washington, DC 20036
(202) 662-1760
FAX: (202) 662-1762

April 16, 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 Proposed Delay to the Effective Date of the Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule

Dear Ms. McHugh,

Thank you for providing an opportunity to share comments regarding the Adoption and Foster Care Analysis and 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) submits these comments on the proposed delay to implement the AFCARS Final Rule issued in 2016. The ABA is a voluntary professional membership organization with more than 400,000 members, and I write today on their behalf to reiterate our support for the Final Rule issued from your Department and to express our concerns about the proposed two-year implementation delay.

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. The Final Rule also includes new information that will allow agencies to develop more comprehensive information about the circumstances that bring families into contact with agencies, such as data on medical needs, living arrangements, older youth and mental health. The Final Rule incorporates data requirements that have arisen from legislation and regulations that have come into effect since 1993, including most recently through the Every Student Succeeds Act (ESSA) and the updated Indian Child Welfare Act (ICWA) regulations.

The ABA continues to support the Final Rule and opposes a two-year delay for implementation. Postponing the effective date when states are already more than a year into the implementation process would disrupt efforts to revise data collection systems and would create burdens and unnecessary confusion for state agencies. Delaying the potential for further changes in the regulations would also interfere with the collection of key data that is not covered by existing AFCARS requirements. Although there may be some burdens associated with incorporating these new data provisions in state systems, the benefits of including those provisions far outweigh the burdens. This is critical, as federal courts have recently ordered federal agencies considering delays for final rules to look at both the potential burden and the potential benefits of timely implementation before changing implementation deadlines. *California v. U.S. Bureau of Land Management*, No. 17-cv-3804, (N.D. Cal., Oct. 4, 2017), for example, held that the Bureau of Land Management's (BLM) postponement of a final rule's compliance date was arbitrary and capricious because BLM considered only the burdens of meeting the compliance deadline and failed to consider the rule's benefits when postponing compliance.

In this case, the benefits of timely implementation of the 2016 AFCARS Final Rule outweigh the potential burdens because the new data elements are long overdue, fill problematic gaps in child welfare data collection, and address legislative requirements that have arisen since the AFCARS update over two decades ago. Three new data categories highlighted below each demonstrate the benefits of timely implementation: Education, LGBTQ, and the Indian Child Welfare Act (ICWA).

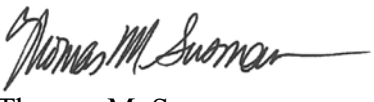
- **Education:** Education-related data elements are essential to monitoring compliance with the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) and the Every Student Succeeds Act (ESSA). Pursuant to that legislation, states should already have begun planning for how they may update their existing Statewide Automated Child Welfare Information Systems (SACWIS) to comply with new Comprehensive Child Welfare Information System requirements, including an emphasis on the importance of data elements and interoperability between child welfare agencies and schools. Delaying implementation of the 2016 Final Rule, and indicating that there may be further changes to the proposed rule creates uncertainty for states about whether they should wait to update these systems and whether they should delay collection of critical education data.

- **LGBTQ:** LGBTQ-identified youth are over-represented 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, and a delay in implementation will result in a continued lack of information about this vulnerable population.

- **ICWA:** Currently, jurisdictions may collect racial and ethnic data, yet race and ethnicity are not the best sources to show compliance with the Indian Child Welfare Act (ICWA). The Final Rule created, for the first time, a standardized requirement for Title IV-E jurisdictions to collect data on cases that fall under ICWA. Without the data collected pursuant to the Final Rule, it will be more difficult to monitor whether jurisdictions are compliant with ICWA.

The ABA continues to support the new data requirements as they are set out in the Final Rule and opposes any delay to the effective date. 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 are tailored to address current areas of weakness in data collection and reporting and should not be delayed.

Sincerely,



Thomas M. Susman

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mi-5xem
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0020
Child Trends

Submitter Information

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

General Comment

See attached file(s)

Attachments

Child Trends response to AFCARS delay

April 16, 2018

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

RE: RIN 0970-AC47
Adoption and Foster Care Analysis and Reporting System (AFCARS)

Dear Ms. McHugh:

Child Trends is a nonpartisan research organization focused exclusively on improving the lives and prospects of children, youth, and their families. For nearly 40 years, decision makers have relied on our rigorous research, unbiased analyses, and clear communications to improve public policies and interventions that serve children and families.

Children and youth in foster care constitute a population of special concern to policymakers and the public, given that they are in the custody of public child welfare agencies. Furthermore, their nearly universal experience of trauma resulting from abuse or neglect and from separation from their families of origin, places them at risk for worse health, education, and social connectedness outcomes than their peers in the general population. Comprehensive data about these vulnerable children and their experiences in foster care are critical to supporting their long-term success. As an institution dedicated to promoting research-based, data-driven solutions to the challenges facing children, we are grateful for this opportunity to weigh in on the Adoption and Foster Care Analysis Reporting System (AFCARS) 2016 Final Rule.

We write to encourage the Children's Bureau to implement the Final Rule within the original timeframe, requiring states to submit data by October 1, 2019. Although we do recognize the burden gathering and reporting these data places on states, we believe they are critical to fulfilling the Children's Bureau's mission: "to improve the overall health and well-being of our nation's children and families."

AFCARS has been the sole, consistent source of information on all children and youth experiencing foster care since 1995. However, priorities and policies surrounding the child welfare system have shifted considerably since AFCARS was created. Additionally, as the field has changed, our understanding of the needs of and risk factors to children have also expanded. **AFCARS must be updated so that it includes those data with the greatest potential to yield information to move the field forward with better services, supports, and policies.**

In the two decades since AFCARS was originally designed, both researchers' and states' capacities regarding data have expanded. As capacity of states and localities to collect and manage electronic data has improved over time, so too has the potential utility of state child welfare administrative data that could be reported into AFCARS, due to the increased reliability, completeness, and quality of the data elements. Many researchers and analysts within state and local agencies, as well as those in independent research organizations and universities, now have access to affordable computing capacity that can examine patterns in, for example, the complete placement histories for hundreds of thousands of children.

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

Below are our recommendations regarding some of the data elements that are of greatest importance to the field.

1. **Retain the data element capturing the circumstances around a child's removal.** The 2016 Final Rule will require states to gather more nuanced information on why children have been removed from their homes, such as prenatal drug and alcohol exposure, parental deportation, family conflict due to a child's sexual orientation or gender identity, homelessness, and if the child was a victim of sex trafficking. Understanding the context and conditions surrounding children's removals is important to current policy and practice discussions. For example, understanding the prevalence of prenatal drug and alcohol exposure is critically important to developing and testing strategies to address the opioid epidemic, where prenatal drug exposure is of particular concern. We currently lack this information on a national level. Similarly, at present we do not have national data on the numbers of children entering foster care due to parental deportation. Without this information, it is impossible for state and local child welfare agencies to prepare to support children as immigration policies change. The added information on removal reasons over time will allow for a better understanding of the lack of long term

stability some children face. This understanding could provide insight into needed family preservation services and prevent multiple foster care episodes.

2. **Retain the data element capturing foster family home types**. Since AFCARS was originally developed, policies have expanded to increasingly recognize and support the ways relatives and non-related kin serve as a placement for children in foster care. The 2016 Final Rule's addition of the "kin foster family home" to the foster family type variable is beneficial to our understanding children's foster care placement. Over the past decade, federal and state legislation has encouraged the placement of children who are in foster care with relatives and non-related kin and, since 2008, federal law has required child welfare agencies to identify relatives when children enter foster care. Including this category will help states understand their progress towards the goal of placing children with relatives and non-related kin.

3. **Retain data elements gathering information on pregnant and parenting youth.** Much of what we know about pregnant and parenting youth in foster care comes from survey research. Without national data on this topic, we are unable to track trends over time. Studies have found former and current foster youth are more likely to have their own children placed in foster care than are young adults without system involvement. To provide adequate reproductive health and pregnancy prevention, in addition to parenting services to foster youth, and train and recruit foster families willing to care for foster youth with their babies, states need to understand the scope of the issue. Without providing better prevention services and placement options for parenting youth, states run the risk of young people leaving foster care and missing vital services for both themselves and their children.

4. **Retain data elements related to the Indian Child Welfare Act (ICWA)**. Currently, Native American children are overrepresented in the foster care population and face some of the worst outcomes. New data required by the Final Rule would allow us to understand when Native American children enter the foster care system, utilization of relatives or kin as a placement, and ways these cases flow through state and tribal courts. It will also hold agencies accountable for doing their due diligence in determining a child's eligibility for ICWA and notification of tribes of the child's involvement with child welfare. The way race/ethnicity is currently collected in AFCARS does not likely yield an accurate account of the number of Native American children in foster care, as it relies on the discretion of child welfare workers.

5. **Retain data elements gathering information on the sexual orientation of foster youth.** Despite the fact that research has demonstrated that LGBTQ youth are at elevated risk for maltreatment and foster care placement, we lack national data on LGBTQ youth in foster care. Furthermore, once they enter foster care, they are at elevated risk of experiencing challenging circumstances and further trauma, compared with other youth in foster care. For example, LGBTQ foster youth are more likely to be placed in congregate care settings, experience further victimization from peers and adults in the child welfare system, and experience negative outcomes than their cisgender straight peers. Such data would help states ensure that they have adequate services

and foster families who are well-prepared to care for this population, as well as help researchers understand under what circumstances their outcomes improve.

Again, we thank you for this opportunity. For any questions regarding these comments, please contact Elizabeth Jordan at Child Trends (ejordan@childtrends.org; 240-223-9316).

Sincerely,

/s/

Carol Emig,
President

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mj-11fp
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0021
Juvenile Law Center

Submitter Information

Name: Jennifer Pokempner
Address: 19107
Email: jpokempner@jlc.org
Organization: Juvenile Law Center

General Comment

Attached please find our comments. Thank you for the opportunity to comment.

Attachments

JLCAFCARS_Comments_April2018

Juvenile Law Center
advancing the rights and well-being of children in jeopardy

The Philadelphia Building
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
215.625.0551 ■ 215.625.2808 fax
800.875.8887 ■ www.jlc.org

April 16, 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 Proposed Delay to the Effective Date of the Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule, RIN 0970-AC47

Dear Ms. McHugh,

Pursuant to the notice published in the Federal Register on March 15, 2018 (83 Fed. Reg. 11450), Juvenile Law Center hereby submits these comments on the proposed rule amending the Adoption and Foster Care Analysis and Reporting System (AFCARS). We respectfully oppose further delays to implementation and believe delays will cause harm to our most vulnerable children who benefit when we collect data that supports program improvement and accountability. There has been ample time for discussion and comment that has resulted in excellent policies that should proceed in accordance with the 2016 Final Rule.

Juvenile Law Center (JLC) is the oldest non-profit, public interest law firm for children in the country and works on behalf of children who come into contact with the child welfare and justice systems. Juvenile Law Center works to improve the opportunities and futures of system-involved youth and 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.

1. There Has Been Ample Time for Discussion and Comment

Previously, 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 on children in foster care. There have been multiple opportunities for public comment prior to the proposed delay; the current Final Rule from December 2016 is the product of these many rounds of public comment. The 2016 Final Rule is crafted to ensure that child welfare agencies are collecting data on critical child and

family related outcomes and brings data collection in line with several decades of statutory changes and requirements enacted since 1993.

2. The 2016 Final Rule Represents Exemplary Changes that Are Long Overdue—Delays Will Prevent the Program Improvement Children Deserve

The Department of Health and Human Services has not updated AFCARS since 1993. 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:** Juvenile Law Center has repeatedly submitted comments regarding the importance of including education-related data elements, which are essential to monitoring compliance with the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections) and the Every Student Succeeds Act (ESSA). States should already have begun 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, including an emphasis on the importance of data elements and interoperability between child welfare agencies and schools.
- **LGBTQ:** There is evidence that LGBTQ-identified youth are over-represented in the child welfare population, and that their specific needs are best served when child welfare agencies have information about which children fit into this category. A delay in implementation will result in a lack of information about this vulnerable population.
- **ICWA:** Currently, jurisdictions may collect racial and ethnic data, yet race and ethnicity are not the best sources to show compliance with ICWA. The Final Rule created, for the first time, a standardized requirement for Title IV-E jurisdictions to collect data on cases

that fall under ICWA. Without the data collected pursuant to the Final Rule, it will be more difficult to monitor whether jurisdictions are compliant with ICWA.

3. Delays Will Cause Confusion and Stall Progress

A two-year delay will result in postponement of the required implementation date from 2019 to 2021. Delays to implementation will cause unnecessary and costly uncertainty for jurisdictions that are contemplating updates to information systems in accordance with the Final Rule. At this time, states are moving forward with plans to comply with the requirements set out within the Final Rule. Postponing the effective date more than one year into the implementation process delays states' current efforts to move forward in revising their data collection systems and creates burdens and unnecessary confusion for state agencies. Any burden on agencies that results from implementation of the Final Rule could be alleviated or mitigated by robust technical assistance and support from the Department of Health and Human Services.

Juvenile Law Center continues to support the new data requirements as they are set out in the Final Rule and opposes any delay to the effective date. 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 are tailored to address current areas of weakness in data collection and reporting and should not be delayed.

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,

Jennifer Pokempner

Jennifer Pokempner, Juvenile Law Center

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mj-1w2q
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0022
Comment on FR Doc # 2018-05038

Submitter Information

Name: Anonymous Anonymous

General Comment

See attached file(s)

Attachments

AFCARS NPRM Delay FINAL Comments 04162018

April 16, 2018

Kathleen McHugh
Division of Policy
Children's Bureau

Re: 45 CFR Part 1355. NPRM for Delay of the AFCARS Final Rule (RIN: 0970-AC47; Docket #: ACF-2018-0004; Federal Register #: 2018-05038).

On March 15, 2018, the US Department of Health and Human Services (HHS), Administration for Children Youth and Families (ACF), issued a Notice of Proposed Rule Making (NPRM) to delay the effective date of the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) Final Rule (Final Rule). This delay would postpone the effective and compliance dates for title IV-E agencies to comply with a series of specified sections of the Rule. The proposed delay would leave in place outdated data reporting requirements that do not meet the obligation that the dataset be comprehensive as required by sec. 479 of the Social Security Act (sec. 479).

The proposed delay, which will create regulatory uncertainty and undermine implementation of title IV-E, is not based on a full consideration of the relevant factors and delay based on the NPRM would represent a clear error in agency judgement. The NPRM relies on factors that Congress did not intend ACF to consider. The NPRM entirely fails to consider important aspects of the problem. The NPRM offers explanations for ACF's proposed delay that runs counter to the evidence before the agency. The reasons asserted in the NPRM for proposing delay are so implausible that a decision to delay the Final Rule could not be ascribed to a difference in view.

The Final Rule, published December 14, 2016 and effective January 13, 2017 (81 FR 90524), is the culmination of many extensive rounds of public comments on updating the AFCARS (2003, 2008, 2010, 2015 and 2016). The Final Rule provides a two-fiscal-year implementation period (32 months) after which agencies are required to report the data elements required by the Final Rule. Reporting the updated data elements by October 1, 2019 requires title IV-E agencies to begin collecting the data in April of 2019. Thus, under the Final Rule title IV-E agencies are afforded 26 months to update their state child welfare information systems. As of April 16, 2018, title IV-E agencies are 15 months into the 26-month timeline for updating their systems. During the implementation period agencies are required to report the data elements in the prior 1993 Rule.

With less than half of the implementation time remaining for title IV-E agencies to begin collecting data under the Final Rule, ACF now proposes to delay implementation of the Final Rule to solicit even more public comment on its policy. ACF intends to solicit additional public comment on streamlining data elements required by the Final Rule and reducing the burden related to agency reporting to AFCARS. Therefore, ACF proposes to delay the effective date and the compliance date of the Final Rule's reporting requirements for an additional two fiscal years.

ACF bases its about-face on the President's Executive Order 13777, Enforcing the Regulatory Reform Agenda. Executive Order 13777 directs federal agencies to establish a Regulatory Reform Task Force to review the burdens created by existing regulations and make recommendations regarding their repeal, replacement, or modification "consistent with applicable law." According to ACF, this Order requires it to reconsider the Final Rule's reporting requirements. ACF now seeks comment on delay of the effective and compliance dates of the 2016 AFCARS Final Rule.

The proposed delay of the Final Rule is unnecessary. The justifications for the proposed delay offered by ACF are arbitrary, capricious, and an abuse of discretion. The proposed delay is arbitrary and capricious because ACF has not provided the legal foundation for delaying the Final Rule. In proposing the delay ACF fails to meet the requirements of administrative procedure.

First, ACF fails to identify statutory authority for its decision to reverse course. ACF also has failed to follow the mandates of Executive Order 13175 and ACF and HHS policies requiring tribal consultation.

Second ACF has given no explanation why a delay of the Final Rule's effective and compliance dates is necessary when it could accomplish its goal of receiving additional information through a less disruptive alternative. The appropriate administrative vehicle, a Request for Information (RFI), does not necessitate delaying the Final Rule and enables ACF to gather the full range of information it seeks about the Final Rule.

Third, the reasons ACF offers for its proposed delay are implausible. Executive Order 13777 does not apply to the Final Rule, and even if the Executive Order did apply, ACF has failed to follow the procedures required by the Order. ACF's tortured dependence on the EO results in the agency relying on factors Congress did not intend ACF to consider when regulating national, comprehensive case level information on all children in foster care and children adopted with the involvement of a title IV-E agency. ACF's justification that further comment related to burden is needed is implausible because there has been no public statement, and ACF alleges no concerns in the NPRM, from title IV-E agencies after publication of the Final Rule about the burden imposed. In addition, there is already a 15-year history of public comment on updating AFCARS.

Moreover, and most critically, the proposed delay runs counter to evidence before the agency. Children's Bureau knows that the Final Rule was properly promulgated addressing all concerns, including concerns a few title IV-E agencies raised in public comment related to the agency's burden estimates in the 2015 AFCARS NPRM and 2016 AFCARS SNPRM. Children's Bureau also knows the Final Rule appropriately addresses concerns raised about the burden imposed on title IV-E agencies by increasing the number and variety of data elements to be collected and reported. Despite ACF's professed concerns for minimizing additional costs to title IV-E agencies while yet more comment is collected, Children's Bureau knows that the proposed delay would require title IV-E agencies and the federal government to incur additional costs and would likely require title IV-E agencies to divert resources unnecessarily.

Finally, the NPRM entirely fails to consider or request comment on important aspects of AFCARS operation. ACF does not consider the costs of delay to title IV-E agencies or the costs of delay to the beneficiaries of the Final Rule. ACF does not consider that the proposed delay would deprive the federal government, communities, and citizens of the benefits of data that reflects child welfare practice today. ACF does not consider that the proposed delay would leave in place 1993 data requirements that are outdated and do not meet the sec. 479 requirement that the national foster care and adoption data collection system be comprehensive.

Background

AFCARS is the only Federal national dataset that requires the collection of case level information on all children in foster care and children adopted with the involvement of a title IV-E (child welfare) agency. Section 479 of the Social Security Act requires the US Department of Health and Human Services (HHS) to regulate the national data collection system to provide comprehensive case level information. HHS is required 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.

The basic purpose of AFCARS data is to address policy development and program management issues at both the State and Federal levels. Sec. 479 seeks to accomplish this purpose by requiring data collection from title IV-E agencies. The data are intended to enable the Federal government to more effectively direct and manage the national foster care and adoption assistance programs. In addition, the data collection enables Congress, HHS, and the Office of Management and Budget (OMB) to implement, evaluate, develop, and change policies to promote the welfare of all foster care and adopted children.

