

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> April 23, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 25, 2019      |
| <b>Tracking No.</b> 1k3-99i7-upuw  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0225  
Theo Adams

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## Submitter Information

**Name:** Theo Adams

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## General Comment

See attached file(s)

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## Attachments

Theo Adams

Docket Number: ACF-2018-0003

**Adoption and Foster Care Analysis and Reporting System**

Close Date: June 18, 2019

Pages: 16572-16600

<https://www.federalregister.gov/documents/2019/04/19/2019-07827/adoption-and-foster-care-analysis-and-reporting-system>

As a former Court Appointed Special Advocate for the City of El Paso, I am in support of the amended regulation for the Adoption and Foster Care Analysis and Reporting System (AFCARS). This amendment is proposed by the Children and Families Administration and aims to improve the collection and reporting of data in IV-E agencies. The data that is being regulated is specifically for children in out-of-home care who exit the home to go to adoption/legal guardianship. As someone currently pursuing a Master of Public Affairs and of Public Health degree, I intend to evaluate the efficacy of the proposed regulation. Additionally, as a trans non-binary person who has attended a panel that talks about how LGBTQIA+ children in the foster care system are treated, I believe that this amendment will begin change how children are labeled on their case files and make a positive difference in their lives. My comment will speak specifically to these areas in the proposed legislation:

1. Implementing penalties for systems that do not adhere to the AFCARS data.
2. The inclusion of queer diversity within the policy, and repercussions.
3. Reducing the costs of reporting by streamlining the data from AFCARS.

**Penalties and their Importance**

The AFCARS data is collected for a number of reasons, including but not limited to budgetary reasons and statistics on the “child welfare population.” For these purposes, imposing penalties on agencies that are not in compliance with the new regulation is in the best interest of not only the agencies, but also for the children in the foster care system. In areas that are particularly conservative, the change in reporting on children in the system will drastically improve their lives and their ability to get adopted.

It is known in the foster/adoption world that children that are perceived/identify as queer people, are labeled as difficult due to these simple facts about them as humans. Due to the change in the AFCARS reporting that prohibits their gender or sexuality from being included in the amendment, they stand a better chance of being adopted out/navigating the system. As states come down harder on exclusionary policies that do not create a welcoming environment to LGBTQIA+ identified and agencies that make getting these kids adopted, having a regulation like this makes it easier for them to find a home that fits them. Additionally, as this new change in reporting is implemented, children are protected in a way that will prevent them from getting further re-traumatized than they have been.

Imposing penalties against teams that violate the standard/law will create a wider safety net because queer kids, and be rest assured that the system is working for them and not against in a way that is so intrinsic to the who they are as a person. The change in data will allow for a more genuine adoption process that is not influenced by the label in which the previous data collection

incorrectly burdened and labeled people. With this in mind, it is so crucial to have penalties that punish this sort of people, because do not receive.

The Human Rights Campaign cites that the number of kids in the foster care system significantly outweigh the number I queer kids that are in the general population. With this, it brings me to my conclusion-

### **The Important of Queer Diversity**

Not allowing the data to reflect on the child's case file is important in how they will proceed through the system. The agency recognizes that including labels that pertain to the child's sexuality or gender (performance), it negatively impacts the child in a way to can traumatize them or re-traumatize them. The caveat to this amendment, however, is that if the child's identity is a cause for their removal from the home, then it must be documented in a very shallow way- it either does or does not apply to the case.

It is important that as children are taken from their homes, and forced to ultimately navigate this system alone, with no sense of true stability, the amendment to the list in terms of ensuring that the child is not re-traumatized is incredibly important. The change in the policy works to only use relevant information for the child, which is important work. In Texas, during the panel that included adoptive parents, they were told that children that are labeled as "difficult" are usually queer a portion of the time. Amending the regulation to not have their gender and sexuality be disclosed immediately on the child's record will only benefit the child in the long run.

### **The Cost of It All**

As AFCARS cuts down on how much needs to go into reporting on children in the new system, a significant of time will be freed up. In the switch within the company, AFCARS will see a significant decrease in spending as they switch from paper to electronic. The estimated cost of savings on streamlining data is \$39.2 million. Cutting down the cost of the system, especially in regards to data collection and storage, it will incentive the agency to make the switch and follow the rules in reporting.