Specifically, AFCARS data are used for:

- Assessing agency compliance with title IV-E;
- Statutorily required reports to Congress;
- Short and long-term budget projections;
- Trend analyses and short and long-term planning;
- Targeting areas for greater or potential technical assistance efforts, for discretionary service grants, for research and evaluation, and for regulatory change;
- Background and justification for policy changes and legislative proposals; and
- Responding to inquiries from Congress, the Office of the Inspector General, and the Government Accountability Office, and setting Office of Management and Budget performance measures.

These purposes are founded in the administrative and regulatory history of AFCARS. “Thus, collection of the data will enable policymakers to assess the reasons why children are in foster care and develop remedies to prevent it. The data will provide information about foster care

placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption and identify geographic areas with special problems. The data will also be useful for research, the ultimate purpose of which is to gain a better understanding of the foster care program and the causes and other factors contributing to its expansion and other changes; and, eventually, to make suggestions and proposals for change to improve the child welfare system" (58 FR 67912).

The AFCARS also provides ACF with data necessary to comply with congressionally-mandated reporting requirements, to measure the performance of state child welfare agencies, and to allocate incentive and formula grant funds (Pub. L.105–89, 1997, i.e., adoption incentive funds and Chaffee Foster Care Independence Program funds).

Indian Child Welfare Act Data

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

In addition, tribes in formal consultations with HHS and in listening sessions, members of the Secretary's Tribal Advisory Committee, and members of the ACF Tribal Advisory Committee have long asked for and recommended that ACF collect ICWA-related data through AFCARS. Tribal and non-Indian comments on the 2015 AFCARS NPRM, including comments by the American Public Human Services Association (APHSA), and both Indian and non-Indian child welfare advocacy organizations also recommended and supported ICWA-related data collection in AFCARS. ACF responded to those practical and reasonable submissions by accompanying the NPRM with proposed ICWA-related data elements in the 2016 Supplemental Notice of Proposed Rulemaking (SNPRM). Without data there is no way for HHS or the federal government to know where to put resources that meet the needs of AIAN children and families.

The 2016 AFCARS Final Rule acknowledges a truism included in public comment to the SNPRM and subscribed to by Indian and non-Indian child welfare advocates and agencies that ICWA is the "gold standard" of child welfare practice.

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

Thus, collecting data related to ICWA benefits all children and families with child welfare experiences. This is particularly true for improving implementation of notice to extended family members, family finding processes, increasing the frequency and stability of kinship placements,

state efforts to prevent removal and preserve families (including prevention activities funded by Family First), and keeping children connected to their home communities and community networks.

Children's Bureau knows that statutory authority for collecting data related to ICWA need not come from the ICWA law itself. Clearly sections 479 and 474(f) of the Social Security Act provides authority to require that title IV-E agencies maintain a data collection system which collects and reports comprehensive information related to adopted and foster children, and requires that the Secretary regulate a national data collection system to provide comprehensive case level information. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which s/he is responsible under the Act.

The legal authority for collecting the ICWA-related AFCARS data elements is clearly articulated in the March 2015 announcement of intent to publish a supplemental notice of proposed rulemaking (80 FR 17713):

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

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

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

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

Children's Bureau has ICWA expertise. Information provided by Children's Bureau to the HHS Secretary's Tribal Advisory Committee (STAC) and the ACF Tribal Advisory Committee (ACF TAC) contradicts Children's Bureau's recent public statements that the division lacks ICWA expertise. According to information provided to the STAC and ACF TAC, grantees of the state Court Improvement Program made numerous requests for training and technical assistance related to improving ICWA implementation. The Children's Bureau's Capacity Building Centers for States and for Courts provide training and technical assistant related to ICWA implementation based on many requests from states and state courts. In part, these continued requests resulted in a 2017 Children's Bureau discretionary grant to states and tribes to co-create

protocols and best practices for intergovernmental partnership and ICWA implementation. In addition, Children's Bureau has sufficient ICWA expertise to implement requirements in title IV-B related to ICWA, and Children's Bureau reviews ICWA implementation when an ICWA case is found in a random sample of cases during title IV-E compliance reviews. Should Children's Bureau require additional expertise it ought not to make excuses but rely on expertise within ACF (through the Administration for Native Americans and Temporary Assistance for Needy Families), expertise within HHS (Office of General Counsel), and expertise within the federal family (Department of Interior, Department of Justice, Senate Committee on Indian Affairs, House Committee on Natural Resources). If Children's Bureau needs still more ICWA expertise to keep up with the extraordinary demand from states and title IV-E agencies, then Children's Bureau should also train all existing Regional staff and hire and retain Central Office staff with ICWA knowledge.

2016 AFCARS Final Rule

The Final Rule is the first update of AFCARS since 1993, when AFCARS was first implemented December 22, 1993 (45 CFR 1355.40). This update was much needed and long in coming. In 2003, investigation by Office of the Inspector General (OIG) found, among other things, that the data elements were not clearly and consistently defined, and that Children's Bureau's technical assistance was difficult to access (OEI-07-01-00660). And in 2003, the Government Accountability Office (GAO) found many of the same problems the OIG investigation identified (GAO-04-267T). In response to the GAO report, Children's Bureau noted that the data definitions needed to be updated and revised and said it was in the process of revising regulations. In 2003, responding to the OIG and GAO reports, Children's Bureau requested public comments on improving the AFCARS data system (68 FR 22386). No AFCARS Notice of Proposed Rule Making (NPRM) or AFCARS changes were published to the Federal Register following the 2003 comment request.

In addition, in 2005 the GAO attempted to meet Congress' request for information on placement decisions for children subject to the Indian Child Welfare Act, the availability of American Indian foster and adoptive homes, and the level of cooperation between states and tribes. However, the GAO found that "national data on children subject to ICWA are unavailable." Many subsequent GAO investigations launched related to American Indian and Alaska Native children's experiences in foster care went uninformed because there was no AFCARS data, including two investigations into sex trafficking of Native Americans. (GAO-15-273, GAO-16-625, GAO-17- 325, GAO-17- 624, GAO-17- 181)

Moreover, in 2008 and again in 2014, Congress enacted statutes requiring the Children's Bureau to add data elements to AFCARS: Fostering Connections to Success and Increasing Adoptions Act (Public Law 110–351, 2008) and the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113–183, 2014).

Finally, in 2015-16, as part of a government wide performance assessment of child well-being, the Office of Management and Budget (OMB) attempted to set federal government-wide

performance standards for American Indian and Alaska Native children which included measures for implementation and compliance with ICWA. OMB was frustrated by the lack of data in AFCARS that could be used for setting standards and measuring performance because AFCARS is the only case level child welfare data that is required to be reported and the 1993 Rule does not include ICWA-related data elements.

The agency thrice requested comments on AFCARS (in 2003, 2008, and 2010) prior to the 2015 NPRM. ACF again proposed to amend AFCARS on January 11, 2008 (73 FR 2082). However public comment to the 2008 NPRM resulted in no changes to AFCARS "[d]ue to the enactment of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351) and the substantial changes it introduced in title IV-E." In July 2010, ACF published a Request for Comment on AFCARS (75 FR 43187). No changes were made to AFCARS as a result of comments to the 2010 Request for Public Comment. Despite Congress's new statutes, the various agency investigations, and HHS's own actions, it was not until 2016 that HHS finally updated the AFCARS regulation.

Statutory Authority for Delay of the Final Rule

It is a basic principle of administrative law that agencies are creatures of statute. They do not have inherent authority to act, much less to derogate from their statutory mission. Nor can the President vest agencies with authority that the executive itself lacks. Instead, agencies must ground their actions in statutory authority and explain those actions in reasonable terms. ACF thoroughly grounded and explained its decisions in the Final Rule. ACF has failed to explain how its reversal of course is consistent with its statutory authority, instead pointing to Executive Order 13777 as the basis for its new policy. But Executive Order 13777 cannot alone sustain the agency's proposed action. ACF provides no statutory basis for their proposed delay of the long-awaited AFCARS update. The executive orders explicitly provide that they are to be "implemented consistent with applicable law." Executive orders do not create power where, in the underlying statutes, there is none. "The president made me do it" is not an identified legal authority for an agency action.

Executive Orders

ACF implausibly cites Executive Order 13777 as authority for proposing delay of the Final Rule. However, EO 13777 is not a statutory basis for agency action. Further, the EO does not apply to the Final Rule, and if the Executive Order did apply ACF fails to follow the procedures required by the Order. Further, in justifying its proposed delay ACF offers explanations that run counter to evidence before the agency and ACF fails to consider important aspects of the problem.

Executive Order 13777 is Not a Statutory Basis for Agency Action.

In reversing course, ACF cites the President's Executive Orders concerning regulatory reform. Elections have consequences, of course, but fundamental principles of administrative law require

an agency to offer a reasonable and lawful explanation when it reverses course after adopting a final rule based upon an extensive administrative record. Simply pointing to an Executive Order is not sufficient, because executive orders do not override statutes. President Trump's orders explicitly provide that they are to be "implemented consistent with applicable law."

It is particularly surprising and utterly implausible that the Executive Orders are the impetus for ACF reversing course because ACF was contemplating review of the Final Rule more than three weeks *before* the President's Executive orders, as evidenced by emails sent from Children's Bureau Deputy, Joe Bock in January 2017. The earliest Bock email is dated more than three weeks prior to issue of Executive Order 13777. Clearly, ACF had already predetermined that it would review the Final Rule before the President issued Executive Order 13777.

The Executive Orders Do Not Apply to the Final Rule

The Executive Orders do not provide a basis for a lawful reversal of course with respect to the Final Rule's effective and compliance dates because the Final Rule does not fall within the date parameters required in the EOs. The EO's requirements for Fiscal Year 2017 apply only to those significant regulatory actions, as defined in Section 3(f) of Executive Order 12866, an agency issues between noon on January 20 and September 30, 2017. The Final Rule was published on December 14, 2016 and effective January 13, 2017. The Final Rule does not fall within the parameters established by the Executive Order because it was published and effective before January 20, 2017. If ACF were to argue that there is a second effective date of October 1, 2019 related to compliance, that effective date does not fall within the date parameters of the EO either.

Further, the Order's requirements apply only to "significant final regulations" and significant guidance documents may also be covered. Guidance for implementing the Executive Orders states E.O. 13771 applies "only to those significant regulatory actions, as defined in Section 3(f) of Executive Order 12866, an agency issues between noon on January 20 and September 30, 2017." The Final Rule is not "significant" under the definition of EO 12866. In the Delay NPRM, ACF states, "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." Since guidance for implementing the Executive Orders states that only "significant" rules and guidance are covered, and since ACF asserts that the Final Rule is not significant, then the Executive Orders do not apply to the Final Rule.

ACF Failed to Use Processes Required by the Executive Orders

In its NPRM for Delay of Effective and Compliance Dates, ACF alleges, "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." However, this is factually inaccurate.

Section 3 of E.O. 13777 requires, in relevant part, the Department and ACF to:

- Establish "a Regulatory Reform Task Force"
- Ensure the established Regulatory Task Force evaluates existing regulations and "make recommendations to the agency head regarding their repeal, replacement, or modification
- Ensure the Regulatory Task Force, at a minimum, identifies regulations that:
    - eliminate jobs, or inhibit job creation;
    - are outdated, unnecessary, or ineffective;
    - impose costs that exceed benefits;
    - create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;
    - derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified [section 3 (d) of EO 13777]
- Ensure the Regulatory Task Force, in performing "the evaluation described in subsection (d)," "shall seek input and other assistance as permitted by law, from entities significantly affected by Federal regulations, including State, local and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations."
- When implementing the regulatory offsets required by Executive Order 13771, each agency head should prioritize, to the extent permitted by law, those regulations that the agency's Regulatory Reform Task Force has identified as being outdated, unnecessary, or ineffective pursuant to subsection (d)(ii) of [E.O. 13777].

Executive Order 13777 was issued February 24, 2017. According to email sent from Children's Bureau Deputy Joe Bock on January 31, 2017 (seven working days after the Presidential inauguration), "The beachhead team is reviewing everything that has gone out just prior to their arrival – including the AFCARS reg- which is typical of all new administrations." Since the 2016 AFCARS Final Rule was already under review on or before January 31, 2017 it could not possibly be based on EO 13777 which was issued 24 days later. Further, since the Final Rule was already under review, it could not possibly have been identified or assessed through the process prescribed by EO 13777. ACF had clearly already predetermined that it would review the Final Rule before the President issued Executive Order 13777.

The Final Rule Does Not Meet the EO Requirements for Reducing Regulatory Burden

The Final Rule does not meet any of the requirements of E.O 13777 for reducing burden. The Final Rule does not eliminate jobs or inhibit job creation. ACF does not allege that the AFCARS update is outdated, unnecessary, or ineffective. It is the first update in 23 years, so it is not outdated. In fact, the 2016 AFCARS regulation updates the very outdated 1993 regulation that ACF proposes to continue to require states to collect and report for an additional two years. The Final Rule was accomplished after 5 public comments attempts to update (2003, 2008, 2010, 2015, and 2016) and includes data elements required by statute (Fostering Connections, 2008, and Sex Trafficking, 2014) so it is not unnecessary. The AFCARS ANPRM does not ask for

comments to address the benefits of the Final Rule; it only asks about burden. ACF does not allege, and the Final Rule is not inconsistent or otherwise interfere with regulatory reform initiatives or policies, nor does it derive from or implement other Presidential directives that have been rescinded or modified. There is no credible evidence, based on the voluminous, detailed, and recent in time administrative regulatory record that supports any of the considerations and factors for review of regulations specified in section 3(d) of the Executive Order.

Implementing ACF's proposed delay would be arbitrary and capricious agency action because it is implausible to believe ACF really views Executive Order 13777 or Executive Order 13771 as providing a sufficient and lawful basis to delay the effective date of the already promulgated Final Rule. To delay the effective or compliance date of the Final Rule, ACF must assert a statutory basis for their action. An Executive Order is not a statute, and the EOs cited by ACF do not apply to the Final Rule. Further, there has been no change in the underlying statutory authorization of the Final Rule, no change in any relevant regulatory provision, and no change in the legal process for rulemaking under the Administrative Procedures Act.

In addition, should ACF rely on the Executive Order's requirements for reducing burden to implement delay of the Final Rule, ACF would be relying upon factors Congress did not intend ACF to consider for regulating a collection system for national adoption and foster care data. Section 479 is clear that ACF is to consider whether the system is national, comprehensive, and reliable and should limit regulation to avoid unnecessary diversion of title IV-E agency resources. In the Final Rule, ACF clearly considered the Congressionally required factors and responded to public comment by editing the proposed data elements and providing reasonable explanations for its decisions and concluded that title IV-E agencies were not unnecessarily required to divert resources.

ACF Cannot Delay Implementation because It is Bound by the Final Rule Until Modified

It is a basic principle of administrative law that "an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked." *Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017). An agency has no inherent authority to stay its own rules. *Id.* The agency may amend or alter a legislative rule, but only through a notice-and-comment procedure and only if it provides a reasonable explanation for its reversal of course. *See id.* ACF fails to provide a reasonable explanation for its proposed course reversal in the 2018 NPRM for Delay. Instead, ACF offers as an explanation for delay the "need" to get further information related to concerns raised in the notice and comment period of the Final Rule. Among the concerns of commenters addressed in the Final Rule is the implementation timeline. All comments and concerns were appropriately addressed by the Final Rule, and ACF does not assert any arguments or facts to the contrary in its NPRM for Delay. ACF is therefore bound by the Final Rule until the Final Rule is amended and cannot permissibly delay implementation of the Final Rule. Should ACF act to implement the proposed delay the agency's action is very likely arbitrary and capricious because ACF has not provided a sufficient lawful basis and a reasonable explanation for delay.

Tribal Consultation

ACF's Proposed Delay is an Abuse of Discretion Because ACF Failed to Follow the Requirements of Executive Order 13175 as well as HHS and ACF Policy with Respect to Formal Government-to-Government Consultation with Indian Tribes.

Department and ACF authorities require formal tribal consultation prior to proposing delay of the Final Rule. Section 8 of ACF's Tribal Consultation Policy states:

"An action that triggers consultation is any legislative proposal, new rule adoption, or policy change that either ACF or a tribe determines may significantly affect Indian tribes. "

An action is considered to significantly affect tribes if there exists a reasonable presumption that it has or may have substantial direct effects on:

a. One or more Indian tribes;
b. The amount or duration of ACF program funding for one or more tribes;
c. The delivery of ACF program services to one or more tribes;
d. The relationship between the Federal Government and Indian tribes; or
e. The distribution of power and responsibilities between the Federal Government and Indian tribes.

ACF shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of policies that have tribal implications. The consultation process and activities conducted within the scope of the ACF policy should result in a meaningful outcome for both ACF and tribes. Before any final policy decisions are adopted that significantly affect Indian tribes, the proposed outcome of a consultation shall be widely publicized and circulated for review and comment to affected Indian tribes, inter-tribal organizations, and within HHS, when appropriate, practicable and permitted by law.

The long-established HHS Tribal Consultation Policy requires, at section 8: "Upon identification of an event significantly affecting one or more Indian Tribe(s), HHS will initiate consultation regarding the event." Section 9 of the HHS Tribal Consultation Policy states: "The HHS Tribal consultative process shall consist of direct communications with Indian Tribes, and Indian organizations as applicable, in various ways" Section 12 of the HHS Tribal Consultation Policy states: "Divisions shall consult, to the greatest extent practicable and permitted by law, with Indian Tribes before taking actions that substantially affect Indian Tribes, including regulatory practices on Federal matters and unfunded mandates."

Finally, Executive Order 13175- Consultation and Coordination with Indian Tribal Governments - states in section 3(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

(1) Encourage Indian tribes to develop their own policies to achieve program objectives;
(2) Where possible, defer to Indian tribes to establish standards; and
(3) In determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Failure to Consult

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

The Regulatory Task Force did not seek input or other assistance from entities significantly affected by Federal regulations, even when tribal leaders specifically asked to provide input. Tribal leaders requested to provide input on delay or modification of the Final Rule in the contexts of official, scheduled government-to-government tribal consultations held by HHS and ACF. For example, on November 6, 2017, during the Annual ACF Tribal Consultation, the Tribal Moderator asked twice about the HHS committee that is reviewing the Final Rule. (*See* Consultation Transcript) Acting Assistant Secretary for ACF, Steve Wagner, told those present "There is not a review committee for AFCARS." The question was further clarified to specifically address "the deregulation internal committee" and tribal leaders reiterated their position from the March 2016 Secretary's Tribal Advisory Committee meeting that they wanted to be part of whatever deregulation was taking place. The Tribal Moderator asked, "So what is this committee, and who are the committee members, and when do they meet?" Acting ACF Assistant Secretary Wagner responded, "There's an internal committee at Health and Human Services to review deregulation and to review any proposed deregulation. And so it consists of the head of our financial analysis shop, the Assistant Secretary for Financial Resources, the internal HHS think tank, ASPE. The executive secretariat is on it. So it's internal to HHS. And their job is just to try and assess a proposal regarding deregulation. But there's no such proposal on the table." The November 6, 2017 statements of the Acting ACF Assistant Secretary clearly conflict with the statements made in email from Children's Bureau Deputy Joe Bock in January 2017 that the beach head team was reviewing HHS regulations including the AFCARS Final Rule. However, both federal agency statements make clear that HHS did not follow the procedures EO 31771 requires for identifying burdensome regulations.

The proposed delay is an abuse of agency discretion because ACF did not meet the mandates of EO 13175; it failed to comply with internal consultation procedures required by HHS and ACF policies; and the agency did not consult with Indian tribes when drafting the NPRM for delay of the Final Rule. ACF typically consults with tribes and affected stakeholders prior to proposed rules as evidenced by the administrative record leading up to the AFCARS Final Rule. The HHS Secretary's Tribal Advisory Committee specifically requested consultation on Final Rule implementation and consultation on agency review of the Final Rule. ACF did not meet those requests and obfuscated rather than respond with candor. Finally, statements made by ACF leadership clearly indicate that ACF did not follow the Executive Order 31771 procedures for identifying burdensome regulations.

Justification for Delay

Agencies must ground their actions in statutory authority and explain those actions in reasonable terms. ACF does not offer reasonable explanations for its proposed delay of the Final Rule. The reasons ACF offers for the proposed delay are arbitrary and capricious because they offer explanations that are counter to evidence before the agency and fail to consider important aspects of the problem.

Children's Bureau knows the proposed delay would leave in place for a minimum of two years a dataset that does not meet the statutory requirements of sec. 479 of the Social Security Act. The 1993 dataset does not reflect current child welfare practice and confusion can compromise the accuracy and reliability of the data collected. Moreover, leaving the 1993 dataset in place is not sound policy. Children's Bureau knows the proposed delay would add more than two years to the implementation timeline for the Final Rule which was developed through notice and comment rulemaking. Children's Bureau knows a delay will result in increased costs to states, tribes, and the federal government and likely cause title IV-E agencies to unnecessarily divert resources to cover the increase.

The Proposed Delay Would Leave in Place a Dataset that Does Not Meet the Statutory Requirements of Sec. 479.

Section 479 of the Social Security Act imposes affirmative obligations on HHS to develop a nationwide system for collecting data on all foster care and adopted children. In particular, sec. 479 requires the Secretary to promulgate final regulations for implementation of the data collection system. HHS cannot comply with its statutory obligations under Section 479(c) of the Act if it fails to implement a nationwide system requiring title IV-E agencies to report comprehensive data on all foster care and adopted children that is reliable and consistent. Delaying the effective and compliance dates of the Final Rule would leave in place a data collection system that does not meet statutory requirements because a lot has changed in technology and child welfare practice since 1993.

The 1993 AFCARS Rule (1993 Rule) is outdated and does not reflect contemporary child welfare practice, and the outdated data elements can cause confusion at data entry. For example, of the categories in the 1993 Rule states can report for the circumstances associated with a child's removal from home and placement into care, drug abuse by a parent had the largest percentage point increase, from 32 percent in FY 2015 to 34 percent in FY 2016. Approximately 92,000 children were removed from their home in FY 2016 because at least one parent had a drug abuse issue. The Final Rule modifies the 1993 data element ''caretaker's alcohol abuse'' to ''caretaker's alcohol use'' and revised the name of the circumstance from ''caretaker's drug abuse'' to ''caretaker's drug use." The language changes are based on guidelines released by the White House Office of National Drug Control Policy that are designed to reduce the harmful stigma associated with substance use disorders and addiction. The Final Rule also broadened data elements to "prenatal drug exposure" and "prenatal alcohol exposure" in place of the 1993 requirements to report "infants addicted at birth." The changes reflect contemporary social work practice and drive best practices. These updates reduce case worker confusion about the meaning of data elements at data entry resulting in consistent and more reliable data. The Final Rule also

allows for more detailed information to be collected on crises that impact child welfare, like the opioid epidemic.

The 1993 Rule is not comprehensive as evidenced by the lack of data for implementing the oversight roles of the Congress, OIG, GAO, and OMB about Indian children and families involved with state child welfare agencies. The 1993 Rule is not comprehensive because it does not collect data related to the Indian Child Welfare Act. The Indian Child Welfare Act (ICWA) of 1978 is Federal law that governs removal and out-of-home placement by states of American Indian children. The law was enacted after recognition by the Federal Government that American Indian children were being removed by public and private agencies from their homes; that removals were often unwarranted (25 USC 1901(4)) and that states often failed to recognize the essential tribal relations of Indian people and the cultural and social standards prevailing in Indian communities and families (25 USC 1901(5)). State child welfare agencies must be alert to the standards identified in the 2016 ICWA final regulations (25 CFR 23), since the ICWA standards determine information a court will require title IV-E agencies to provide with respect to issues like notice to parents and Tribes (FR § 23.111), emergency proceedings (FR § 23.113), active efforts (FR§ 23.120), and placement preferences (FR § 23.129–132).

The ICWA is not the only federal law related to children involved in title IV-E agencies for which data is not being required by the 1993 Rule. The 1993 Rule is not comprehensive because it does not include data statutorily required by other federal laws including the Fostering Connections to Success and Increasing Adoptions Act and the Preventing Sex Trafficking and Strengthening Families Act. The Final Rule is comprehensive because it includes data related to ICWA and data that is statutorily required by other federal laws. Until the Final Rule is implemented ACF is not in compliance with the statutory requirements of section 479.

The ACF proposal to delay the effective and compliance dates of the Final Rule is not sound policy. The Final Report of the bipartisan Commission on Evidence-Based Policymaking, mandated by the Evidence-Based Policymaking Commission Act of 2016 (the Act), specifically listed "statistics collected through the Adoption and Foster Care Analysis and Reporting System (AFCARS) . . . case-level information on all foster children and those who have been adopted in the United States" as sources of data "useful for evidence-building activities." The bi-partisan Commission on Evidence-Based Policymaking reviewed and referenced AFCARS data as data that "may be integrated and made available to facilitate program evaluation, continuous improvement, policy-relevant research, and cost-benefit analyses by qualified researchers and institutions" consistent with section 4 of the Act.

As already stated, delaying the effective and compliance dates of the Final Rule leaves in place a data collection system that does not meet the requirements of title IV-E. Leaving the 1993 Rule in place runs counter to Children's Bureau's knowledge about the extraordinary limitations of the 1993 dataset. In addition, the NPRM for Delay entirely fails to consider important aspects of the problem. For example, a delay would deprive federal, state, and tribal governments of critical case-level data on children necessary "to facilitate program evaluation, continuous improvement, policy-relevant research, and cost-benefit analyses" and to build an evidence base for federal, state, and tribal policymaking to improve child welfare outcomes and cost effectiveness. Any delay in the long-anticipated October 1, 2019 compliance date for the Final Rule would

materially and detrimentally affect federal evidence-building functions at significant cost of resources.

Implementing the Proposed Delay Would Be Arbitrary and Capricious Agency Action

The reasons ACF offers for proposing to delay the Final Rule runs counter to evidence before the agency. In 2016, after careful consideration of an extensive rulemaking record, ACF reasonably adopted a rule for providing, for the first time since Congress required it in 1986, a comprehensive national data collection system with an effective date of January 13, 2017. In promulgating the Final Rule, ACF "examine[d] the relevant data and articulate[d] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." The agency examined the relevant evidence before it, including all public comments received related to data elements, implementation timeline, and administrative burden. The preamble to the Final Rule clearly articulates explanations for decisions made including rational connections between facts found and the regulatory choices made related to the data elements, burden, and implementation timeline. No relevant circumstances have changed since ACF adopted the Final Rule. Yet now ACF has proposed to reverse course by delaying the effective and compliance dates of the Final Rule. ACF proposes actions that run counter to the evidence before the agency when it decided on the implementation timeline, which data elements to include in the update, and its assessment of the burden on title IV-E agencies in order to meet the statutory requirements.

ACF explains its proposed delay by stating that it does "not want states to incur costs unnecessarily as we further assess burden under the rule." But that rationale is arbitrary on its face. Delaying compliance with the Final Rule would require states to incur more costs, not less, and to divert resources unnecessarily. Children's Bureau knows that title IV-E agencies are more than half way through the implementation timeline and half of the projected administrative costs associated with implementation should have been claimed for reimbursement. If title IV-E agencies are not halfway through implementation in April 2018, it is because Children's Bureau created uncertainty with Central Office emails telegraphing delay as early as January 2017, and because Children's Bureau has shirked its responsibility to provide guidance to title IV-E agencies for implementing the Final Rule. ACF should not add additional costs and contribute still more uncertainty by delaying implementation of the Final Rule

Further delay of the Final Rule requires title IV-E agencies to unnecessarily divert resources and disregards the requirements of sec. 479. Title IV-E agencies commented on updating AFCARS in 2003, 2008, 2010, 2015, and 2016. Now that the Final Rule has been effective for 15 months, title IV-E agencies are being asked to comment on Delay of the Final Rule and the ANPRM. Further comment requires title IV-E agencies to divert resources to responding to yet another AFCARS Notice, rather than updating their systems in order to better serve children and families. Given the long history and many ineffective attempts to update the AFCARS rule, delay also creates more uncertainty that is a burden on title IV-E agencies, states, and tribes as they plan and execute critical updates to their child welfare information systems. ACF's proposed actions are evidence that title IV-E agencies are unable to depend on ACF decisions and timelines, and thus are unable to rely on ACF conclusions as they execute updates to their

child welfare information systems. Questionable ACF reliability and incautious injection of uncertainty into change processes increases costs to title IV-E agencies causing them to divert valuable resources from administering systems and programs that serve vulnerable children and families.

Children's Bureau also knows, as described in the Final Rule, that the AFCARS update is designed to be implemented with the Comprehensive Child Welfare Information Systems (CCWIS) updates, and that simultaneous implementation of the two rules saves title IV-E agencies time and money. Yet, ACF does not propose to delay implementation of the CCWIS rule. ACF appears unconcerned with the burden of the proposed AFCARS delay. ACF has taken a one-sided view and thus failed to seek input on an important aspect of the problem. Agencies decisions that fail to consider important aspects of the problem are arbitrary and capricious.

Extending the AFCARS implementation timeline means title IV-E agencies are deprived of the efficiencies and cost savings they could benefit from by implementing CCWIS updates and the AFCARS update at the same time. The two rules have overlapping implementation timeframes that reduce burden and costs associated with updating agency information systems. Delaying compliance with Final Rule means that title IV-E agencies will spend two years more time implementing the AFCARS update beyond the implementation timeframe for the CCWIS Rule. That is two years more of expenses for which title IV-E agencies only receive a 50% cost allocated match. A four-year AFCARS compliance timeline that does not overlap with CCWIS implementation will cost states, tribes, and the federal government more than would the original two-year timeline in the Final Rule.

Another of ACF's explanations for delaying implementation of the ICWA-related provisions of the Final Rule is arbitrary on its face because it is counter to evidence before the agency. As part of their justification for proposing delay of the Final Rule, ACF alleges "The Supplemental Notice of Proposed Rulemaking (SNPRM) that added the ICWA compliance data elements to the AFCARS was only open for comment for thirty 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." Yet in its notice of proposed rulemaking ACF has allowed only thirty days for comment on the proposed delay of the Final Rule. If thirty days to respond to delay of 2016 Final Rule is sufficient for states to produce comments on the costs, burdens, and benefits of delaying a rule that is 15 months into a 2-fiscal-year implementation timeline, then thirty days to respond solely to proposed ICWA-related AFCARS data elements certainly was sufficient. Moreover, 27 states commented on the 2015 AFCARS NPRM; of those, 15 states (more than half) also commented on the SNPRM and one state commented on the SNPRM without commenting on the 2015 NPRM. In addition, not one state commented that thirty days was insufficient to analyze the data elements, accurately calculate the burden associated with the SNPRM, or move comments through their chain of command. Not one state commented that the ICWA-related data elements were unfamiliar. In addition to state comments, 19 tribes, 5 child welfare organizations, a group of lawyers, one school district, and 12 private citizens commented on the SNPRM. The numerous comments on the SNPRM evidences there was sufficient time for states to respond.

ACF also asserts arbitrary explanations that require consideration of factors Congress did not intend ACF to consider when regulating a national child welfare data system, and that run counter to evidence before the agency. Section 479 of the Social Security Act requires the data collected be comprehensive, efficient, reliable, and consistent. ACF notes in the Delay NPRM "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." There is no requirement in sec.479 that the AFCARS data elements collected be statutorily tied to title IV-E or title IV-B. Moreover, Children's Bureau knows this justification was used in the past for not including ICWA-related data elements and was specifically and thoroughly rejected by ACF in its notice of intent to publish a supplemental notice of proposed rulemaking (80 FR 17713) and in all subsequent agency AFCARS publications and public statements leading up to and including the Final Rule. In the 2018 NPRM for Delay ACF is requesting information about the connection between data elements and titles IV-E and IV-B which are factors Congress has not intended HHS to consider for regulating a comprehensive system for the collection of data relating to adoption and foster care and which ACF knows, or should know, runs counter to evidence on which prior agency action is based. An agency decision that relies on factors that Congress did not intend it to consider and that runs counter to evidence before the agency is arbitrary and capricious.

Delay of the Final Rule Will Perpetuate ACF Failure to Comply with Sec. 479

Contrary to statements made in 2018 NPRM for Delay, states are required under title IV-B to report ICWA-related data. ACF has permitted this data to be reported narratively in Child and Family Services Plans (CFSP) and Annual Progress and Services Reports (APSR). While reporting the ICWA-related data is required for funding under title IV-B, ACF does not require consistent data, reporting, definitions, or formats. As a result of the lack of regulatory consistency and narrative reporting there is extraordinary variety in reporting across states when states report the data at all. In 2016 Children's Bureau produced a report on the ICWA-related data collected as required by title IV-B and found that 23 states and the District of Columbia failed to comply with the title IV-B requirement. The report also found that 14 of 30 tribes accepting IV-B funding expressed concerns about how states implement ICWA or how the states consult or collaborate with tribes. Narrative reporting of ICWA-data is not comprehensive, efficient, reliable, or consistent. The quantitative ICWA-related data elements in the Final Rule ensure that ICWA-related data, including the data required by title IV-B, is efficiently collected, current, consistent, accessible, and reliable. In addition to quantifying and systematizing data required under title IV-B, the ICWA-related AFCARS data elements are necessary because ACF does not qualitatively review ICWA cases during title IV-E compliance reviews. If an ICWA-case is part of a random sample of cases selected for state title IV-E compliance review, then ACF will review ICWA compliance in that case. ACF does not routinely, systemically, or periodically document or review ICWA implementation or compliance on a state-by-state or national basis. With delay of the Final Rule ACF will perpetuate its failure to comply with sec. 479 as applied to tribal children and families.

Further, a majority of the ICWA-related data elements are only reported if ICWA applies to the child's case. It's disingenuous of ACF to imply that collecting and reporting these elements is required in every case. Moreover, ACF and state title IV-E agencies should be reminded that American Indian and Alaska Native children are over-represented in some geographies and are

rare in others because, in significant part, state and federal government policies and actions designed to eradicate AI/AN peoples, institutions, and cultures, as well as state child welfare policies and actions that fail to consider the cultures and essential relations of tribal people. ACF and state title IV-E agencies should follow and implement federal law and be mindful and proactive in not repeating mistakes of the past. They can use reliable, consistent national ICWA-related data reliably and consistently collected in AFCARS in that effort.

If the implementation of the Final Rule is delayed, ACF will continue in its failure to comply with sec. 479 as applied to Lesbian, Gay, Bisexual, and Transgender (LGBT) youth and families. The Final Rule has just four data elements that are essential to understanding the experiences of LGBT youth and families with child welfare experiences. The data elements are also critical for developing policies and practices to address the overrepresentation of LGBT youth in state child welfare systems. LGBT youth in foster care are entitled to safe, affirming, appropriate out of home placements when they cannot remain safely at home. The 1993 Rule has no data that contributes to understanding experiences or the effect of child welfare policy on LGBT youth and families.

Delaying compliance with the 2016 AFCARS Final Rule unnecessarily deprives communities and citizens of the benefits of data that reflects child welfare practice today, not child welfare practice as it was in 1993. Yet, ACF fails to consider the benefits of the Final Rule and fails to ask about the benefits of the Final Rule in the NPRM for Delay. In doing so ACF fails to consider an important aspect of the problem in its proposal to delay implementation. Most troubling, the ACF concern about burden of the Final Rule on states is not matched by an equal concern for the regulatory beneficiaries: children in foster care and their families. ACF expresses no concern for the burden of delay on children and families with child welfare experiences. This is a particularly paradoxical omission from federal administrative divisions named for these beneficiaries and charged *exclusively* with improving their lives.

<u>In Proposing an Advanced Notice of Proposed Rule Making (ANPRM) ACF Fails to Use the Least Disruptive Administrative Vehicle for Achieving its Stated Goal of Obtaining Additional Information on a Final Rule.</u>

ACF cites as justification for delay its Advanced Notice of Proposed Rule Making (ANPRM) asking "title IV-E agencies and the public to comment on the data elements of the December 2016 final rule." Given that the Final Rule was so recently promulgated after many opportunities for public comment, and detailed and thoughtful consideration of the comments are reflected in the preamble to the Final Rule, the appropriate administrative vehicle for requesting further information is a Request for Information (RFI). An ANPRM is ordinarily a vehicle agencies issue before they are ready to issue a Notice of Proposed Rulemaking (NPRM). In its ANPRM ACF does not state that the information collected will be used to inform a future NPRM. Moreover, the express terms of section 3 (e) of EO 13777 makes it clear that an ANPRM is not the appropriate vehicle under which the Department solicits and receives "input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local, and tribal governments, small businesses, consumers, non-governmental

organizations, and trade associations" as part of the formal evaluation required by section 3 (d) and (e) of E.O. 13777.

Summary

ACF is bound by the Final Rule until the Final Rule is modified, therefore the implementation timeline in the Final Rule must be executed. ACF provides no statutory basis for their proposed action to delay implementation of the 2016 AFCARS Final Rule. ACF implausibly relies on the Executive Orders as a basis for their proposed change of course. This assertion is contradicted by earlier written or officially documented oral statements made by Children's Bureau and ACF.

The proposed delay is clearly unnecessary. ACF provides no reasonable justification for its proposed delay. Delay would deprive communities of data that reflects current child welfare practice. The proposed delay would leave in place for at least two more years the 1993 national data collection system that is out of date, and not comprehensive, reliable, and consistent. Children's Bureau knows the proposed delay would result in more costs to states, tribes, and the federal government, not less costs because title IV-E agencies are already more than halfway through the implementation timeline.

ACF explanations for the proposed delay are arbitrary and capricious. The NPRM relies on factors that Congress did not intend ACF to consider. ACF entirely fails to consider the benefits of the data and the benefits of the Final Rule implementation timeline which are important aspects of the problem. ACF provides explanations for its proposed delay that are counter to evidence before the agency. And, the reasons asserted in the NPRM for proposing delay are so implausible that a decision to delay the Final Rule could not be ascribed to a difference in view.

Instead of providing reasonable explanations for its proposed action, ACF asserts as justification for delaying the Final Rule issues raised by commenters made *during the comment period* for the 2016 Final Rule. All the concerns raised by commenters were addressed in the Final Rule and ACF does not assert that title IV-E agencies raised concerns about burden after publication of the Final Rule. In justifying their proposal to delay implementation of the Final Rule ACF does not allege that the Final Rule was improperly promulgated. ACF does not allege that any of the rational connections, facts, or decisions made for the Final Rule are unreasonable or that any relevant factors have changed.

ACF is required to implement the Final Rule as promulgated until modified, including the required implementation timeline. ACF should not delay implementation of the Final Rule because delay is unnecessary. And ACF certainly should not delay implementation of the Final Rule based on the arbitrary and capricious reasons provided in the 2018 NPRM.