### **Conclusion**

I believe this regulation will protect children in the system, and make their navigating and experience of the system significantly easier. Implementing a system in which people who do not wholly participate in protecting the life and status of children, is a crucial step forward in the foster and adoption realm. I eagerly anticipate when this regulation will be implemented and how well it work.

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| <b>Received:</b> April 24, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 25, 2019      |
| <b>Tracking No.</b> 1k3-99j5-xqwk  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0226  
Dan Sokolow

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## Submitter Information

**Name:** Dan Sokolow  
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**Email:** droysokolow@gmail.com  
**Organization:** Unaffiliated

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## General Comment

The proposed rule is short-sided and fails to recognize the unique needs of children. Certainly the information currently collected for LGBTQ children going through the adoption and foster care system can be termed "sensitive" and not everyone is comfortable providing information, but the consequences of not collecting the data has the potential to undermine the health and success of LGBTQ children in the adoption and foster care systems. Evidence-based research has shown that the needs of LGBTQ children going through the adoption and foster care systems are more likely than other children to not receive the services they require to be healthy and thrive. The proposed rule ignores this research and puts sets up LGBTQ children going through the adoption and foster care for failure.

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| <b>Received:</b> April 24, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 25, 2019      |
| <b>Tracking No.</b> 1k3-99j9-u0j6  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0227  
Kristie Greer

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## Submitter Information

**Name:** Kristie Greer  
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**Email:** kristie.greer@yahoo.com

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## General Comment

The maltreatment statistics on child abuse and neglect warrants the proposed rule of reporting. Using information to collect data on children in and out of adoption aids in proper placement for adoption. We have to continue and collect necessary data in order to ensure all measures are addressed. The affected children are already at a disadvantage and it would be fair to allow additional barriers to be placed upon them. We desperately need this proposed rule to become law. Each year, the childrens bureau produces the child maltreatment report using the state data that is retrieved from these in and out of home adoption cases. If we prevent this data from being tracked and monitored what happens next?

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| <b>Received:</b> April 26, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 29, 2019      |
| <b>Tracking No.</b> 1k3-99kc-i9w8  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0228  
Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

Sexual and gender minority youth are overrepresented in the child welfare system. The Williams Institute found approximately 19% of youth in care in CA were LGBTQ. The move to include sexual orientation and gender identity in the AFCARS was a significant step in our ability to 1) count the numbers of LGBTQ youth in care (if you can't be counted, you simply don't count); and 2) understand differential pathways through child welfare for LGBTQ kids. HHS must make a more informed decision about the idea to remove the collection of SOGIE information from AFCARS.

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| <b>Received:</b> April 26, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 29, 2019      |
| <b>Tracking No.</b> 1k3-99kc-hqbv  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0229  
Anonymous

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## Submitter Information

**Name:** KJI, Cleveland OH Anonymous

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## General Comment

This new rule represents significant backsliding in pursuit of evidence-based care for all youth in foster care. How unfortunate that politics trump science.

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| <b>Received:</b> April 26, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 29, 2019      |
| <b>Tracking No.</b> 1k3-99kh-jziu  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0230  
Brian Lutz

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## Submitter Information

**Name:** Brian Lutz

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## General Comment

Please do not remove the collection of sexual orientation, gender identity and gender expression from the reporting system! LGBTQ+ youth, particularly those involved in the foster care system, are at a high-risk for behaviors, outcomes, and life experiences they should avoid. By not capturing their unique experiences in the system, we would be unable to target what unique needs this youth population will need. Also, by deciding to remove this category of information we collect, we are symbolically implying that these youth do not exist, are invisible, and do not matter. This would be sending the wrong message to our communities and our youth.



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| <b>Received:</b> April 26, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 29, 2019      |
| <b>Tracking No.</b> 1k3-99ki-rldb  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0231  
Anonymous

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## Submitter Information

**Name:** amber Anonymous

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## General Comment

we should change these regulations and rules on how we record data of the children in foster care. i think this because many children in foster care are neglected and abused and something should be done for these kids due to the fact they are minors and have little no say in what goes on in their life

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| <b>Received:</b> April 26, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> April 29, 2019      |
| <b>Tracking No.</b> 1k3-99kj-dnud  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0232  
Misty Luminais