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mj-cpvx
Comments Due: April 16, 2018
Submission Type: API

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0023
CSSP

Submitter Information

Name: Alexandra Citrin
Address: 20005
Email: alexandra.citrin@cssp.org
Organization: Center for the Study of Social Policy

General Comment

See attached file(s)

Attachments

CSSP Comments - NPRM Proposed delay for compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule

Center for the Study of Social Policy | Ideas into Action

April 16, 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: Notice of Public Rulemaking – Proposed delay for compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule (*Federal Register*, Volume 83, No. 51, published March 15, 2018, pages 11450–11452)

The Center for the Study of Social Policy (CSSP) is a national nonprofit organization recognized for its leadership in reforming public systems. Our work in public systems includes our role as the federal court appointed monitor in several state child welfare systems and our work providing technical assistance across the nation on improving policy and practice strategies impacting families with young children, adolescents and transition age youth, expectant and parenting youth, youth facing homelessness, and youth who identify as lesbian, gay, bisexual, transgender or questioning (LGBTQ). All of our work is devoted to ensuring children have equitable opportunities to maximize their potential.

CSSP welcomes the opportunity to provide comments on the Notice of Public Rulemaking (NPRM) regarding delaying the date for compliance with the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule. CSSP previously provided comment on the NPRM for the 2016 Final Rule (81 FR 90524) and subsequent Supplemental Notice of Proposed Rulemaking (SNPRM) for AFCARS data elements related to the Indian Child Welfare Act of 1978 (ICWA).

In response to the current NPRM, CSSP strongly opposes delaying the implementation of the 2016 Final Rule. As described in more detail below, the 2016 Final Rule is critically important to ensuring that HHS is able to collect and report on data required by law and essential to guiding policy and practice to promote positive well-being and permanency outcomes for children and youth involved with child welfare.

AFCARS data is used by HHS and state governments in a number of different ways including to: assess agency compliance with Title IV-E; prepare reports to Congress; budget based on trends in child welfare populations; identify areas for technical assistance; and to justify policy changes and legislative proposals. However, AFCARS has not been updated since 1993 and subsequently, the ability of the federal government and state governments to use data to drive decision making is currently compromised.

As a result of the long delay in updating AFCARS, there is currently a lack of important data that is able to inform and guide how child welfare systems operate, creating a barrier to strong federal policy and state-system performance. In order to use data to drive policy, program, and resource development, allocation, and implementation – the federal government and state governments need accurate and relevant data that is aligned with current best practice in child welfare. The 2016 Final Rule was a first step toward collecting these data elements. Any delay in the effective date of the 2016 Final Rule will be a major step backward that will harm children and inhibit effective policy and program responses that can promote well-being and permanency outcomes for children and youth involved with child welfare.

The remainder of this letter discusses key issues HHS should consider when weighing a potential delay to the effective date for the AFCARS 2016 Final Rule.

The Role of AFCARS

AFCARS is a critical tool for collecting data that can inform policy development, identify gaps in services, and highlight populations that are experiencing disparate outcomes. Using such data to guide decision-making and financial investments is not only important to achieving better child and family well-being outcomes, including shorter stays in foster care, but also essential for making short and long-term budget decisions, including where to invest resources to promote better outcomes for children and youth.

Legislative Requirements Added to AFCARS 2016 Final Rule

The 2016 Final Rule is the first update to AFCARS since 1993, when AFCARS was first implemented. Since 1993, several key pieces of federal child welfare legislation have passed, including *Fostering Connections to Success and Increasing Adoptions Act (PL 110-351, 2008)* and the *Preventing Sex Trafficking and Strengthening Families Act (PL 113-183, 2014),* both of which require the Children's Bureau to collect and report on critical data elements that are currently not included in AFCARS. The required data elements included in these statutes are important for policy and program development that can foster well-being outcomes, including education outcomes for children and youth in child welfare and promoting well-being for children and youth who have been or are at risk of experiencing commercial sexual exploitation (CSEC).

In addition to capturing data that are legally required, the 2016 Final Rule included the addition of critical data elements related to American Indian/Alaska Native (AI/AN) children, who are subject to the *Indian Child Welfare Act (ICWA) of 1978 (PL 95-608, 1978),* and are essential to ensuring effective implementation of ICWA. A 2005 report from the Government Accountability Office found that national data on children subject to ICWA are unavailable. It has been over 36 years since the enactment of ICWA and yet there are still substantial gaps in data and issues that need attention in order to reduce AI/AN disproportionality and improve tribal, state, and federal responses. Currently, AI/AN children are overrepresented within state foster care systems nationally and in some states are overrepresented in care at a rate as high as 10 times their population rate – the need for ongoing, reliable and accessible data has never been greater. This lack of data has hampered states' ability to examine their implementation of ICWA, and has made it increasingly difficult to develop effective responses that address disproportionality and other areas for improvement.

The 2016 Final Rule includes the first federal data elements that can provide detailed information on ICWA implementation, allowing tribes, states and federal agencies to develop a greater

understanding of the trends in out-of-home placement and barriers to permanency for AI/AN children. Improved policy development, technical assistance, training and resource allocation can and should stem from having access to this reliable data. Any delay in AFCARS data collection will continue to hinder child welfare's ability to respond to the well-being and permanency needs of AI/AN children.

Additional Important Data Elements

In addition to updating AFCARS to ensure the collection of data required by statute, the 2016 Final Rule also includes critical data elements related to pregnant and parenting youth in foster care and regarding the sexual orientation and gender identity of youth in foster care. For youth in foster care who are pregnant or parenting, the government has a responsibility to promote their healthy development and well-being and that of their children. The *Family First Prevention and Services Act (FFPSA)*, which was passed as part of the *Bipartisan Budget Act (PL 116-123, 2018)*, recognizes the unique needs of these youth and their children, making them newly eligible for prevention services financed by title IV-E. However, in order for states to effectively develop and implement resources and services to support these young families, they must have data about their overall needs and unique experiences. Delaying the collection of these data through AFCARS will negatively impact states' abilities to effectively implement services in accordance with *FFPSA* – further denying pregnant and parenting youth in foster care and their children the resources they need to promote their health and well-being.

Research has documented the unique needs of youth involved with child welfare who identify as LGBTQ and the poorer health and well-being outcomes of these youth as compared to their peers in foster care, creating an urgent need for data that can inform more responsive and effective practice. 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 a safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression" (ACYF-CB-IM-11-03, 4-06-2011). In order to fulfill its obligation to protect the safety, permanency and well-being of LGBTQ children and youth, it is both timely and critical that the federal government and child welfare systems create the infrastructure and policy to support the collection and analysis of client-specific sexual orientation and gender identity information.

Alignment with CCWIS

Critical to the implementation of AFCARS is the ability for state agencies to implement a comprehensive child welfare information system. We want to note, as we did in our response to the CCWIS NPRM (81 FR 35449), the importance of matching the upcoming changes in AFCARS with the redesign of CCWIS. As states are planning to implement a new CCWIS, a delay in the effective date of the 2016 Final Rule will cause confusion for states and prevent them from adequately building their systems to collect these important data. Lessons from previous system updates have shown that it is very difficult to retrofit a system to collect information rather than including essential data elements in the system at the time that it is being built. Any delay in AFCARS will create regulatory uncertainty and undermine the implementation of an effective CCWIS – and possibly lead to additional future costs to states who may attempt to retrofit their systems later to align with AFCARS.

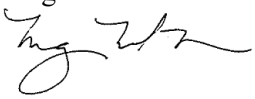
Conclusion

By updating AFCARS through the 2016 Final Rule, HHS had taken a significant step toward correcting extensive data gaps that exist in federal data collection concerning well-being and permanency outcomes for all children and youth involved with child welfare, including AI/AN children and families, children and youth who identify as LGBTQ, and pregnant and parenting youth. Any delay to the effective date of the 2016 Final Rule will be detrimental and inhibit states' abilities to effectively promote positive permanency and well-being outcomes – directly undermining their legal responsibility to children, youth and families.

Without the collection of these critical data, states will continue to struggle to identify and develop effective strategies to address barriers faced by children and families. Rather than delay the effective date for data collection, we would strongly encourage HHS to move ahead and support state agencies with direct technical assistance as they work to implement changes in their data collection and address areas of practice in need of additional attention.

We look forward to working with HHS in the future to strategize on how to use the new data available in AFCARS. If you have any questions, please don't hesitate to contact Megan Martin, (202) 371-1565; megan.martin@cssp.org.

Sincerely,
Megan Martin



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

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mj-x8bt
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0024
Virginia Dept of Soc Svcs

Submitter Information

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

General Comment

The State of Virginia is in agreement with the Childrens Bureau proposal to delay implementation of the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule for title IV-E agencies to comply with agency rules for an additional two fiscal years.

The State of Virginia currently has a legacy system that is approximately 20 years old and it would require extensive work to bring this child welfare system into compliance with the federal Comprehensive Child Welfare Information System (CCWIS) requirements. The delay in implementation will allow Virginia to integrate the requirements of the December 2016 AFCARS final rule by replacing our system with a new CCWIS compliant system.
As Virginia is not requesting a delay in implementation of Family First Prevention Services Act (FFPSA), we will have significant work to modernize Virginias information systems to support FFPSA. The delay in implementation will allow Virginia to devote time to address AFCARS modifications during the implementation phases of CCWIS and FFPSA.

The State of Virginia is in agreement with the issues already identified in the NPRM, Section 1355.40.

Although the costs of implementation are unknown at this time, Virginia would anticipate significant costs associated with time, securing resources, and information technology changes due to our legacy system lacking the ability to meet SACWIS and CCWIS compliance.

We appreciate the opportunity to comment on the delay of the December 2016 AFCARS final rule (81 RF 90524).

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mj-uvfc
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0025
Comment on FR Doc # 2018-05038

Submitter Information

Name: Leanne Leason

General Comment

The delay of compliance and effective dates will give states more time to determine the impact of the change and find the resources and funds to implement. At a high level, these additional elements could result in over $200,000 in system changes for our state. As a state agency, we continue to experience high staff turnover and depleting funds to make system changes. These changes are extensive and ICWA only represents 1% of our population. In addition, many of the new required data elements are very vague. There will need to be webinars to provide additional guidance on what exactly is required. These changes will result in not only system changes, but policy/practice changes as well.

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ml-ph4m
Comments Due: April 16, 2018
Submission Type: Web

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0026
Children's Defense Fund

Submitter Information

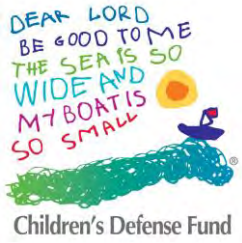
Name: Stefanie Sprow
Organization: Children's Defense Fund

General Comment

See attached file(s)

Attachments

CDF 2018 NPRM AFCARS Comments



April 16, 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 regarding the Delay of Compliance and Effective Dates of 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 express our concern about the Delay of Compliance and Effective Dates of 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).

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. CDF, like many others, responded to 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 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. 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 outcomes and the system.

The updates in the Final Rule are long overdue and should not be delayed. 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 nor new reporting required of states. The Administration for Children and Families (ACF) needs to know how children are faring.

Benefits of the AFCARS 2016 Final Rule

Prior to the 2016 AFCARS Final Rule, the system 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 AFCARS 2016 Final Rule made a number of significant

25 E Street, NW, Washington, DC 20001 p (202) 628-8787 f (202) 662-3510 www.childrensdefense.org

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. CDF will provide more detailed comments on the important benefits of the 2016 Final Rule in our response to the ANPRM in June. Examples of these benefits include:

- The important shift to a national longitudinal data system that will collect and report on quality uniform data across the states on a child's experience over time while in care.
- Amended data elements, including those providing more information on the circumstances affecting the child and family at the time of removal that will clarify the crises that bring them to the attention of the system and help identify prevention services that could help keep children safely with their families; the multitude of living arrangements, other than foster family homes, in which children are placed when in foster care; data elements on the child's health, including timely health assessments, and expanded data elements on the child's health, behavioral and mental health conditions.
- New data elements to help fill the gaps in information on: the child's education needs, including school enrollment, educational level, educational stability and involvement in special education; caseworker visits; sibling information; identification of pregnant and parenting youth in care and whether minor parents have their children with them in foster care; and whether children are victims of sex trafficking.
- New reporting that will capture more information on children who exit care receiving Title IV-E adoption and guardianship assistance, including the number and characteristics of children who receive this assistance, the amount of the subsidies and the length of time to permanence for them. In order to move more children to permanency quickly, we must have a better understanding of the scope of both adoption and guardianship assistance and how to broaden their reach to help more children and families.

Many of these benefits come as a result of several pieces of federal child welfare legislation enacted since 1993, including the *Fostering Connections to Success and Increasing Adoptions Act of 2008*, the *Child and Family Services Improvement and Innovation Act of 2011,* and the *Preventing Sex Trafficking and Strengthening Families Act of 2014*, many with specific data requirements. The new data in the 2016 AFCARS Final Rule helps ACF see the impact on children of policies, practices and protections included in these new federal laws.

Benefits for American Indian and Alaska Native Children

Another very important benefit in the 2016 Final Rule is the information added to describe specific measures taken by the state to ensure American Indian and Alaska Native children are afforded the protections assured to them in the Indian Child Welfare Act (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 American Indian and Alaska Native children is consistent with federal law. CDF is supportive of the inclusion of data elements related to ICWA in the Final Rule. Although progress has been made as a result of ICWA, American Indian and Alaska Native 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. 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 American Indian and Alaska Native 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 Indian children will help benefit their particular needs and complement benefits they share with other children so they can be addressed in policy and practice.

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 right to intervene in state proceedings, or transfer proceedings to the jurisdiction of the Tribe.

Certainly inclusion of a requirement for such measures in the Title IV-B State Plan and the Program Instruction creates 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.

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 Indian children for whom state agencies receive federal funds under Title IV-E. CDF joined in supporting these ICWA provisions in the Final Rule. Some states have involved and collaborated with tribes and other relevant stakeholders as they implement policies and practices needed to provide protections for American Indian and Alaska Native 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.

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.

Proposed Delays Increase Uncertainty and Deny Children Long Overdue Reporting on Essential Benefits

The 2016 AFCARS 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. Continuing this delay now means further uncertainty to states and continued lack of beneficial information on children. The implementation deadline for the 2016 AFCARS Final Rule was generous, and with appropriate technical assistance from ACF could be very effective. However, states that had been working to meet the 2019

implementation deadline, now likely feel unease as to whether investments they already made may have to be diverted now 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. Instead ACF over this next year should assist states to use their recent improvements and updates to state data systems through the new Comprehensive Child Welfare Information System (CCWIS) to meet the requirements in the 2016 AFCARS Final Rule and maintain the 2019 implementation date.

The Children's Defense Fund urges ACF to drop its requested delay of compliance and effective dates in the AFCARS 2016 Final Rule. We appreciate the opportunity to respond to your request for the delay and urge you to abandon it given that the benefits of the Final Rule – 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 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

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mm-ot1f
Comments Due: April 16, 2018
Submission Type: API

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0027
Center for American Progress

Submitter Information

Name: Frank Bewkes
Address: 20005
Email: fbewkes@americanprogress.org
Organization: Center for American Progress

General Comment

See attached file(s)

Attachments

CAP AFCARS Delay Comment 4.16.2018

Center for American Progress

1333 H Street, NW, 10th Floor
Washington, DC 20005
Tel: 202 682.1611 • Fax: 202 682.1867

www.americanprogress.org

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
CBComments@acf.hhs.gov
(202) 401-5789

April 16, 2018

RE: Adoption and Foster Care Analysis and Reporting System (AFCARS)
Docket No. ACF-2018-0004 / Regulatory Information No. 0970-AC47

Dear Ms. McHugh,

The Center for American Progress (CAP) is writing to oppose the Administration for Children and Families' (ACF) proposal to delay for two fiscal years the compliance and effective dates in the AFCARS 2016 final rule. CAP is a nonprofit think tank dedicated to turning progressive ideas into evidence-based policy. As researchers with expertise on child welfare, we believe the revisions in the final rule were already long overdue, as AFCARS has not been updated since its inception in 1993. It is an understatement to say that much has changed in technology and child welfare practice since 1993. The new data points are desperately needed to both improve our child welfare system and also comply with current legal requirements. Delaying compliance with the 2016 AFCARS final rule deprives communities and citizens of data that reflects the child welfare system of today rather than that of 25 years ago. The delay leaves in place outdated data elements that no longer meet the obligation that the dataset be comprehensive as required by sec. 479 of the Social Security Act (sec. 479). Additionally, the proposed delay will mean that some statutorily required data in the Final Rule will not be collected and reported on for two more years. In 2008 and again in 2014, Congress enacted statutes requiring the Children's Bureau to add data elements to AFCARS: Fostering Connections to Success and Increasing Adoptions Act (Public Law 110–351, 2008) and the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113–183, 2014). Continuing to delay implementation of the revised AFCARS with legally required data elements is a flagrant disregard for those statutes.

Sexual orientation data on foster youth is needed now.

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) youth are overrepresented in the foster care system.[1] Research also indicates that LGBTQ youths spend longer in foster care and experience more placements.[2] This is an already vulnerable population. According to the 2015 Youth Risk Behavior Surveillance System, LGB youth are roughly 4.5 times more likely to attempt suicide than their straight peers.[3] It is vital that data be collected on the sexual orientation of children and youth in care, so that their

outcomes can be analyzed and compared to those of non-LGBTQ children. With these data, the efficacy of state policies and procedures can be better evaluated, and improvements can be developed.

CAP is a leading expert on LGBTQ data collection and the disparities this population faces. Speaking from both public education and research standpoints, 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 LGBT 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 LGBT foster youth. Delaying questions relating to sexual orientation in AFCARS keeps invisible the experiences of the LGBT community and leaves the Federal government blind to its unique needs. More of these data on the experiences and needs of LGBT youth in our country are needed – not less. This is especially true given the increasing LGBT American population.[4] Plus, having more longitudinal data allows for a better understanding of children's experiences in care and it can better inform evidence-based policies and practices. Longitudinal data from AFCARS can be a powerful tool to help address the changing needs of foster youth over time. It will shed light on what new policies and practices might be needed in child welfare.

Indian Child Welfare Act-related federal data on foster youth is needed now.

State and federal data on American Indian and Alaska Native (AI/AN) children is sparse. What information is available suggests that AI/AN children are overrepresented in the foster care system. The federal protections of the Indian Child Welfare Act should in theory help to reduce this disproportionality and increase permanency for these youths, but there has been no ICWA-specific data collection in the 40 years since its enactment. This data needs to be collected and examined so that technical assistance to the states can be improved, federal program resources can be allocated more effectively, and the extent to which states are working with tribes to implement ICWA can be evaluated.

The ICWA-related data elements are necessary because Children's Bureau does not qualitatively review ICWA cases. If an ICWA-case is part of a random-sample selected for Title IV-E compliance review, then Children's Bureau will review ICWA implementation in that case. But Children's Bureau does not routinely, systemically, or periodically document or review ICWA implementation on a state-by-state or national basis.

While states are already required to report ICWA-related data under title IV-B in their CFSPs and APSRs, few states comply.[5] ACF has not required consistent data, reporting, definitions, or formats. Due to the lack of regulatory consistency and narrative reporting there is extraordinary variety in reporting across states when states report the data at all. Federal data is needed. The new quantitative ICWA-related data elements in AFCARS will ensure that the ICWA-related data is efficiently collected, current, consistent, accessible, and reliable. Section 479(c)(1) and 479(c)(2) of the Social Security Act requires that data collected be efficient, reliable, and consistent. Narrative reporting of ICWA-data is not efficient, reliable, or consistent. Therefore, with delay of the Final Rule ACF will continue its failure to comply with sec. 479 as applied to tribal children.

Delaying compliance with the 2016 AFCARS Final Rule is unnecessary.

It challenges reason to allege there has not been enough time for states to comment or that there isn't enough evidence related to burden. States commented on updating AFCARS in 2003, 2008, 2010, 2015 and 2016. There is a 15-year history of public comment on updating AFCARS including the outpouring of comments to the 2015 AFCARS NPRM and SNPRM. ACF offers as an explanation for delay the "need" to get further information related to concerns raised in the notice and comment period of the Final Rule. Those concerns were appropriately addressed by the Final Rule, and ACF does not assert any

arguments or facts to the contrary. ACF does not allege that any concerns related to burden were raised *after* the Final Rule was published.

Delaying compliance with the 2016 AFCARS Final Rule requires states to divert resources.

States commented on updating AFCARS in 2003, 2008, 2010, and 2015 (twice). Now they are being asked to comment on Delay of the 2016 AFCARS Final Rule and the ANPRM. This requires title IV-E agencies to divert resources to responding to yet another Notice related to AFCARS, rather than serving children and families. Title IV-E agencies are also over a year into a 2-fiscal-year implementation timeline. Delaying compliance with the 2016 AFCARS Final Rule means that states will not benefit from the efficiencies and cost savings of implementing AFCARS and CCWIS at the same time. More importantly, delaying compliance with the 2016 AFCARS Final Rule means that states will spend two additional years implementing the AFCARS update. That is two years more of expenses for which states only received a 50% cost allocated match. A four-year compliance timeline will cost states and the federal government more than would a two-year timeline.

In conclusion, CAP opposes any delay in the implementation and reporting of the 2016 AFCARS Final Rule and encourages ACF to keep to the current implementation timeline.

Sincerely,
Frank J. Bewkes
Policy Analyst
Center for American Progress

---

[1] 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).
[2] Bianca D. M. Wilson and others, "Sexual & Gender Minority Youth in Los Angeles Foster Care" (Los Angeles: The Williams Institute, 2014), available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.
[3] 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).
[4] 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/.
[5] Department of Health and Human Services Children's Bureau, "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" (2015) available at https://www.acf.hhs.gov/sites/default/files/cb/state_tribal_cfsp_2015_2019.pdf.

As of: September 15, 2020
Received: April 13, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-no7u
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0028
Puyallup AFCARS Delay Comment Letter 04-13-18

Submitter Information

Name: Vanessa L. Ray-Hodge
Address: 87102
Organization: Puyallup Tribe of Indians

General Comment

See Attached

Attachments

Puyallup AFCARS Delay Comment Letter 04-13-18

LAW OFFICES
SONOSKY, CHAMBERS, SACHSE,
MIELKE & BROWNELL, LLP
500 MARQUETTE AVENUE, NW, SUITE 660
ALBUQUERQUE, NEW MEXICO 87102
TEL (505) 247-0147 | FAX (505) 843-6912
WWW.SONOSKY.COM
GBROWNELL@ABQSONOSKY.COM
DMIELKE@ABQSONOSKY.COM
VRAYHODGE@ABQSONOSKY.COM

MARVIN J. SONOSKY (1909-1997)
HARRY R. SACHSE
REID PEYTON CHAMBERS
WILLIAM R. PERRY
LLOYD BENTON MILLER
DOUGLAS B.L. ENDRESON
DONALD J. SIMON
ANNE D. NOTO
MARY J. PAVEL
DAVID C. MIELKE*
GARY F. BROWNELL*
COLIN C. HAMPSON
RICHARD D. MONKMAN
MATTHEW S. JAFFE
WILLIAM F. STEPHENS
VANESSA RAY-HODGE*
FRANK S. HOLLEMAN
REBECCA A. PATTERSON
KENDRI M. M. CESAR
MATTHEW L. MURDOCK*
WHITNEY LEONARD

OF COUNSEL
MYRA M. MUNSON
ARTHUR LAZARUS, JR
ROGER W. DUBROCK
KAY E. MAASSEN GOUWENS
JAMES E. GLAZE

POLICY ADVISORS
HON. MARK BEGICH

JUNEAU OFFICE
302 GOLD STREET, SUITE 201
JUNEAU, ALASKA 99801
(907) 586-5880·FAX (907) 586-5883

SAN DIEGO, CA OFFICE
145 WILLOW STREET, SUITE 200
BONITA, CA 91902
(619) 267-1306·FAX (619) 267-1388

WASHINGTON, D.C. OFFICE
1425 K STREET, SUITE 600, N.W.
WASHINGTON, D.C. 20005
(202) 682-0240·FAX (202) 682-0249

ALBUQUERQUE, NM OFFICE
500 MARQUETTE AVE, N.W.
SUITE 660
ALBUQUERQUE, NM 87102
(505)247-0147·FAX (505) 843-6912

*ADMITTED IN NEW MEXICO

April 13, 2018

VIA ONLINE SUBMISSION
CBComments@acf.hhs.gov

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

Re: Notice of Proposed Rulemaking; Delay of Compliance and Effective Dates; AFCARS 2016 Final Rule; RIN 0970-AC47

Dear Ms. McHugh:

On behalf of the Puyallup Tribe of Indians ("Tribe"), I appreciate this opportunity to comment on the proposed delay of compliance and effective dates regarding the final Adoption and Foster Care Automated Reporting System ("AFCARS") rule promulgated on December 14, 2016 ("2016 Rule"). 83 Fed. Reg. 11450 (Mar. 15, 2018). The Administration for Children and Families ("ACF"), provided an implementation period of two years and is now seeking to extend that period for another two years. The Tribe opposes any delays in implementing the 2016 Rule.

The proposed delay in compliance and effective dates is extremely concerning to the Tribe and appears to be a tactic to allow ACF time to change and significantly limit the data reporting requirements in the 2016 Rule. Since the final rule was issued, ACF has already once sought a "Supplemental Notice of Public Rulemaking" questioning whether ICWA data

collection will have practical utility and should be collected. *See* 82 Fed. Reg. 29866 (June 30, 2017). Public comment was only open for 30 days and Indian tribes, including the Puyallup Tribe of Indians, and others worked within that timeframe to submit comments supporting the 2016 Rule. It now appears that ACF did not get the comments it desired. *See* 83 Fed. Reg. at 11451 ("[t]he Supplemental Notice . . . was only open for comment for 30 days. This was an insufficient amount of time for states . . . ."). And in conjunction with the proposed delay of the 2016 Rule, ACF is again seeking public comment on whether the 2016 Rule should include ICWA data. *See* 83 Fed. Reg. 11449 (Mar. 15, 2018).

Further delay of the 2016 Rule is unnecessary and only seeks to undermine implementation of the 2016 Rule, which has already gone through substantial public notice and comment. For the first time, the AFCARS rule includes elements related to the Indian Child Welfare Act of 1978 ("ICWA"), and requires the collection of state-level data on American Indian and Alaska Native children in state child welfare systems. This is a significant and positive step forward in ensuring that the federal government fulfills its trust responsibility to Indian tribes and recognizing the agency's role with respect to ICWA compliance.

ICWA was enacted because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children . . . and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions."[1] However, since ICWA's enactment over 35 years ago, Indian children have continued to be represented disproportionally in state foster and adoptive proceedings across the country. Prior to the 2016 Rule there was no mechanism to comprehensively collect data relating to ICWA compliance by state agencies.[2] The 2016 Rule now provides a mechanism by which ACF can track ICWA compliance across states.

The federal register notice attempts to justify the delay on the basis that the new ICWA data collection elements will take time to implement and understand by states and the Department of Health and Human Services ("HHS"), and that there will be questions from states on the reporting requirements. 83 Fed. Reg. at 11451. But since 2016, HHS and states have had time to work through implementation questions. The federal register notice does not suggest that ACF has received requests by states to delay implementation; rather it only speculates that states may not know how to report on the ICWA data elements. Moreover, ensuring that HHS implements the 2016 Rule consistent with the Department of the Interior's ICWA regulations

[1] 25 U.S.C. § 1901(4).

[2] Information pulled in 2007 from those self-identifying as American Indian nationally showed that Indian children were overrepresented in foster care at more than 1.6 times the expected level and even more significantly overrepresented in foster care in certain states with larger American Indian populations. "Time for Reform, A Matter of Justice for American Indian and Alaska Native Children," at 5 NICWA. *See also* 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) (documenting the need for better data regarding states implementation of ICWA).

and the litigation positions taken by the Department of Justice should not be a cause for delay. Effective April 1, 2016, all three agencies entered into a Memorandum of Understanding creating an interagency partnership to strengthen ICWA compliance.[3] HHS has the ability and responsibility to coordinate with these agencies. As such, the Tribe sees no reasonable basis for delaying the 2016 Rule, except to give ACF time to roll back the important achievements made in the 2016 Rule for tracking ICWA compliance.

Thank you for your consideration of these comments.

Sincerely,

Vanessa L. Ray-Hodge
Counsel for Puyallup Tribe of Indians

[3] https://www.bia.gov/sites/bia.gov/files/assets/public/press_release/pdf/idc1-033728.pdf.

As of: September 15, 2020
Received: April 14, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-hlos
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0029
Family Focused Treatment Association

Submitter Information

Organization: Family Focused Treatment Association

General Comment

See Attached

Attachments

Family Focused Treatment Association

FFTA Family Focused Treatment Association

294 Union Street, Hackensack, NJ 07601-4303 / Tel: (800) 414-3382 Fax: (201) 489-6719 / E-mail: ffta@ffta.org www.ffta.org

April 14, 2018

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

Dear Ms. McHugh:

The Family Focused Treatment Association (FFTA) is a professional association of 477 agency members across the country, that provide intensive treatment services to over 40,000 youths ages 0-21 annually. These youths are in the custody of state child welfare and/or state juvenile justice departments and are authorized for clinical intervention services in family-settings (Therapeutic Family Care or TFC) for youth who cannot remain with their biological family due to severe mental or behavioral health displays, psychological issues, and/or medically fragile conditions.

We are responding to the request for comment on the Notice of Proposed Rulemaking (2018-05038/ RIN 0970–AC47 Adoption and Foster Care Analysis and Reporting System) to delay implementation of the updated AFCARS until September 20, 2021. We oppose any delay.

The basic purpose of AFCARS data is to address policy development and program management issues at both the State and Federal levels. Timely data collection allows Congress, HHS, and the OMB to implement, evaluate, develop, and change policies to promote the welfare of all children in out of home care. This data then enables policymakers to assess the reasons why children are in out of home care and to develop remedies to prevent such moves and to stabilize families.

Any delay will deny access to current data and information and force continued reliance on the original set of data elements finalized more than two decades ago instead of providing data relevant to today's families who are dramatically impacted by poverty, domestic violence, and Substance Use Disorders and Opioid Use Disorders.

There will always be a rational for delaying revisions because there are likely to be more revisions to child welfare law and practice in the future. There will always be a cost and burden in any future revisions, and especially as demands for accountability on spending and programs increase. Governments at all levels are forced to make the unpopular spending decisions to support technology and data updates.

Cost and burden alone should not be a rational for further delays.

The proposed delay is unnecessary because there is already a 15-year history of public comment on updating AFCARS, and the Final Rule has been properly promulgated addressing all concerns raised in public comment. The proposed delay would require title IV-E agencies and the federal government to incur additional costs and would likely require title IV-E agencies to divert resources.

The Family Focus Treatment Association thanks you for the opportunity to submit comments on steps to improve AFCARS. We sincerely hope you will revisit any decision to delay implementation.

Sincerely,

Laura W. Boyd, Ph.D.
National Public Policy Director
Family Focused Treatment Association
lboyd@ffta.org, www.ffta.org

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-v759
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0030
CA Tribal Families Coalition

Submitter Information

Organization: California Tribal Families Coalition

General Comment

See attached

Attachments

CA Tribal Families Coalition

CALIFORNIA TRIBAL FAMILIES COALITION

April 16, 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-AC47 **Adoption and Foster Care Analysis and Reporting System;** Notice of Proposed Rulemaking; delay of compliance and effective dates (3/15/2018)

Dear Sir or Madam,

On behalf of its member Tribes, the California Tribal Families Coalition 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 of 1978 (ICWA). Data points specific to ICWA were incorporated into AFCARS as detailed in the Final Rule published on December 14, 2016.

CTFC was formed in 2017 as a continuation of the California ICWA Compliance Task Force, convened in 2015 at the invitation of the California Attorney General. The Task Force's work culminated in a detailed report to the Attorney General which documented numerous ICWA compliance issues throughout the state, and offered recommendations to remedy non-compliance. CTFC's Board of Directors is comprised of thirteen tribal leaders from across the state, including five of the seven co-chairs of the Task Force.

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.

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, this NPRM is open for a 30-day comment period. Per Executive Order 12866, the typical comment period is 60 days. 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."

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.

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

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

Sincerely,

Delia M. Sharpe
Executive Director

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-mnvg
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0031
Casey Family Programs

Submitter Information

Organization: Casey Family Programs

General Comment

See attached

Attachments

Casey Family Programs

casey family programs

safe children | strong families | supportive communities

April 16, 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

RE: Notice of Proposed Rule Making
Adoption and Foster care Analysis and Report System (AFCARS)
45 CFR Part 1355
RIN 0970-AC47

Dear Ms. McHugh,

Thank you for the opportunity to provide comments on the U.S. Department of Health and Human Services Notice of Proposed Rule Making RIN 0970-AC47. Casey Family Programs is the nation's largest operating foundation that focuses exclusively on improving the child welfare system and ultimately preventing the need for foster care. We provide ongoing strategic consultation, technical assistance, data analysis and independent research, and currently work in all of the states and with many tribes to assist child welfare leaders in their efforts.

Casey Family Programs is in full support of better tracking to improve services and to insure accountability. We urge the Administration to pursue as aggressive a timeline as possible that support states and tribes in the collection and reporting of the expanded AFCARS data elements. We believe it is important for states to have the time, guidance and support needed to meet the new regulations, but also recognize the importance of these new data elements to ensure the appropriate oversight and monitoring of these programs. We do plan to submit separate comments related to proposed changes in the AFCARS file structure and data elements.

We are very concerned about the burdens around data collection and are equally compelled by the importance of insuring that government responsibility to provide adequate care and oversight for the large number of children in state custody and care, including American Indian/Alaska Native children. Greater effort is needed to assess a child's eligibility for the Indian Child Welfare Act (ICWA) protections as well as to insure that,

P 206.282.7300 | F 206.282.3555 | casey.org
2001 Eighth Avenue | Suite 2700 | Seattle, Washington 98121

casey family programs

safe children | strong families | supportive communities

once eligibility is established, appropriate measures are taken to track adherence to ICWA protections and statutory requirements. We also support the statutory mandate to track safety support to victims of sex trafficking and to comply with the Fostering Connections to Success and Increasing Adoptions Act of 2008 legislation.

We appreciate the integration of the ICWA changes into the larger AFCARS rule changes and applaud changes in the AFCARS file structure. We also are hopeful that passage of the Family First Prevention Services the Act and the revised rules guiding the Comprehensive Child Welfare Information System (CCWIS) flexibility will potentially ease some state burden by allowing more flexibility in how all new data elements are collected and reported. The flexibility of CCWIS provides opportunities for modular systems and electronic data transfer which should ease state burden in complying with this substantial change in AFCARS. We believe these adaptations could be further encouraged and burdens made more manageable with additional federal support.

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

Sincerely,

David Sanders
Executive Vice President
Systems Improvement

P 206.282.7300 | F 206.282.3555 | casey.org
2001 Eighth Avenue | Suite 2700 | Seattle, Washington 98121

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-ackf
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0032
Cherokee Nation

Submitter Information

Organization: Cherokee Nation

General Comment

See attached

Attachments

Cherokee Nation

CHEROKEE NATION
OFFICE OF THE ATTORNEY GENERAL

P.O. Box 1533
Tahlequah, OK 74465
918-453-5000

Todd Hembree
Attorney General

April 16, 2018

VIA ONLINE SUBMISSION
CBComments@acf.hhs.gov

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

Re: Notice of Proposed Rulemaking; Delay of compliance and effective dates; AFCARS 2016 Final Rule; RIN 0970-AC47.

Dear Ms. McHugh,

We appreciate this opportunity to comment on the proposed delay of compliance and effective dates regarding the final Adoption and Foster Care Automated Reporting System ("AFCARS") rule promulgated on December 14, 2016. 83 Fed. Reg. 11450 (Mar. 15, 2018). The Administration for Children and Families ("ACF"), provided an implementation period of two years and is now seeking to extend that period for another two years. The Cherokee Nation ("Nation") opposes any delays in implementing the 2016 Rule.

The proposed delay in compliance and effective dates is extremely concerning to the Nation and appears to be a tactic to allow ACF time to change and significantly limit the data reporting requirements in the 2016 Rule. Since the final rule was issued, ACF has already once sought a "Supplemental Notice of Public Rulemaking" questioning whether ICWA data collection will have practical utility and should be collected. *See* 82 Fed. Reg. 29866 (June 30, 2017). Public comment was only open for 30 days and Indian tribes, including the Cherokee Nation, and others worked within that timeframe to submit comments supporting the 2016 Rule. It now appears that ACF did not get the comments it desired. *See* 83 Fed. Reg. at 11451 ("[t]he Supplemental Notice . . . was only open for comment for 30 days. This was an insufficient amount of time for

states . . . ."). And in conjunction with the proposed delay of the 2016 Rule, ACF is again seeking public comment on whether the 2016 Rule should include ICWA data. *See* 83 Fed. Reg. 11449 (Mar. 15, 2018).

Further delay of the 2016 Rule is unnecessary and only seeks to undermine implementation of the 2016 Rule, which has already gone through substantial public notice and comment. For the first time, the AFCARS rule includes elements related to the Indian Child Welfare Act of 1978 ("ICWA"), and requires the collection of data on American Indian and Alaska Native children in state child welfare systems. This is a significant and positive step forward in ensuring that the federal government fulfills its trust responsibility to Indian tribes and recognizing the agency's role with respect to ICWA compliance.

ICWA was enacted because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted of their children . . . and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions."[1] However, since ICWA's enactment over 35 years ago, Indian children have continued to be represented disproportionally in state foster and adoptive proceedings across the country. Prior to the 2016 Rule there was no mechanism to comprehensively collect data relating to ICWA compliance by state agencies.[2] The 2016 Rule now provides a mechanism by which ACF can track ICWA compliance across states.

The federal register notice attempts to justify the delay on the basis that the new ICWA data collection elements will take time to implement and understand by states and the Department of Health and Human Services ("HHS"), and suggests that there will be questions from states on the reporting requirements. 83 Fed. Reg. at 11451. But since 2016, HHS and states have had time to work through implementation questions. Nothing in the federal register notice indicates that ACF has received requests by states to delay implementation; rather, it only speculates that states may not know how to report on the ICWA data elements. Moreover, ensuring that HHS implements the 2016 Rule consistent with the Department of the Interior's ICWA regulations and the litigation positions taken by the Department of Justice should not be a cause for delay. Effective April 1, 2016, all three agencies entered into a Memorandum of Understanding creating an interagency partnership to strengthen ICWA compliance.[3]

---

[1] 25 U.S.C. § 1901(4).

[2] Information pulled in 2007 from those self-identifying as American Indian nationally showed that Indian children were overrepresented in foster care at more than 1.6 times the expected level and even more significantly overrepresented in foster care in certain states with larger American Indian populations. "Time for Reform, A Matter of Justice for American Indian and Alaska Native Children," at 5 NICWA, available at: http://www.nicwa.org/government/time-for-reform.pdf. *See also* 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) (documenting the need for better data regarding states implementation of ICWA).

[3] https://www.bia.gov/sites/bia.gov/files/assets/public/press_release/pdf/idc1-033728.pdf.

HHS has the ability and responsibility to coordinate with these agencies. As such, the Nation sees no reasonable basis for delaying the 2016 Rule except to give ACF time to rollback the important achievements made in the Rule for tracking ICWA compliance.

Thank you for your consideration of these comments.