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## Submitter Information

**Name:** Misty Luminais

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## General Comment

It is important that SOGI (sexual orientation and gender identity) data be collected. Children with minority SOGI are at risk on a number of levels when involved with systems BUT WE WON'T KNOW THE SCOPE OF THE PROBLEM IF WE DON'T COLLECT DATA. Just because something is difficult to do does not mean it shouldn't be done. I can't imagine that with the resources of the government, it would be impossible to validate the questions, train people to ask them with sensitivity, and keep them confidential. There are numerous other examples of the government doing this effectively in other settings or about other topics.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> April 30, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 02, 2019        |
| <b>Tracking No.</b> 1k3-99n8-fumr  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0233  
Joseph Sandagato

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## Submitter Information

**Name:** Joseph Sandagato  
**Address:** 02461  
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**Organization:** Massachusetts Adoption Resource Exchange

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## General Comment

It is unfortunate that the ACF would willingly abandon data collection on the sexual orientation of youth in foster care and foster and adoptive parents and guardians in the Adoption and Foster Care Analysis and Reporting System (AFCARS). This population of children suffers discrimination at a greater rate and is exponentially more susceptible to safety and health issues than their non-LGB identified counterparts. These statistics are critical in securing and maintaining funding for programming and supports to serve this vulnerable population, within the already vulnerable population of youth in foster care. It also undermines efforts to collect data and report on the placement of youth with LGB-identified adoptive parents and guardians. I strongly urge ACF to consider reinstatement of this data in future AFCARS.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> April 30, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 02, 2019        |
| <b>Tracking No.</b> 1k3-99n8-9tau  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0234  
Matthew Brush

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## Submitter Information

**Name:** Matthew Brush  
**Address:** 90005  
**Email:** brushmg@gmail.com

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## General Comment

Foster children come in all shapes and sizes, all who need love. It is important to note that LGBT children who are in foster care face unique challenges like substance abuse, family rejection, and staying longer in the system. It is vital that we collect this data to ensure the health of these vulnerable populations! Many LGBT children face abuse on the basis of their gender or sexual identity, so asking these questions is essential to ensuring families are equipped to take care of them and know they may need extra support. As a public health professional I strongly OPPOSE the removal of LGBT-related identifiers from foster care databases, and strongly believe we should CONTINUE to collect this information.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> April 30, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 02, 2019        |
| <b>Tracking No.</b> 1k3-99na-yn9s  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0235  
Jeannette Page

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## Submitter Information

**Name:** Jeannette Page  
**Address:** 94132  
**Email:** nettyconfetti945@hotmail.com

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## General Comment

I strongly object to lifting the reporting requirements on LGBTQ youth and parents/caregivers in AFCARS. Without tracking these individuals, we have no way of compiling data about their experiences in this system, and thusly cannot be sure they are being served equitably. LGBTQ youth comprise a disproportionate amount of homeless youth, and right now we do not know how many of these youth are being underserved or pushed out of foster care. To justify this change by saying that the financial burden of reporting on LGBTQ youth and parents/caregivers is too high is blatantly unethical, and frankly irrelevant when human lives are on the line. I urge DHHS to reject this proposed rule for AFCARS, and to uphold the prior 2016 rule that is already on the books.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 01, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 02, 2019        |
| <b>Tracking No.</b> 1k3-99nu-ctqa  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0236  
Anonymous

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## Submitter Information

**Name:** Nicole Anonymous

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## General Comment

To not include this information in AFCARS would be a huge misstep for the youth in care who experience these identities. Study after study shows that the youth who identify as anything other than straight and male/female are at greatest risk. Knowledge is power and this action would take a way a knowledge tool.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 03, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 07, 2019        |
| <b>Tracking No.</b> 1k3-99p3-x9mo  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0237  
Sarah Barry

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## Submitter Information

**Name:** Sarah Barry  
**Address:** 43015  
**Email:** barry.se@gmail.com  
**Organization:** Citizen

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## General Comment

It is not enough to only collect data on a child's sexual orientation or gender expression if that is what caused the family conflict because not all LGBTQ children will experience that kind of family conflict. If a caseworker does not know that a child is gay, and places that child with a foster family that does not accept gay children, that child will face additional trauma. The agency does not consider such questions "feasible", which is ridiculous. Many things that were not considered "feasible" were done anyway, and yes that might take time and money. The government bleeds money, so cry me a river. Also, I appreciate the concerns AFCARS has about maintaining the confidentiality of LGBTQ youth but as the rule change document notes, the child's case is confidential save for "specific circumstances" in which the "case must be disclosed to courts and providers". If a case must be disclosed only under such a "specific circumstance", surely the caseworker or AFCAR can find a way to redact that information unless it directly pertains to the case. Not collecting the data at all, however, is short-sighted and will only lead to WORSE outcomes for LGBTQ children.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> April 26, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 09, 2019        |
| <b>Tracking No.</b> 1k3-99kc-wnfd  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0238  
Victor Groza

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## Submitter Information

**Name:** Victor Groza

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## General Comment

Why would you take the most vulnerable population of youth and exclude them from AFCARS? It is not a rational or kind decision but one based on hate, fear and ignorance.