Sincerely,

Chrissi Ross Nimmo
Deputy Attorney General

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-s31y
Comments Due: April 16, 2018
Submission Type: E-mail

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0033
CO comments

Submitter Information

Organization: Colorado

General Comment

See attached

Attachments

CO comments

From: Duenas - CDHS, Ann [mailto:ann.duenas@state.co.us]
Sent: Monday, April 16, 2018 3:38 PM
To: ACF CBComments <CBComments@acf.hhs.gov>
Cc: Deying Zhou - CDHS <deying.zhou@state.co.us>
Subject: RIN 0970-AC47, Colorado Response to NPRM on AFCARS Delay

Colorado is currently modernizing its Comprehensive Child Welfare Information System (CCWIS). Developers in Colorado's Office of Information Technology (OIT) are working at full capacity to complete this project by January 1, 2019. After this modernization effort is complete, Colorado's OIT developers will begin work on modifying its case management system to implement both the National Electronic Interstate Compact Enterprise (NEICE) and the Families First Prevention Services Act. Additionally, there are concerns about the collection of ICWA data. Collaborative efforts will need to be undertaken with different state agencies, including State Judicial, to identify and gather ICWA data for the AFCARS file. Due to Colorado's current focus on modernizing and modifying its case management system, and considering further efforts that are needed to engage with other state agencies to collect ICWA related data points, Colorado is supportive of the proposal to delay the implementation of AFCARS 2.0.

Please contact Ann Duenas at ann.duenas@state.co.us for any questions or concerns.

Ann Dueñas
Federal Performance Data Analyst & Liaison
Research, Analysis & Data

COLORADO
Office of Children, Youth & Families
Division of Child Welfare

Office 303.866.5174 I Cell 720.656.9019
1575 Sherman St., 2nd Floor
Denver, CO 80203
ann.duenas@state.co.us I colorado.gov/CDHS/

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-ke8y
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0034
Danny K Davis AFCARS comment

Submitter Information

Name: Danny Davis
Organization: U.S. House of Representatives

General Comment

See attached

Attachments

Danny K Davis AFCARS comment

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

April 16, 2018

Ms. Kathleen McHugh
AYCF/Children's Bureau
Department of Health and Human Services
Administration for Children and Families
Washington, DC 20013

RE: NPRM 2018-05038

Dear Ms. McHugh:

I write in strong opposition to the proposed **additional** two year delay in requiring states to report critical data needed to manage the child welfare system, hold states accountable for keeping children safe, and help Congress formulate policy for the future. The Adoption and Foster Care Analysis and Reporting System (AFCARS) has not been updated in decades, and as a result, HHS is out of compliance with a number of statutory requirements, including policies intended to improve data collection which Congress mandated over a decade ago.

States and other child welfare stakeholders have had multiple, formal opportunities to share their views on AFCARS updates, and HHS has received and responded to their input. The Bush Administration formally solicited comments from the public on improving AFCARS as early as 2003, and issued a notice of proposed rulemaking (NPRM), which received public comment, in 2008. In July 2010, the Obama administration published notice that due to a substantial number of new legal requirements for AFCARS, they planned to issue a new NPRM, and again solicited comments. The Administration published an NPRM in 2015, which stakeholders were again asked to publicly comment on. Finally, HHS published a supplemental proposal in 2016, and again provided for public comment. All of those years of public comments were considered and responded to in the final rule, which became effective on January 13, 2017.

We have already waited far too long for AFCARS to be updated consistent with expert advice and Congressional instructions. Further delays in implementing the regulation will lead to still-longer delays in collecting the information, which will impede both our Congressional oversight and our development of future policy. I urge you to allow the final regulation to take effect as scheduled.

Sincerely,

Danny K. Davis

Congressman Danny K. Davis
Ranking Member
Subcommittee on Human Resources

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-lwfu
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0035
Generations United

Submitter Information

Organization: Generations United

General Comment

See attached

Attachments

Generations United

generations united®

Because we're stronger together

April 16, 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: RIN 0970-AC47

Dear Ms. McHugh:

Generations United is opposed to the Administration for Children and Families' (ACF) decision to delay for two fiscal years the implementation of the 2016 final rule to update the Adoption and Foster Care Analysis and Reporting System (AFCARS). Further delaying this update will negatively affect the ability to address the needs of vulnerable children in foster care. Consistent with Generations United's mission and our longstanding work through our National Center on Grandfamilies, we are particularly focused on what the delay will mean to kinship families or grandfamilies. We define kinship families or grandfamilies to mean families in which children reside with and are being raised by grandparents, other extended family members, and adults with whom they have a close family-like relationship, such as godparents and close family friends.

The child welfare system is relying more than ever on kin to care for children in foster care. According to 2016 AFCARS data, 32 percent of all children in foster care are in the care of relatives. Despite this high percentage of children with kin, we have little data about them. To better serve these children and families, we need to collect the necessary information called for in the Preventing Sex Trafficking and Strengthening Families Act and the Fostering Connections to Success and Increasing Adoptions Act. With this useful information, agencies will better know how to spend their resources to support the children and caregivers in grandfamilies.

Many of the data elements called for in the final rule to update AFCARS are critical to serving the growing number of children in foster care with relatives:

- data on "kin"
- information on prior adoptions and guardianships that were dissolved or disrupted before entering out-of-home care
- data on guardianships and adoptions even if no financial subsidy is provided on the child's behalf
- information on payment of nonrecurring adoption costs
- data on siblings who are living with the child in the adoptive or guardianship home
- data related to American Indian/Alaska Native children and the Indian Child Welfare Act (ICWA)

This data collection will help states, tribes, and localities better support grandfamilies who raise one-third of all children in the foster care system, in addition to kin who have adopted or taken guardianship of children who were previously part of the system.

Delaying compliance with the AFCARS 2016 final rule deprives states, tribes, and localities of the benefits of data that reflect child welfare practice today, not child welfare practice as it was in 1993 when AFCARS was last updated.

Please let us know if we provide any additional information. I can be contacted at (425) 659-3500 or abeltran@gu.org. Our Deputy Executive Director, Jaia Lent, can be reached at (202) 777-0115 or jlent@gu.org.

Sincerely,

Ana Beltran, JD
Special Advisor
Generations United

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-ax14
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0036
MAP

Submitter Information

Organization: Movement Advancement Project (MAP)

General Comment

See attached

Attachments

MAP

movement advancement project

April 16, 2018

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

Re: RIN 0970-AC47 Delayed Implementation of 2016 AFCARS Final Rule

Dear Ms. McHugh:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking to delay the implementation of the updated Adoption and Foster Care Analysis and Reporting System (AFCARS) by two additional years to September 20, 2021.

The Movement Advancement Project (MAP) is an independent think tank that provides rigorous research, insight, and analysis to help speed equality for LGBT people.

MAP opposes the proposal by the Children's Bureau to delay the collection of this critical data on children, youth, and families involved with the foster care system. AFCARS plays a critical 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 already finalized AFCARS rule would include collection of critical new data which would significantly improve current child welfare data collection.

Specifically, the updates under the finalized rule would expand our knowledge of how youth experience the child welfare system. For example:

- Currently, there is little useful data collected at either the state or federal level related to American Indian and Alaska Native (AI/AN) children who are under the custody of state child welfare authorities. The revised AFCAR rules will provide access to more detailed, case-level data at the federal level. By examining such data, we can improve technical assistance to states, allocate federal program resources more effectively, and help evaluate the extent to which states are working with tribes to successfully implement ICWA.
- Lesbian, gay, and bisexual (LGB) youth are greatly overrepresented in the child welfare system, and the proposed rule included data collection about this youth and their experiences. This data is critical to understanding how these young people experience the child welfare system and how states can best serve them.

States, tribes, and child welfare agencies had many opportunities to comment on these updates as well as others, and the Children's Bureau addressed previously specific concerns within the publication of the 2016 Final Rule. The time now is to implement the 2016 final rule and ensure that critical new information is available to improve the lives of vulnerable children in foster care.

Sincerely,

Naomi Goldberg, MPP
Research and Policy Director

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-cvb9
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0037
National Crittenton Foundation

Submitter Information

Organization: National Crittenton Foundation

General Comment

See attached

Attachments

National Crittenton Foundation

The National Crittenton Foundation

BELIEVE IN **THE POWER OF POTENTIAL**

921 SW Washington Street, Suite 312
Portland, OR 97205

phone (503) 297-2217
toll free (866) 449-2217

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

April 16, 2018

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

Dear Ms. McHugh:

The National Crittenton Foundation (TNCF) appreciates the opportunity to provide comment on the Administration for Children and Families (ACF)'s decision to delay for two years the implementation of the 2015 final rule to update the Adoption and Foster Care Analysis Reporting System (AFCARS). TNCF supported this final rule, and we believe that further delaying its implementation will negatively impact ACF's ability to help states and localities, public agencies and their nonprofit partners meet the needs of the vulnerable children and youth they serve, and particularly our most marginalized girls, young women and women. Therefore, we strongly oppose the delay.

TNCF represents a family of 26 agencies across the country operating in 31 states and the District of Columbia. Working in partnership with public systems, our agencies provide innovative, comprehensive, gender- and culturally-responsive, trauma-informed and developmentally appropriate services. These services are provided in a range of settings for girls, young women, and their families – from in-home and school-based early learning centers to residential treatment foster care placements, community-based mental health services, wrap-around family support, and diversion and re-entry juvenile justice programs, among others. Our agencies are on the front lines of meeting the needs and supporting the potential of young people who have spent time in multiple systems, including child welfare, juvenile justice, substance abuse treatment, mental health, runaway and homeless shelters, and others.

TNCF has long advocated for the use of data to inform policy and practice, and we believe the inclusion of new data elements included in the 2016 update to AFCARS would represent a huge step forward for the child welfare field. As we noted in our comments to the NPRM in April 2015, we strongly support the following data elements in particular:

- The overall shift to more historical and longitudinal information about children and youth in the foster care system. Many young people we serve enter and exit the system multiple times, and understanding their history and trajectory through the foster care system would provide a much-needed understanding of how their history impacts their involvement with the system.
- The increased focus on health and mental health conditions of children entering the foster care system. Most of the girls and young women we serve have histories of trauma stemming from exposure to chronic adversity including multiple forms of gender-based violence , and understanding the nature of their health and mental health histories will be instructive to efforts to fully meet their needs.

The National Crittenton Foundation

BELIEVE IN **THE POWER OF POTENTIAL** 921 SW Washington Street, Suite 312 Portland, OR 97205 phone (503) 297-2217 toll free (866) 449-2217 fax (503) 297-1277 www.NationalCrittenton.org

- The updated data requirements regarding "crossover youth," including youth who have run away from care as well as the prevalence and experiences of young people in foster care who are also involved with the juvenile justice system. Our agencies often serve young people who have interacted with multiple systems, and it is important to better understand the experiences of such youth. What little data exists on crossover youth suggests that girls are over represented in the population of children and youth impacted by more than one system.

We also applauded ACF's inclusion of new data elements regarding pregnant and parenting teens in care. If implemented, the revised AFCARS would require state agencies to report on girls in foster care who are pregnant, girls and boys in foster care who are parents, and girls and boys in foster care who have primary responsibility for and are living with their child(ren). Our agencies serve many expectant and parenting youth – a population with unique needs and that requires individualized supports and services – and we have long been frustrated with the lack of data on expectant and parenting teens in the foster care system, which undermines our ability to make sound policy and programmatic decisions to help meet their needs.

As private agencies that fill the gaps of our public systems, we are dismayed that the delay of this final rule will perpetuate outdated data systems that hinder the efforts of child welfare agencies and their private partners to ensure young people receive high-quality services. There have been no updates to AFCARS since 1993, when it was first created, and there have been numerous landmark child welfare laws enacted since then, including the Fostering Connections to Success and Increasing Adoptions Act of 2008, the Child and Family Services Improvement and Innovation Act, and the Preventing Sex Trafficking and Strengthening Families Act, which included statutory changes to child welfare policy including new data elements that should be collected in AFCARS. It is past time for our federal data system to catch up to these policy changes.

The overdue updates to AFCARS are critical not only in helping the field and policymakers understand the scope of the issues impacting children and families, but, more importantly, in determining appropriate policy and programmatic responses to help meet the complex needs of marginalized, system-impacted girls, young women, and gender-nonconforming youth. We urge you to move forward with implementation of the 2016 final rule as quickly as possible.

Thank you for the opportunity to provide input on this important issue. If you have any questions please do not hesitate to contact me at jeannette@nationalcrittenton.org.

Sincerely,

Jeannette Pai-Espinosa
President
The National Crittenton Foundation

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-v7wq
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0038
OH Comments AFCARS 45

Submitter Information

Name: Carla Carpenter
Organization: Ohio Dept of Job and Family Services

General Comment

See attached

Attachments

OH Comments AFCARS 45

Ohio | Department of Job and Family Services

John R. Kasich, Governor
Cynthia C. Dungey, Director

April 16, 2018

Ms. Kathleen McHugh, Director
Division of Policy, Children's Bureau
Administration on Children, Youth, and Families
Administration for Children and Families
1250 Maryland Ave SW, Suite 800
Washington, DC 20024
CBComments@acf.hhs.gov

Re: **Ohio Comments on AFCARS 45 CFR Part 1355 RIN 0970-AC47**

Dear Ms. McHugh:

Ohio is in support of the delay of the AFCARS 2016 Final Rule implementation. Ohio has determined that the impact on resources is estimated to be substantial. Our initial estimate of the changes required in AFCARS would exceed 10,000 hours of development, testing, and implementation. The projected cost is estimated at over 1 million dollars for system changes alone. This does not include estimates for the time users will spend recording information into the system.

Please feel free to contact Jennifer Watson, the Office of Families and Children child welfare reporting manager, at (614) 387-8884 or via e-mail at Jennifer.Watson@jfs.ohio.gov with any questions regarding our state's comments.

Sincerely,

Carla K. Carpenter
Office of Families and Children, Deputy Director

JW/gc

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-ik6z
Comments Due: April 16, 2018
Submission Type: E-mail

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0039
Rights4Girls

Submitter Information

Organization: Rights4Girls

General Comment

See attached

Attachments

Rights4Girls

From: Cherice Hopkins [mailto:cherice@rights4girls.org]
Sent: Monday, April 16, 2018 3:36 PM
To: ACF CBComments <CBComments@acf.hhs.gov>
Subject: RIN 0970–AC47

Dear Ms. McHugh,

Rights4Girls submits the below comment in response to the Department of Health and Human Services' Administration for Children and Families' proposal to delay, by two fiscal years, the compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 final rule (81 FR 90524) for title IV–E agencies to comply with 45 CFR 1355.

Since the *Preventing Sex Trafficking and Strengthening Families Act* became law in 2014, there has been a substantial increase in the number of reported cases of children missing from the child welfare system. According to the National Center for Missing and Exploited Children, after the law's passage the number of reports they received grew from approximately 5,000-6,000 reports to approximately 13,000 reports. Additionally, during that time, the proportion of runaway children who were identified as likely trafficking victims steadily declined, for example, from approximately one in six children in 2016 to one in seven children in 2017. The vast majority of these children were in the care of the child welfare system when they went missing. We know from many child sex trafficking survivors and their providers that there is a strong nexus between foster care involvement and an increased vulnerability to sex trafficking. Given this nexus, the rise in reports of children missing from care juxtaposed with the decline in the number of those children identified as likely trafficking victims raises concerns as to whether jurisdictions that didn't previously report missing children, but who are now required to do so, actually screen for trafficking among children in their caseloads.

With an automated system like AFCARS, we now have a critical opportunity to understand the prevalence of sex trafficking in the child welfare context. This data collection component is pressing, and we strongly urge against waiting until 2021 to begin looking into what we have known for years to be a real problem. Action delayed, is assistance denied to thousands of child victims around the country. With this reporting requirement, we have the opportunity to fill a major information gap. It is important not to take steps that would inadvertently widen the gap thereby putting even more children at risk of not being identified, and more importantly, not being connected to services. Furthermore, a delay is unnecessary as some state child welfare agencies have already attempted to report their data to the Department of Health and Human Services.

Respectfully,

Rights4Girls
Washington, DC

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-lwpe
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0040
South Dakota Division of Child Protection Services

Submitter Information

Organization: South Dakota Division of Child Protection Services

General Comment

See attached

Attachments

South Dakota Division of Child Protection Services

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

DSS
Strong Families - South Dakota's Foundation and Our Future

April 16, 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 Notice of Proposed Rulemaking (NPRM RIN 0970-AC47) to delay implementation and provide an additional two fiscal years to comply with the AFCARS December 2016 final rule. The Department submitted comments to OMB in January 2018 regarding the burden to States to implement the AFCARS element changes which would require a significant investment of not only staff resources, but also funding associated with staff to implement the proposed changes. Many of the comments we are submitting now were included in those comments submitted to OMB. The December 2016 final AFCARS rule includes 272 individual data elements, of which 153 are new items. The State of South Dakota strongly supports delaying the implementation date to allow time for further clarification on the new data elements, allow time for states to comment on streamlining the elements and for subsequent system development once elements are finalized.

While states recognize the value in adding additional information to monitor and analyze outcomes for children in the child welfare system, these changes would create an onerous burden to already stretched resources needed to provide services to children and families. The data entry required for the elements would take time away from direct casework and potentially cause delays in timely permanency for children and affect other critical services for children to ensure their safety and well-being. South Dakota, along with every other state, struggles with recruitment and retention of qualified casework staff. Caseworkers are critical to the improvement of child welfare outcomes. These same workers are responsible for gathering most of the information reported to AFCARS.

The proposed implementation start date of FFY 2019 is an unreasonable timeframe for South Dakota to implement the requirements with the resources available. Guidance is needed regarding the data elements and reporting requirements in order to create new fields and screens in South Dakota's information system and to map elements correctly. South Dakota also respectfully recommends implementation not be retroactive and new data elements should only apply to cases going forward. In addition to the AFCARS changes, South Dakota is facing changes from SACWIS to CCWIS data system with similar implementation projections and implementation of both initiatives at the same time will be very difficult to do.

The tasks associated with implementation of the new AFCARS elements include planning/development meetings; reviewing drafts of system and extraction changes; testing and implementation activities; and providing training and support to staff regarding the system changes. There has been no additional money allocated to states to help defer the costs of this.

Therefore, the SDDSS supports the delayed implementation of the first AFCARS report period by two years until October 1, 2021 and to extend the reporting of AFCARS data in accordance with the current AFCARS regulation until September 30, 2021. 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

Lynne A. Valenti
Cabinet Secretary

CC: Virgena Wieseler, Division Director of Child Protection Services
Tonia Bogue, SACWIS Project Director

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-qm54
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0041
VFA

Submitter Information

Organization: Voices for Adoption

General Comment

See attached

Attachments

VFA

Voice for Adoption

SPEAKING OUT FOR OUR NATION'S WAITING CHILDREN

April 16, 2018

Kathleen McHugh

Director, Policy Division

Administration for Children and Families

U.S. Department of Health and Human

Services 330 C St. SW

Washington, DC 20024

RE: RIN 0970-AC47

Dear Ms. McHugh:

Voice for Adoption write to share our strong opposition to the Administration for Children and Families' (ACF) decision to delay for two fiscal years the implementation of the 2016 final rule to update the Adoption and Foster Care Analysis and Reporting System (AFCARS). Further delaying this update will negatively affect the ability to address the needs of vulnerable children in foster care.

AFCARS plays a critical 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 already-finalized AFCARS rule would include collection of critical new data which would significantly improve current child welfare data collection.

ACF has implemented several landmark updates to federal child welfare law in the nearly twenty years since the last update to AFCARS. This includes major updates 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.)