This is not a socially just decision. I it a decision to try to hide or ignore an entire class of people.

I am sure this is the type of planning that went into the Holocaust.



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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> April 27, 2019    |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 09, 2019        |
| <b>Tracking No.</b> 1k3-99kz-j7mx  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0239  
Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

This is discriminatory in nature and in rule of law. To ask that items be removed because they are self reported when that is how they must be gathered shows a lack of understanding of the data on the part of those asking for it's removal and those agreeing to remove it. Additionally, religious beliefs should never be a part of the medical decision making process. The Hippocratic Oath includes physicians to pledge to treat their patients without harming them. This is intentionally harmful.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 07, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 09, 2019        |
| <b>Tracking No.</b> 1k3-99rt-ufmc  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0240  
True Colors

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## Submitter Information

**Name:** Robin McHaelen  
**Address:** 06106  
**Email:** director@ourtruecolors.org  
**Organization:** True Colors

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## General Comment

See attached file(s)

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## Attachments

True Colors

May 7, 2019

The U.S. Department of Health & Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

To Whom It May Concern:

I am writing in response to the proposed rule change from the Department of Health and Human Services (HHS) regarding abandoning data collection on sexual orientation of youth in foster care and foster and adoptive parents and guardians in the Adoption and Foster Care Analysis and Reporting System (AFCARS). Along with the Family Equality Council and 48 other pro-LGBTQ+ groups, True Colors rejects this proposal because it is detrimental to the LGBTQ+ community, specifically youth.

While our current administration is carefully disguising this action as beneficial, arguing that data collection would be intrusive and traumatizing to LGBTQ+ folks, we see **through this statement. By eliminating data collection, we are limiting HHS' ability to** recruit more diverse families and making it difficult to determine which families are affirming and supportive of LGBTQ+ youth.

This information is pertinent to incorporate because agencies and state governments cannot improve LGBTQ+ youth care if they erase important information about them. If there is no data to collect on their identities, there is no data to measure or use to combat discrimination. Rendering our youth invisible makes it even more difficult to create programs and services that can help meet their needs. After all, 1 in 5 LGBTQ+ foster youth report poor treatment in the system twice as often as their cisgender and heterosexual peers.

This proposed rule change threatens an already vulnerable and overrepresented population in foster care, as well as, discourages potential LGBTQ+ folks from applying to be foster and/or adoptive parents.

We need foster and adoptive parents of all genders and sexualities to take care of foster children of all genders and sexualities. We denounce the HHS' proposed rule change and encourage you to recognize the harm that this decision will create.

Sincerely,

Kristina Carvalho, Graduate Intern  
Robin McHaelen, Executive Director

True Colors  
30 Arbor Street, 201A  
Hartford, CT, 06106

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 23, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 28, 2019        |
| <b>Tracking No.</b> 1k3-9a2i-t3mc  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0241  
Sylvia Randolph

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## Submitter Information

**Name:** Sylvia Randolph  
**Address:** 20001  
**Email:** sylviamrandolph@outlook.com

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## General Comment

Thank You Department of Health and Human Services for the opportunity to comment on this very important issue of Child Safety and wellbeing.

The system on the national scale has enough demographic data collection. What is needed is a mixed method data collections system.

This would support the Federal reporting requirements as well as State and local service measures.

It would negate long term management issues that are found at the local level. It would provide for a faster more intensive wrap around service. Please see attachment.

Sincerely

Sylvia Randolph Ph.D.  
Public Policy Analyst  
SUB&S  
Washington, DC 20001  
2022158746

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## Attachments

Sylvia Randolph

Work force development in the next 40 years and the Labor force. Moving from means tested to paid in investment, targeting youth from the foster care system a managed population by implementing a savings program for these youth to monitor their education, and aging out statistics on to either labor or educational endeavors. Youth identified via health and economic backgrounds of dynamic financial shocks, transient job stability, hidden finances, and noisy means tested programming ,an explanation of social construction theory; minority women and retirement. The exploration of economically disenfranchised communities, low economics, and unbalanced financing ending deprivation as a strategy in the war on poverty by sustainable workable solutions to balance financial inequities. By examination of low income community development, and programs for minority women across America aging out of the foster care system. The lack of and need of mixed-method research from means-tested programming causes a problem conceptually in social contract theory. Without new research we will continue to see a problem for job stability and financial security into retirement for African American women. There is a gap in literature, innovation, theory, and method aging out of systemic programming.

## Policy Analysis

### Social Security Foster Youth Bill

#### Aging Out

### Second Generation Education & Workforce Development Impact

by

Sylvia Marla Randolph

MA, New England College, 2013

BS, Hampshire College, 2002

Proposal Submitted in Partial Fulfillment

of the Requirements for the Degree of  
Doctor of Philosophy  
Public Policy and Administration

Walden University

December 2019

### Abstract

Work force development in the next 40 years and the Labor force. Moving from means tested to paid in investment, targeting youth from the foster care system a managed population by implementing a savings program for these youth to monitor their education, and aging out statistics on to either labor or educational endeavors

Youth identified via health and economic backgrounds of dynamic financial shocks, transient job stability, hidden finances, and noisy means tested programming explanation of social construction theory, minority women and retirement. The exploration of economically disenfranchised communities, low economics, and unbalanced financing ending deprivation as a strategy in the war on poverty by sustainable workable solutions to balance financial inequities. By examination of low in come community development, and programs for minority women across America aging out of the foster care system.

The lack of and need of mixed-method research from means-tested programming causes a problem conceptually in social contract theory. Without new research we will continue to see a problem for job stability and financial security into retirement for African American women. There is a gap in literature, innovation, theory, and method aging out of systemic programming.



Policy Analysis

Social Security Foster Youth Bill “Aging Out”

by

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MA, New England, 2013

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Proposal Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

December 2019

### Dedication

To my children Julhon (YAYA) and Miriam (Queeny) Randolph, I dedicate this work for the love of you and all that you have given me as your mother. To all the children in the foster care system I say, “Out of a Box Prepared Bottle of Hope” is the work and purpose of my dissertation.

### Acknowledgments

To my children Julhon (YAYA) and Miriam (Queeny) Randolph, I dedicate this work for the love of you and all that you have given me as your mother.

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## Chapter 1: Introduction to the Study

Work force development in the next 40 years and the Labor force. Moving from means tested to paid in investment, targeting youth from the foster care system a managed population by implementing a savings program for these youth to monitor their education, and aging out statistics on to either labor or educational endeavors.

Youth identified via health and economic backgrounds of dynamic financial shocks, transient job stability, hidden finances, and noisy means tested programming explanation of social construction theory, minority women and retirement. Dynamic financial shocks, transient job stability, hidden finances, and noisy means tested programming, an explanation of social construction theory, minority women and retirement. The exploration of economically disenfranchised communities, low economics, and unbalanced financing ending deprivation as a strategy in the war on poverty by sustainable workable solutions to balance financial inequities. By examination of low-income community development, and programs for minority women across America aging out of the foster care system.

There is problem of and need of mixed-method research from means-tested programming causes a problem conceptually in social contract theory for African American Women and systemic programming into retirement. Without new research we will continue to see a problem for job stability and financial security into retirement for African American women. There is a gap in literature, innovation, theory, and method aging out of systemic programming. (2016); Vandermoortele, J. (2000); Riale, R. Possali, A. (2010) Wale, A., D. (2010); Barrdett, J., Ferris, J., A., Lention, S. (2014)

## Stochastic Dispersion 2

There is a problem with the Means Tested economic model where unsupported economics drives a slack in equity to support the current social economic system targeting social security and welfare programs. This issue is supported both the socio and economic construct. Gomes, Kotlikoff and Viceria (2012) said, "We posit, calibrate, and simulate a realistic life cycle a model featuring best consumption, portfolio choice, and labor supply decisions in the face of uncertainty in earnings, lifespan, investment returns and government policy" (p. 126) In an article from New Gallup 2018 a research firm states "25% of those aged 18 to 29 plan to rely on Social Security in their Retirement. This is nearly twice the 13% in an age group who said this in 2017, Older non retirees are also more likely to plan on Social Security." <http://www.newgallup.com> (web page 2018)

Living in low-income communities, issues, and concerns in themes such as financial stability, models such as education skills development and job readiness, and the tools such as Social Security and personal savings have been unexamined in the past 40 years, having insignificant impact to social construction. (Sara, H., Watt, T., Takai, K. (2013); Turner, A. (2015); United States Bureau of Statistics). The purpose of this work is to show where new research shows measurable significance of prosperity and the wealth with African American women from foster care systemic services cannot meet the supply and demand from public policy research stochastic dispersion approach.