The Final Rule is the first update of AFCARS since 1993, when AFCARS was first implemented on December 22, 1993. We feel the delay will push access to needed data and information that has been limited by the continued reliance on the original set of data elements finalized more than two decades ago. The Final Rule published on December 14, 2016 was to be effective January 13, 2017. This continues a pattern of delay after earlier efforts to revise and improve information through earlier public comment periods and attempts to update AFCARS in 2003, 2008, 2010, 2015 and now most recently 2016.

There are several elements of the AFCARS that VFA would like to highlight:

Longitudinal Data

While AFCARS point-in-time data is useful for the field, having more longitudinal data will certainly allow for a better understanding of a child's experience in care and provide invaluable information for use in decision-making regarding policy and practice in child welfare. Longitudinal data tends to provide both clarity and quality when examining what a child's experience is in care, and can be used to shed light on where new policies and practices may be needed. This change will enhance efforts to achieve improved outcomes for children and families.

1220 L St. NW, Suite 100-344, Washington, DC 20005
202-210-8118 | director@voice-for-adoption.org | www.voice-for-adoption.org

Indian Child Welfare Act

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

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

Sexual Orientation and Gender Identity

Several studies have shown that lesbian, gay, bisexual, transgender, and questioning (LGBTQ) children and youth are over-represented in foster care—in part due to their family's rejection of them. We also know that these children and youth may face bias in foster care and lack placements where their safety and dignity is assured. To address these core issues, it is critically important that we collect data on the sexual orientation of children and youth in care and determine how their outcomes differ from other children. (We recommend that data on gender identity be collected as well.)

This data has great utility. It can be used to explore whether certain states' policies or practices are shaping the experiences LGBTQ youth are having and identify areas of attention for the federal government. It also provides clarity on these young people's experiences and how different state procedures may affect them.

Other

We also believe that states and the federal government can benefit from collecting and analyzing data on health, behavioral or mental health conditions; prior adoptions; sibling placements; environment at removal and child and family circumstances at removal; foster family home type and other living arrangements; and location of living arrangements. Through this, we can determine if certain states are succeeding in ensuring safety, permanency, and well-being for children and how their successes can be replicated in other communities.

Although we know that data collection has significant costs, the costs of not knowing what is happening in our child welfare systems is far greater. We are spending billions of dollars to care for and protect children, and can learn much about what is working and where further policy and practice changes are needed.

There will always be a rational for delaying revisions since there are likely to be more revisions to child welfare law and practice. There will always be a cost and burden in any future revisions. Governments at all levels are forced to make the unpopular spending decisions to support technology and data updates and frequently the result is that delays in such technology improvements occur because the benefit is not readily visible to the public. This happens even when demands for accountability on spending and programs increase. Cost and burden alone should not be a rational for further delays.

1220 L St. NW, Suite 100-344, Washington, DC 20005
202-210-8118 | director@voice-for-adoption.org | www.voice-for-adoption.org

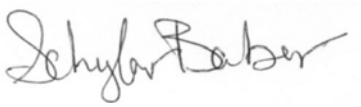
It will mean that we will not update needed data and this is concerning in light of the need to have better information in response to both federal and state changes in policy and practice.

Data collection on adoption and legal guardianship disruption and dissolution is also critical. According to *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 113-183), ''(d) To promote improved knowledge on how best to ensure strong, permanent families for children, the Secretary shall promulgate regulations providing for the collection and analysis of information regarding children who enter into foster care under the super-vision of a State after prior finalization of an adoption or legal guardianship."

Part of the rationale for this delay is an overall directive by the President to reduce regulatory burdens on the American people. We feel this action must consider all people, including those families and children touched by the child welfare system. All too often these children are relegated to a lower status and national priority. Delaying an update of the 25-year-old AFCARS standards will, we believe, create a greater burden for these families because it will undercut evaluation and improvement of how these families and their children are supported. It will also deprive communities and citizens of the benefits of data that reflects child welfare practice today, not child welfare practice as it was in 1993. The proposed delay is unnecessary because there is already a 15-year history of public comment on updating AFCARS, and the Final Rule has been properly promulgated addressing all concerns raised in public comment. The proposed delay would also require title IV-E agencies and the federal government to incur additional costs and would likely require title IV-E agencies to divert resources.

Delaying compliance with the 2016 AFCARS Final Rule is unnecessary, and requires states to divert resources. We strongly urge you not to delay or scale-back implementation the 2016 final rule, and oppose this proposed two-year delay.

Sincerely,



Schylar Baber

Executive Director

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mq-nqrb
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0042
Lambda Legal and the National Center for Lesbian Rights

Submitter Information

Organization: Lambda Legal and the National Center for Lesbian Rights ("NCLR")

General Comment

See Attached

Attachments

Lambda Legal and the National Center for Lesbian Rights

April 16, 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 delaying the compliance and effective dates in the Adoption and Foster Care Analysis and Reporting System 2016 final rule, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC47]

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

Dear Ms. McHugh:

On behalf of Lambda Legal and the National Center for Lesbian Rights ("NCLR"), please accept the following comments regarding the Notice of Proposed Rulemaking at 83 Fed. Reg. 11450 ("Proposed Rule")[1] to delay compliance and the effective dates of the final Adoption and Foster Care Analysis and Reporting System ("AFCARS") Rule ("Final Rule").[2] Lambda Legal and NCLR request that U.S. Department of Health and Human Services, Administration for Children and Families ("ACF"), Administration on Children Youth and Families ("ACYF"), Children's Bureau ("Children's Bureau") rescind the Proposed Rule and proceed with the AFCARS Final Rule as promulgated.

Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexual, transgender people, and everyone living with HIV through litigation, education, and public policy work. Additionally, Lambda Legal's Youth in Out-of-Home Care Project specifically advocates for the rights of lesbian, gay, bisexual, transgender, and queer or questioning ("LGBTQ") young people in foster care, juvenile justice settings, and systems of care for youth experiencing homelessness.

[1] 83 Fed. Reg. 11450 (Mar. 15, 2018) (to be codified at 45 C.F.R. § 1355), available at https://www.gpo.gov/fdsys/pkg/FR-2018-03-15/pdf/2018-05038.pdf.
[2] 45 C.F.R. § 1355 (2016), available at https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29366.pdf.

NCLR is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the LGBT community, provides free legal assistance to LGBT people and their legal advocates, and conducts community education on LGBT issues. NCLR has been advancing the civil and human rights of LGBT people and their families across the United States through litigation, legislation, policy, and public education since it was founded in 1977. NCLR's Youth Project, established in 1993, engages in litigation, public policy advocacy and system reform efforts to promote the health and well-being of LGBTQ youth in their families, schools and public systems of care.

A. Background

For over a decade, our organizations have collaborated with public child welfare agencies and their contract providers across the country in the development of best practices, nondiscrimination policies, and procedures to appropriately serve and support LGBTQ children and families, including foster and adoptive parents. That work has included training and technical assistance regarding collection of sexual orientation- and gender identity-related demographic information, including NCLR's 2013 publication "Guidelines for Managing Information Related to the Sexual Orientation & Gender Identity and Expression of Children in Child Welfare Systems."[3]

In 2015, Lambda Legal and NCLR along with the Human Rights Campaign, The Williams Institute and Center for the Study of Social Policy filed comments regarding the Final Rule and collection of sexual orientation and gender identity-related demographic information for youth and foster and adoptive parents and legal guardians. For the reasons summarized below, Lambda Legal and NCLR continue to support and safe and affirming collection of this 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 ("SOGI"), provide training to staff regarding respectful collection of SOGI information, and implement confidentiality protocols for SOGI information. While we recognize that the Final Rule did not require collection of gender-identity related information, we advocate that states do collect gender-identity information in addition to sexual orientation information.

The Proposed Rule, if implemented, would negatively affect LGBTQ youth and families by contributing unnecessarily to a status quo that has kept LGBTQ youth and foster and adoptive parents and guardians statistically invisible, fostered harmful environments in care and poor

[3] 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.

outcomes for LGBTQ youth, and perpetuated the underutilization of LGBT people as placement resources and permanent families. Delaying the collection of demographic information regarding Native American and Native Alaskan 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 Native American or Native Alaskan youth. Delaying implementation of the new data element tracking removals involving conflict related to a child's sexual orientation or gender identity frustrates ACF's interest in prioritizing prevention of child abuse and neglect and placement in out-of-home care. In addition, further delay in obtaining nationwide data concerning family rejection of LGBTQ youth inhibits the ability of the federal government and states to further their work to reduce the over-representation of LGBTQ youth in care, in general, and LGBTQ youth of color, in particular.

B. Delay in Implementation of the Final Rule Negatively Impacts the Safety, Permanency, and Well-being of LGBTQ Children

The core objectives of safety, permanency, and well-being apply to all children in the custody of child welfare agencies, including LGBTQ children. 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]

These observations 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.[6] 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.[7] Eleven percent of the participants identified as gender-nonconforming, and 5.6% identified as transgender.[8]

[4] ADMIN. FOR CHILD. & 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 [hereinafter "*ACYF-CB-IM-11-03*"].
[5] *Id.*
[6] *See RISE*, LOS ANGELES LGBT CENTER, https://lalgbtcenter.org/rise (last visited Mar. 29, 2018).
[7] Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, & Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST., at 6 (August 2014), www.williamsinstitute.law.ucla.edu/research/safe-schools-and-youth/lafys-aug-2014/ [hereinafter "*Sexual and Gender Minority Youth*"].
[8] *Id.*

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.[9] Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth,[10] and LGBTQ youth are more likely to be hospitalized for emotional reasons and have higher incidences of juvenile justice involvement.[11] They were also more likely to have become homeless,[12] with many citing lack of acceptance in foster care as the reason they experienced homelessness.

Organizations that develop professional standards have also documented the negative experiences of LGBTQ youth and issued recommended practices for their treatment in child welfare settings. The Child Welfare League of America ("CWLA"), a coalition of hundreds of private and public agencies serving vulnerable children and families, is the nation's leading organization focused on improving the nation's child welfare system. ACF endorsed *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings*, by CWLA and other national experts.[13] *Recommended Practices* calls for state child welfare agencies to adopt and implement policies that prohibit discrimination on the basis of sexual orientation, gender identity, and gender expression.[14]

In addition, CWLA has issued a National Blueprint for Excellence, which establishes eight core principles with accompanying standards to "guide the thinking, decision-making, and behavior of individuals, organizations, communities, and government entities committed to the promotion and enhancement of children's safety, permanency, and well-being."[15] The Blueprint asserts that LGBT children and adults have the right to be free from discrimination and urges agencies to have explicit SOGI non-discrimination policies.[16]

---

[9] *Id.* at 6.
[10] 18.5 percent of all youth in the Williams Institute study reported having experienced some form of discrimination based on their actual or perceived sexual orientation, gender identity, or gender expression. *Id.* at 35.
[11] The Williams Institute concluded that 13.47 percent of LGBTQ youth in foster care were hospitalized for emotional reasons, compared with 4.25 percent of non-LGBTQ youth. *Id.* at 38.
[12] Compared with 13.90 percent of non-LGBTQ respondents, 21.09 percent of LGBTQ youth surveyed by the Williams Institute reported that they had every been homeless. *Id.*
[13] CHILD WELFARE LEAGUE OF AM., *Recommended Practices to Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of or Living with HIV in Child Welfare Settings* (2012), https://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf.
[14] *Id.*
[15] CHILD WELFARE LEAGUE OF AM., *National Blueprint for Excellent in Child Welfare* (2013), https://www.cwla.org/our-work/cwla-standards-of-excellence/national-blueprint-for-excellence-in-child-welfare/.
[16] *Id.* at 108-09.

Findings and recommendations by the Children's Bureau and CWLA are consistent with and flow from 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, and societal stigma and discrimination.[17] In fact, family rejection is one of the most commonly cited reasons for LGBTQ youth entering out-of-home care.[18] In order to identify and address 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.

The child welfare profession has acknowledged the importance of collecting 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 ("CSSP"), Legal Services for Children, the National Center for Lesbian Rights ("NCLR"), and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.[19] 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.

Collection of SOGI data is consistent with the focus of the child welfare profession on outcomes and accountability as the framework for increasing professional competency. The Child and Family Services Review evaluates states on a set of outcomes, which inform the development of Program Improvement Plans to guide ongoing quality improvement.[20] The field supports the use of evidence-based strategies and interventions to improve outcomes. Child welfare agencies collect and report client data to track demographic trends, identify gaps in services, assess the effectiveness of specific interventions, and measure progress towards system objectives.[21] All of these reform efforts hinge on the collection and analysis of client data.

---

[17] *Sexual and Gender Minority Youth*, at 11 ("LGB young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse, compared to their peers who reported no to low levels of family rejection.") (citing Caitlyn Ryan, David Huebner, Rafael M. Diaz, & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009)).

[18] *Id.* at 11.

[19] Wilber, *supra* note 3.

[20] The Child and Family Services Review process, in its current form, does not provide a mechanism to accurately analyze outcome differences between LGBTQ youth versus their non-LGBTQ peers.

[21] JUVENILE LAW CENTER & ROBERT F. KENNEDY NATIONAL RESOURCE CENTER FOR JUVENILE JUSTICE, *Models for Change Information Sharing Toolkit* (2d ed., 2015), http://www.infosharetoolkit.org/.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGI information. 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[22]) 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.[23] 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.[24] 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.

The documented vulnerability of LGBTQ foster children to poor health and mental health outcomes creates an urgent need for data-driven practice. In order to fulfill its obligation to protect the safety, permanency, and well-being of LGBTQ youth, it is critical that the child welfare profession create the infrastructure and policy to support the collection and analysis of client-specific SOGI information. Social science and child welfare organizations have documented the negative experience of LGBTQ youth in child welfare systems for over fifteen years. It is imperative that collection of this information begin as soon as possible, so that ACF can implement data-driven policies to prevent further discrimination and poor outcomes for LGBTQ youth in foster care. Any delay in the compliance and effective dates of the 2016 Final Rule requiring the collection of SOGI information will hinder ACF's ability to prevent these negative outcomes.

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.[25] Also, ACF recognized in the Final Rule the sensitive nature of SOGI information and acknowledged the need for implementation of training and technical assistance related to policy development and practice. 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." In support of this guidance, the Rule states that "ACF will provide technical assistance to agencies on

[22] https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29366.pdf.
[23] 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).
[24] National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).
[25] 45 C.F.R. § 1355 (2016).

collection this information." The Children's Bureau's assessment, after ample notice and significant comment, is still important and valid and no new justification exists that warrants delaying the well-advised and important provisions of the Final Rule.

Even though both the federal government and professional organizations, like Child Welfare League of America, have highlighted for years the need to improve policy and practice, many states still lag behind. The Final Rule provides both direction and incentive for states to establish nondiscrimination provisions, provide training on supporting LGBTQ youth, and establish confidentiality protocols so they may collect data safely and, importantly, have better data. Any delay reduces that important incentive and leaves states with the undesirable and unhelpful status quo.

Due to broad societal changes, LGBTQ youth are feeling more supported and welcome in society as a whole and coming out at younger ages and in larger numbers. SOGI data collection and practice in the child welfare system has lagged well behind reality for youth. Further delay of implementation of the Final Rule only puts ACF and state child welfare agencies further behind in accurately capturing information about the reality of the children they serve. One-time, site-specific studies have been helpful to validate anecdotal observations, but do not compare with possibility of nationwide data to identify trends and address systemic reform. Systemic reform that flows from demographic and outcome measures will reduce disproportionality, improve outcomes, and, ultimately, save money by reducing costly hospitalizations, congregate care placement, and incarceration across the nation. Delay only inhibits these positive changes for youth.

C. LGBT Caregivers are an Important and Underutilized Resource for Children in Care and Delay Negatively Impacts States Ability to Improve Outcomes for Children

Increasing numbers of LGBT adults, both singles and couples, are building their families through foster care and adoption. According to the 2007 report by the Williams Institute and Urban Institute, gay and lesbian foster parents are raising six percent of foster children in the United States.[26] Based on data from the National Survey of Family Growth in 2001, nearly 2 million lesbian, gay, and bisexual adults are interested in adopting children.[27] In fact, a William Institute report analyzing multiple data sources demonstrated that same-sex couples are four time more likely to foster or adopt children than different-sex couples.[28] Almost forty years of research has

[26] Gary J. Gates et al., *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, THE WILLIAMS INST. & URBAN INST. (Mar. 2007), https://www.urban.org/sites/default/files/publication/46401/411437-Adoption-and-Foster-Care-by-Lesbian-and-Gay-Parents-in-the-United-States.PDF.
[27] *ACYF-CB-IM-11-03*, *supra* note 2.
[28] Gary J. Gates, *LGBT Parenting in the United States*, WILLIAMS INST. (Feb. 2013), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf.

overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.[29]

These data suggest that the LGBT community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Given the chronic shortage of foster homes in the United States, efforts to recruit and retain all prospective resource families, including LGBT families, should be part of an agency's diligent recruitment strategy. 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."[30] This is in line with almost forty years of research which has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.[31]

In order to expand the pool of permanent homes for children and youth, it is critical to remove all barriers that prevent the participation of qualified LGBT families. While an increasing number of public agencies have made explicit efforts to welcome LGBT applicants, far too many agencies and individual child welfare professionals continue to operate with bias towards LGBT parents, leading to discrimination and unfair assessment of LGBT applicants and licensed resource families.[32]

The Final Rule's requirement to capture sexual orientation of foster and adoptive parents and legal guardians would incentivize states to establish nondiscrimination provisions and to implement training on how to effectively and respectfully gather sexual orientation-related information. Such work will lead to broader efforts to recruit and utilize LGBT families, will increase disclosure and allow for more thorough assessment of applicants, and subsequently a matching and placement process that offers the greatest potential for success and permanency. In contrast, delaying the implementation of this data collection will delay these benefits both for same-sex couples seeking to foster or adopt, and for children in care who are seeking permanent homes.

Collection of SOGI data from foster and adoptive families will also help identify trends in the types of placements, rate of disruptions, and the number of foster placements with LGBT families that translate into permanent adoptive placements. Although anecdotal evidence

---

[29] ECDF Act Facts, FAMILY EQUALITY COUNCIL (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/.
[30] *ACYF-CB-IM-11-03, supra* note 2.
[31] ECDF Act Facts, FAMILY EQUALITY COUNCIL (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/.
[32] *See* Gary P. Mallon, *Lesbian and gay foster and adoptive parents: Recruiting, assessing, and supporting an untapped resource for children and youth*, CHILD WELFARE LEAGUE OF AM. (2006).

suggests that LGBT foster and adoptive parents are more likely to assume custody of older children, children with high levels of medical and behavioral needs, and LGBTQ youth, there is no accurate data to document these trends. Data collection will also identify states that are successfully engaging LGBT foster and adoptive parents and others that are not. States that can improve may benefit from the experiences of states that have been more successful. Delaying the implementation of the data collection would halt this helpful learning process and children will pay the price in states that are not fully utilizing all the potential foster and adoptive parents available.

D. Conclusion

For these reasons, we strongly oppose the proposed delay to the collection of sexual orientation information for youth and adults and information about family circumstances related to LGBTQ identity required by the Final Rule. We also oppose delay of the other beneficial additions to AFCARS that are not specific to LGBTQ youth but serve the invaluable purpose of shining a light on their experiences and outcomes while in care. We appreciate the opportunity to comment on the inclusion of these data elements and to recommend and support additional measures to support the child welfare field in professionally and sensitively collecting this critical information. We welcome the opportunity to work with ACF to assist in the implementation of these important reforms.