*Social Construction Theory Understanding Deprivation a Historical Lens* into impact program models and implementation for minority women who have had direct



### Stochastic Dispersion 3

experience with systemic programs, a historical lens discussion on poverty; generations in the economic labyrinth of managed programs and its limitations.

How stochastic dispersion blue print, theory has contributed to the research and the study of sociology through practice and means-tested social policy as a stabilizing measure for the basic needs of food clothing and shelter or supply and demand of services. For example, caps and regulations that support means tested programming delay or hinder job skill and the financial stability. To address this problem by analyzing data; to use the best practice measures for program outcomes and the factors of change to adjust and mitigate affective measures. Without doing so, an ozone layer or climate change, conflict where one will either destroy or cloud the other. Looking ahead 40 years a slack inequities and better quality of life to a model ending deprivation through the pipeline of good citizenship policy (United States Chamber of Commerce 2016)

Exploring the lives of women juxtaposing the welfare queen and the destructive environment of negative social equity called poverty (queueing) Horst, H. & Paulsen, M. (2015). The driven social construction of practice by failed research outcomes is best understood by Chapel, K. (2015) "poverty rate of 12% is manageable vs. 30% poverty rate" (p. 271), of unmanaged problems" (p.54). (United States Congress Budgeting Office 2016; United States Census Bureau 2017; Children Bureau)

Examine statistical analysis that focus on policy change, researchers Gomes, Kotlikoff and Viceira (2012) "The first such issue involves the political process leading to indecision. The second issue is that policy changes, no matter when announced, may affect more than one generation as the government proceeds to satisfy in temporal

Stochastic Dispersion 4

budget. A third issue is whether we need to consider how policy indecision affects the aggregate capital formation and the evolution of wage and interest rates" (p. 128).

Minority women and their children in comparison to their peers who have aged out of the foster care system are non-supported by both the socio and economic construct: theory, method, and analysis. Specifically, workforce development labor outcomes, rather than means tested programming in the service sector. This type of unmerged research analysis causes problems for job, and financial security for these women.

Finally explore relationships in programming, models, and implementation such as the Triple Helix Model of government, education, and programming as a tool in agreement analysis, The Stanford University Triple Helix Research Group Ranga & Etzkowitz (2013) states "Within the concept of the Triple Helix Innovation" (p. 123). Focused on the impact of deprivation and generational poverty for population outcomes at the age of retirement. Social indicators, discussion themes and research variables in social construction where evidence-based research can make significant difference in complex, adaptive systems where managed, generational, stochastic dispersion agreement analysis can exist, and strengthen economics and prosperity. (United States Department of Health and Human Services Executive Summary, 2017)

*Social Construction and Stochastic Dispersion a historical lens of three agencies Children's Bureau, Labor Department, and Social Security Bureau.* It will examine, explore, and explain, focus, impact, and outcome on population growth through policy and programming. the problem with in discussion themes, social indicators, and program variables.

Stochastic Dispersion 5

The duality of poverty and foster care, is the reality for many African American women, government program models and the resources within areas of ambiguity and foci in social change. Using documented data and studies, the literature review will discuss grounded sources that will show the limitations, and how new research innovation can show sustainable income support for African American women and their offspring.

Policy across sector is innovative and transformative to proficient management into a service venue that speaks to the true value of children to adulthood. Ambiguity and foci in social construction, the layered issues found in state and local level programming absolute and relative. In early social change interventions of stable fundamentals, strategic action, to managed poverty outcomes without using means tested programming. That employment recidivism rates must decrease, and the job stability must increase is a given. The quality of life in our community program analyses from a dual spectrum and used in positive outcome programming and not dependability using public policy as a grounding.

The policy foci from the perspective of the sociologist, economist, and governments impact through the field of econometrics and applied prosperity for minority women, would fill gaps lacking value and add generations of steps to prosperity, wealth, and structured positive financial environments. (Prosperity Now 2017) Answering the question how the environment of systemic equity can evolve within the lives of minority women. (Hill, M. and Algate, J. 1996) Using the minority woman's

Stochastic Dispersion 6

experience aging out of the foster care system to understanding the purpose of absolute wealth and the responsibility of relative gains. Giving significance to life satisfaction.

Ambiguity in public policy comes from the service sector where poverty; due to the inequalities of socially poor communities are so because policies do not support for economic growth, but implemented for simple economics (The Economist, 2016; Wall Street Journal, 2016). When families do not move beyond the poverty level, or living just below poverty, disenfranchised wealth is not a cause but the effect of unmanaged public policies and local programming within service models. (United States Census Bureau 2015)

New social service regulations will change minority women careers and financial security in the next 40 years? Stable financial outcomes for women who have exited the foster care system localizing the purpose, significance, theory and analyze means tested programming in econometrics and show the collective process of the financial stability and growth impact through examination, exploration, and explanation. Fisher, F., Miller, G.J., Sidney, S.M. (2007); Johnson, G. (2010); Good, I.P. (2012); Roberts, D. (2002)

The disturbing reality of children living in poverty is a cry and call for help (Micklow, A.C. Warner, M.E., 2104). The inequalities of poverty are a disease of ethics, a plague of moral and a phenomenon of the current state of the war on poverty. Research shows much of that data and statistics make up a sizeable number of children and families given by the U.S. Census Bureau and social services have: separated families, broken core family unit, dismantled extended family and destroyed community relations.

## Stochastic Dispersion 7

Researchers Hall, H. R. and Roussel, L.A. (2014) said “Evidence-based research, split and survival outcome measurements, systemic slack” (p. 25) bias and missing data, causing flawed outcomes, limitations, validity restrictions, reliability, and error in existing data. Agreement analysis lack the correct alpha size, this can be shown in the coefficient of dynamism. The explanation through improper or the bias and missing data that does not the examine the noise in transient populations. That thus become the aged out low-income woman living in poverty or means tested communities and the continued services.

Finally exploration and innovation of software, technology, design where research analyses explains the existing work of change agents to produce returns that are ethical and moral in nature. The layering of a collective society inclusive to those who need the most help to show impact on poverty and the deprivation for minority women and their children who have aged out of the system . Social construction in its current analysis and research design, where the lack of mixed methods, agreement analysis of social construction specifically data used to address issues and concerns in thematic variables relevant to the field of social work. Where these issues effect minority women systemically once reaching the age of the retirement due to the failed research. (The Unites States Ways and Means Committee, “The United States Ways and Means Committee (2016) is the Head Office of the Government the Supplies the Financial Resources to aid families and children. The office also compiles data from annual reports from states. These reports give the financial break down of needs and services to youth

Stochastic Dispersion 8

living in poverty” (webpage); California Department of Social Services Berkeley.edu (webpage).

Appendix section are data tables, figures, analysis, and graphs from earlier research to support the information for chapters 1, 2 and 3.

## Chapter 2: Literature Review

## Introducion

### Social Constructionism Approach to Evidence Based Research and Social

#### Complexity

It is not only discreditable to use a people that there is now no recognized and authoritative source of information upon these subjects relating to child life, but in the absence of such information as should be supplied by the Federal Government many abuses have gone unchecked: for public sentiment with its great corrective power, can only be aroused by full knowledge of the facts.

President Theodore Roosevelt, Message to Congress February 15, 1909. (p. 1)

..... **Bradbury D. E. (1962)**

This chapter will be multilayered in context asking and answering questions showing the social norm and agency complexity and administrative adaptability of Social Construction by Peter Berger and Thomas Luckmann (1966) and later discussed by Schneider (1984) will be the argument of agreement in statistical analysis, policy design, method, and themes from existing targeted research. (Pierce, J, J., Sidiki, S., Jones, D. M., Schumacher, K., Pattinson, A., and Peterson, H, 2014).

Introducing new theory from scientific examination through current statistical outcomes. The chapter cites literature on social construction theory in applied practice from of the Children's Bureau, Labor Department, and Social Security Bureau, to show where the need for mixed methods public policy analysis for future studies. Examines: problem, purpose, significance, and how the system on the local level does not preserve the objective grounded by practice, and not approached through a philosophical lens of

prosperity. How Social construction in the poverty premise; that the psyche of constructionism; poverty is the root to the abuse and neglect of children and the continued evolving door of generational poverty from the failed efforts of the research causing generational foster care. The chapter introduces a discussion on merged theory; complex adaptive social constructionism to build the objective of defining wealth and prosperity through education and workforce development. It will take on a nonlinear subject matter and later name the areas of the ambiguity found in agency programs or public policy foci, that will help in understanding bias and error in the analyzing the lives of African American woman: quality of life, life satisfaction and deprivation.