Sincerely,

M. Currey Cook
Counsel and Youth in Out-of-Home Care Project National Director
Lambda Legal

Shannan Wilbur, Esq.
Youth Policy Director
National Center for Lesbian Rights

As of: September 15, 2020
Received: April 13, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92om-bobu
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0043
Pueblo of Isleta

Submitter Information

Name: J. Robert Benavides
Organization: Pueblo of Isleta

General Comment

See Attached

Attachments

Pueblo of Isleta

OFFICE OF THE GOVERNOR

505-869-3111
505-869-7596

PUEBLO OF ISLETA

April 13, 2018

VIA ONLINE SUBMISSION
CBComments@acf.hhs.gov

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

Re: Notice of Proposed Rulemaking; Delay of compliance and effective dates; AFCARS 2016 Final Rule; RIN 0970-AC47.

Dear Ms. McHugh,

We appreciate this opportunity to comment on the proposed delay of compliance and effective dates regarding the final Adoption and Foster Care Automated Reporting System ("AFCARS") rule promulgated on December 14, 2016. 83 Fed. Reg. 11450 (Mar. 15, 2018). The Administration for Children and Families ("ACF"), provided an implementation period of two years and is now seeking to extend that period for another two years. The Pueblo of Isleta ("Pueblo") opposes any delays in implementing the 2016 Rule.

The proposed delay in compliance and effective dates is extremely concerning to the Pueblo and appears to be a tactic to allow ACF time to change and significantly limit the data reporting requirements in the 2016 Rule. Since the final rule was issued, ACF has already once sought a "Supplemental Notice of Public Rulemaking" questioning whether ICWA data collection will have practical utility and should be collected. *See* 82 Fed. Reg. 29866 (June 30, 2017). Public comment was only open for 30 days and Indian tribes, including the Pueblo, and others worked within that timeframe to submit comments supporting the 2016 Rule. It now appears that ACF did not get the comments it desired. *See* 83 Fed. Reg. at 11451 ("[t]he Supplemental Notice . . . was only open for comment for 30 days. This was an insufficient amount of time for states . . . ."). And in conjunction with the proposed delay of the 2016 Rule, ACF is again seeking public comment on whether the 2016 Rule should include ICWA data. *See* 83 Fed. Reg. 11449 (Mar. 15, 2018).

Further delay of the 2016 Rule is unnecessary and only seeks to undermine implementation of the 2016 Rule, which has already gone through substantial public notice and comment. For the first time, the AFCARS rule includes elements related to the Indian Child Welfare Act of 1978 ("ICWA"), and requires the collection of data on American Indian and Alaska Native children in state child welfare systems. This is a significant and positive step forward in ensuring that the federal government fulfills its trust responsibility to Indian tribes and recognizing the agency's role with respect to ICWA compliance.

ICWA was enacted because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted of their children . . . and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions." However, since ICWA's enactment over 35 years ago, Indian children have continued to be represented disproportionally in state foster and adoptive proceedings across the country. Prior to the 2016 Rule there was no mechanism to comprehensively collect data relating to ICWA compliance by state agencies. The 2016 Rule now provides a mechanism by which ACF can track ICWA compliance across states.

The federal register notice attempts to justify the delay on the basis that the new ICWA data collection elements will take time to implement and understand by states and the Department of Health and Human Services ("HHS"), and suggests that there will be questions from states on the reporting requirements. 83 Fed. Reg. at 11451. But since 2016, HHS and states have had time to work through implementation questions. Nothing in the federal register indicates that ACF has received requests by states to delay implementation; rather, it only speculates that states may not know how to report on the ICWA data elements. Moreover, ensuring that HHS implements the 2016 Rule consistent with the Department of the Interior's ICWA regulations and the litigation positions taken by the Department of Justice should not be a cause for delay. Effective April 1, 2016, all three agencies entered into a Memorandum of Understanding creating an interagency partnership to strengthen ICWA compliance. HHS has the ability and responsibility to coordinate with these agencies. As such, the Pueblo sees no reasonable basis for delaying the 2016 Rule except to give ACF time to rollback the important achievements made in the Rule for tracking ICWA compliance.

Thank you for your consideration of these comments.

Sincerely,

J. Robert Benavides
Governor

25 U.S.C. § 1901(4).
Information pulled in 2007 from those self-identifying as American Indian nationally showed that Indian children were overrepresented in foster care at more than 1.6 times the expected level and even more significantly overrepresented in foster care in certain states with larger American Indian populations. "Time for Reform, A Matter of Justice for American Indian and Alaska Native Children," at 5 NICWA, available at: http://www.nicwa.org/government/time-for-reform.pdf. *See also* 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) (documenting the need for better data regarding states implementation of ICWA).
https://www.bia.gov/sites/bia.gov/files/assets/public/press_release/pdf/idc1-033728.pdf.

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92mp-si2w
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0044
Utah

Submitter Information

Name: Diane
Organization: Utah Division of Child and Family Services

General Comment

See attached

Attachments

Utah

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

MEMORANDUM

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

From: Diane Moore,
Director, Utah Division of Child & Family Services

Date: April 16, 2018

Re: Comments re: Docket ID: ACF-2018-0004; RIN 0970-AC47

On behalf of the Utah Division of Child and Family Services, the following comments are submitted in response to the Notice of Proposed Rulemaking for delay of compliance and effective dates to 45 CFR Part 1355 Adoption and Foster Care Reporting System (AFCARS), issued in the Federal Register, Vol. 83, No. 51, March 15, 2018.

We support the delay of compliance and effective dates for changes in AFCARS elements contained in 45 CFR 1355.41 through 1355.47, but are concerned that limiting the extension to two years may not provide sufficient time for states to take all steps needed to implement changes for reporting and to assure data quality. This is particularly true if no additional changes are made to simplify reporting and to reduce the number of required elements. If data requirements are not reduced, an extension of four years is more reasonable to enable states to comply with the regulations and to provide quality data reporting.

Three factors seriously impacting the time required for states to implement the AFCARS regulations are briefly described below:

- The numerous new AFCARS elements require significant programming capacity and time in order to modify existing data systems to capture and report data. With AFCARS reporting changes required to be made at the same time states are transitioning to CCWIS, inefficiencies will occur if AFCARS programming time frames can only be met by changing legacy systems. It will be more effective, and will prevent duplication and unnecessary costs, to allow sufficient time for AFCARS changes to be incorporated into programming for new CCWIS modules (which has to occur eventually).

- A number of AFCARS elements must be accessed through data systems outside of the child welfare agency. Utah's child welfare agency does not have control over the priorities of the independent third party IT systems, which may create barriers to compliance within the two year extension timeframe. CCWIS requirements for interfaces also tie to this concern.

- Recent changes to Federal law with passage of the Family First Prevention Services Act will also require programming changes to child welfare data systems to ensure compliance with mandatory provisions, requiring shifting of information system programming resources to respond to implementation requirements. The time frames for making practice changes for FFPSA implementation overlaps with the current proposed time frame for AFCARS changes, making an undue burden for states.

Thank you for the opportunity to provide comments. We are committed to complying with Federal Regulations and improving data quality; however, after thorough review of the AFCARS elements and considering factors such as those listed above, we believe that extending the time frame for compliance and effective dates from the proposed two years to four years is essential for states.

Submitted by:

Diane Moore

Diane Moore, Director
Utah Division of Child and Family Services

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92ro-8hii
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0045
PA Comments

Submitter Information

Name: Cathy Utz
Address: 17105
Organization: Pennsylvania Dept. of Human Services

General Comment

See Attached

Attachments

PA Comments

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE

APR 16 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-AC47

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 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 the AFCARS proposed rule, which delays the compliance and effective date of the AFCARS 2016 final rule for an additional two fiscal years. The Children's Bureau is proposing this delay at the same time it seeks public comment through an Advance Notice of Proposed Rulemaking on suggestions to streamline the AFCARS data elements and remove any undue burden related to reporting AFCARS.

Section comments of the Proposed Rule

§1355.40 Foster Care and Adoption Data Collection

DHS supports the proposed delay for the compliance and effective date in the AFCARS 2016 final rule to allow an additional two fiscal years for state implementation. We strongly believe additional time is needed for the following reasons:

- On March 15, 2018, ACF published an Advance Notice of Proposed Rulemaking (ANPR) under the Regulatory Information Number 0970-AC72, which seeks suggestions to streamline the AFCARS data elements and remove any undue burden related to reporting AFCARS. This ANPR has a 90 day comment period and has the potential to change the AFCARS data elements required by the AFCARS 2016 final rule. Any revisions to the final

rule will require additional time on our part to incorporate electronic system updates and provide training to field staff.

- Up to this point, states have received no additional guidance from ACF on the AFCARS 2016 final rule regulations. The lack of guidance is impeding our ability to develop clear system requirements needed to add the data elements into our electronic system. The lack of clear system requirements will likely lead to costly rework for states' electronic systems once ACF issues guidance.

- Pennsylvania is currently under an AFCARS Improvement Plan (AIP) and would like to implement needed electronic system changes to come into full compliance with AFCARS regulations. Delaying the implementation of the AFCARS 2016 final rule would provide Pennsylvania with the necessary timeframes to complete the tasks outlined in our AIP prior to incorporating the AFCARS final rule into our electronic system and training materials.

- Pennsylvania urges ACF to make a timely decision on the proposed delay for the compliance and effective date in the AFCARS 2016 final rule as Pennsylvania is already working on meeting the new AFCARS requirements and changes to those requirements will result in rework.

- Pennsylvania has a federated child welfare IT system model that uses a series of data exchanges between the state level system and six county-based systems. This model requires extensive coordination with multiple IT systems to implement any IT system changes. Continued uncertainty regarding the AFCARS 2016 final rule adds significant risk to our implementation of changes to our IT systems to meet AFCARS reporting requirements.

Sincerely,

Cathy A. Utz

Cathy A. Utz
Deputy Secretary

As of: September 15, 2020
Received: April 16, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92rp-idf6
Comments Due: April 16, 2018
Submission Type: E-mail

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0046
Nottawaseppi Huron Band of Potawatomi

Submitter Information

Name: Jamie Stuck
Address: 49052
Organization: Nottawaseppi Huron Band of Potawatomi, Pine Creek Indian Reservation

General Comment

See Attached

Attachments

Potawatomi

NOTTAWASEPPI HURON
BAND OF THE POTAWATOMI
A FEDERALLY RECOGNIZED TRIBAL GOVERNMENT

April 16, 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-AC47 **Adoption and Foster Care Analysis and Reporting System;** Notice of Proposed Rulemaking; delay of compliance and effective dates (3/15/2018)

Dear Sir or Madam,

The Nottawaseppi Huron Band of the Potawatomi 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 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:

HHS's statutory mission requires collection of the Final Rule's data requirements.

Reliable statistics are vital to making sensible choices that produce positive outcomes in governance. The U.S. has realized the importance of statistics since the 19th century, as demonstrated by the creation of the Bureau of Labor Statistics and the Department of Education in the 1880s. The statistics from those organizations were vital to many current regulations and policies. There are currently 13 national statistical agencies in the United States. According to www.whitehouse.gov, "federal statistics are **essential** [emphasis added] to inform private and public decision making across our nation."

Section 479 of the Social Security Act (ACT) mandates that the U.S. Department of 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.

Section 479(c)(3) of the ACT makes it clear that data collection systems developed and implemented under the ACT shall provide national information with respect to the demographic characteristics of adoptive foster children and their biological, adoptive, or foster parents; the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care); and the extent and nature of assistance provided by federal, state, and local adoption and foster care program and the characteristics of the children with respect to whom such assistance is provided. American Indian/Alaska Native (AI/AN) children are foster children as contemplated by the ACT. All of the aforesaid information will be impacted by ICWA's requirements. It is unclear how HHS could provide reliable data without collecting information on the ICWA data elements contained in the Final Rule.

The Final Rule, which HHS promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of AI/AN children for whom ICWA applies and historical data on children in foster care. As the Administration for Children and Families (ACF) noted in the Program Instruction for the Adoption and Safe Families Act of 1997 (ASFA), Log No. ACYF-CB-PI-98-02, issued January 8, 1998, the child welfare system must focus on results and accountability. Public Law 105-89 and ASFA, when read as whole, are intended to protect a child's health and safety by clarifying the meaning of reasonable efforts and ensuring data collection to enforce the intent of the law. The efforts and safety requirements in ICWA supersede and enhance the efforts and safety requirements in Public Law 105-89. Any data collection that ignores the safety and effort requirements provided to children in ICWA cases, is denying AI/AN children the permanency, safety, and well-being that Congress intended for ALL children within the child welfare system. Moreover, ICWA's heightened protections, processes, and burden of proof could affect the reliability and consistency of the aggregate data unless the ICWA data points are considered and accounted for. Thus, the Final Rule's data collection elements are necessary in order for HHS to meet its statutory mandate 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' (ACF) 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.

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, this NPRM is open for a 30-day comment period. Per Executive Order 12866, the typical comment period is 60 days. 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."

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.

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

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 delay, hindrance or stoppage of ICWA data point collection reduces the overall reliability and validity of the aggregate data and 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,

Jamie Stuck, Tribal Council Chair

Dorie Rios, Tribal Council Vice-Chair and Tribal Secretary Pro Tem

Dr. Jeff Chivis, Tribal Council Treasurer

Homer A. Mandoka, Tribal Council Sergeant-At-Arms

As of: September 15, 2020
Received: April 26, 2018
Status: Posted
Posted: June 26, 2018
Tracking No. 1k2-92t7-3yv0
Comments Due: April 16, 2018
Submission Type: Paper

PUBLIC SUBMISSION

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-0047
TX letter

Submitter Information

Name: Hank Whitman
Address: 78714
Organization: Texas Department of Family and Protective Services

General Comment

See Attached

Attachments

TX letter only

Texas Department of Family and Protective Services

Commissioner
H. L. Whitman, Jr.

April 10, 2018

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

Via the Internet: *http://www.regulations.gov/*
Via Regular and Certified Mail

RE: Notice of Proposed Rulemaking (NPRM)
Adoption and Foster Care Analysis and Reporting System (AFCARS)
45 CFR Part 1355
Posted on Federal Register/Vol.83, No.51/Thursday, March 15, 2018

Dear Ms. McHugh:

Texas Department of Family and Protective Services (DFPS) respectfully submits this comment letter regarding the Notice of Proposed Rulemaking (NPRM) with Comment Period on the *Adoption and Foster Care Analysis and Reporting System* (AFCARS) published in the *Federal Register* (83 FR 11450) on March 15, 2018, for the Administration for Children and Family Services (ACF) of the U.S. Department of Health and Human Services.

Texas DFPS supports the proposed delay of the compliance and effective dates in the AFCARS 2016 final rule for title IV-E agencies to comply with agency rules with an additional two fiscal years. In fact, Texas supports the removal of compliance and effective dates until the decisions on streamlining, per the Advance Notice of Proposed Rulemaking (ANPRM) published on March 15, 2018, have been finalized. Until then, Texas will be unable to effectively determine the full extent of the financial burden upon the state and how long making the necessary changes to our Statewide Automated Child Welfare Information System (SACWIS) will take.

Texas DFPS shares ACF's commitment to produce reliable data, including longitudinal data as appropriate. However, at this point, we know that the 2016 final rule has required—and will continue to require—vast modifications to our SACWIS as well as a complete re-write of our AFCARS extraction code. From an information technology (IT) perspective, SACWIS is immensely complex and adding a large number of data collection elements increases the complexity and affects all future SACWIS enhancements. Without at least the two year proposed delay, DFPS will be unable to complete the necessary IT changes in time.

As shared previously with ACF in a comment letter dated April 7, 2015 (Texas DFPS response to the NPRM published in the Federal Register on February 9, 2015), as well as through our support of the written comments submitted by the American Public Human Services Association of National Public Child Welfare Association on April 10, 2015, the addition of data elements to AFCARS continues to have a significant burden on IT resources and also requires state monetary resources that are not currently available.

Thank you for the opportunity to comment on this NPRM. If you have additional questions, please contact Elizabeth "Liz" Kromrei, Child Protective Services Director of Services who serves as the lead on this matter. She can be reached at (512) 438- 3291 or by email at ELIZABETH.KROMREI@dfps.state.tx.us.

Sincerely,

Hank L. Whitman, Commissioner
Texas Department of Family and Protective Services

Kristene Blackstone, Associate Commissioner for Child Protective Services
Texas Department of Family and Protective Services

PUBLIC SUBMISSION

As of: September 15, 2020
Received: March 31, 2018
Status: Pending_Post
Tracking No. 1k2-92bs-7rwr
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-DRAFT-0001
Comment on FR Doc # 2018-05038

Submitter Information

Name: Anonymous Anonymous

General Comment

Story on emission regulations should be other Nations polluters, USA has Clean air. Air apps and meters are now on the internet, and stores, see chart at bottom.
NOTE: 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. China, the world's growing manufacturing hub, saw an increase of 20 to 50 per cent in nitrogen dioxide, much of it occurring over the North China Plain. In some China cities can quite easily see the smog in eyes when the AQI surpasses 200. A 2011 study of the Seoul area found similar results, concluding that 51% of the area's local fine particulate matter is formed within South Korea. On a typical day, 2013 , 25 million South Koreans inhale an unsafe amount of microscopic particles of various sizes (PM2.5, PM10 and others). In April of 2016 , the nation suffered very high levels of PM2.5.
Compared to Good Air in The United States has an annual average of 8 g/m3 of PM2.5 particles which is above the save level by 20%. Very Green Air.
NOTE : Houston, TX has an annual average of 10 g/m3 of PM2.5 particles. at the WHO safe level.

Understand Air Apps READINGS Chart Legends
The AQI level is based on the level of 6 atmospheric pollutants, Particulates known as PM2.5 and PM10 , Sulfur Dioxide (SO2), Nitrogen Dioxide (NO2), Carbon monoxide (CO), and ozone (O3)
NOTE: range: Air Quality Index AQI 0-50 good=, Green | 51-100 = Moderate Yellow | 101-200 Unhealthy Orange | 201-300 very Unhealthy Red

Major Polluters: DATE 3.30.2018 of air meters. nations all show unhealthy.
Korea, Seoul Unhealthy; RED; AQI= 109 ; PM2= 132; PM10=64; NO2=55; O3=38;
CHINA , Beijing; Unhealthy; RED ; AQ1=164; PM2 =159; PM10= 94; NO2=96; O3=9;
INDIA; Delhi ; Very Unhealthy ; RED; AQI=174; PM2= 259 ; PM10= 150; NO2=128; O3=14

COMPARE TO OIL AND GAS STATES all show Green Air
TEXAS Dallas Good; Green; AQI= 23; PM2.5= 32; PM10=19; NO2=5; O3 106

TEXAS Houston Good Green AQI =40 PM2.5= 27 ; PM10= 15; NO2= 2 ; O3=93
Oklahoma , Ok City Good ; GREEN AQI 48; PM2=64; PM10=7; NO2=21; 03=97;
North Dakota; Good, Green; AQI =34 PM2.5= 6; PM10= 5 ; NO2=3 ; 03=78 ;
Colorado , Denver Moderate Green ; AQI =41; PM2.5= 50; PM10=31; NO2=17; O3= 102
Pennsylvania Pittsburgh Good ;Green AQI= 27 PM2.5=25; PM10=3 NO2=18; O3=74;

Just think how much we can save from Unfair Regulation which could be spent on Children, Schools, Heath Care, Seniors and budget.

PUBLIC SUBMISSION

As of: September 15, 2020
Received: April 03, 2018
Status: Pending_Post
Tracking No. 1k2-92dq-kcjn
Comments Due: April 16, 2018
Submission Type: Web

Docket: ACF-2018-0004
AFCARS Implementation Delay

Comment On: ACF-2018-0004-0001
Adoption and Foster Care Analysis and Reporting System: Notice of Proposed Rulemaking; delay of compliance and effective dates.

Document: ACF-2018-0004-DRAFT-0002
Comment on FR Doc # 2018-05038

Submitter Information

Name: Anonymous Anonymous

General Comment

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,
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.
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.