Early Philosophers such as “Hobbes (1651) Leviathan Social Contract; Harmers (1929)’s Theory of Communicative Action; Mouzelis, N. (1992) Critical Planning Theory and Mantysalo, R. (2002) Complex adaptive systems” Walden University (web page, 2016) in complicated situations; one finds in the labyrinth of early sociology; the need to maintain agency while communicating in a structured government. Within an open society is “Waldo 1800’s, Public Administration, and Public Management; Kingdon (2007) Multiple Streams/Triple Helix; and Frederickson (1968) Social Equity and Public Administration” Walden Univeristy (web page, (2016). Bridging theory into practice with Lipsky's, M. (2010) “Street Level Bureaucrats”. We find the era of new method and the design of new theoretical practice on research and study analysis within evidence research.

Through agreement public policy analyses, the chapter argues in theory of social constructionism and mergers new theory complex adaptive social constructionism public



administration and adds administrative management; if addressed in this conceptual context, would give a better understanding to the analytical discourse found in research themes, variables, and social indicators that would juxtapose the current position of African American women aging out of the systemic programming. Economics is the predictor. But (Segre, S., 2016) that social complexity exists in the lives of African American women who age out of systemic programs because of subordinate and the hierarchy positioning, supports inequities within in life satisfaction and quality of the life, predicts and dictates need for interdependent and independence of the systemic process.

Past research draws on the experiences as well as the collective understanding within a venue that will work towards the process of change over time, a research hypothesis that speaks to policy and research questions that work theory via equal strength in thematic models evidence-based research variables and social indicators of applied science. Using a new social construction in welfare regulations that influence systemic services, education and job incentives for minority women who exit the foster care system.

Can new social service regulations have a positive impact on minority women job and financial security in the next 40 years using new method in public policy, to a significant difference in life satisfaction from deprivation to absolute and relative wealth. Gray, D. & Sundstrom (n.d.); Strivers, C. (2000); Rosentraub, M.S. & Sharp, E. B. (1981); Coulter, P.B. & Pittman, T. (1983); Mark, G. & Brian, T. (1999); Coulter, P. B. & Pittman, T. (1983); Chow, A. (2014). Weilber, G.M. &., Sabatier, P.A. (2014)

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Main research hypothesis; systemic equity will evolve within the lives of African American women who have aged out of foster care (Hill, M. Algate, J. (1996) when new applied theory in welfare regulations influence systemic services, education and job incentives for minority women who exit the foster care system. Implemented at several points of the services, can new social service regulation have a positive impact on minority women job and financial security in the next 40 years. New theory complex adaptive social constructionism public administration and adds administrative management; find the limitation in variables and indicators in poverty analysis and measurements to social change in Diffusion of Innovation, Multi Stream Analysis, and Punctuated Equilibrium Theory for public policy specifically economic i.e., and social measures in job security and Social Security. Where the financial breakdown both relative and the absolute has caused generations of poverty, that continue to fall into the same failed market of supply and demand.

The literature will show how new methods in social construction research and public policy have a significant difference in the life satisfaction, quality of the life and deprivation, on absolute and the relative wealth. Bridging social construction changes, to social inclusion and quality of life; life steps to ending generations of foster care and a strategy to combating poverty. Social construction in known information, foci and the ambiguity within means tested programs in social services and generational foster care. Specifically, metrics that lead up to program implementation through public policy, social services, and managed population growth where policy and social change can co-habitat and work interchangeably. Mouzelis, N. (1992); Keller, L. & Spicer, M. (1997) It will

take for those actors and stake holders involved to work in a collaborative form as McDowell, I & MacLean, L. (1998) states “Lies in how to capture the complexity of reality, yet limit the potentially endless amounts of the information that must be collected.” (p.15)

Buried in unmet purposed plans, strategies, and goals that continue to weaken the economic system and break down of the sociology growth. (Branch, E.H., 2014; Hall, H. R, Roussel, L.A. 2014). Where the economic structure then becomes the in good faith of those who donate their time for the best interest of families in need and give services called the non-for-profit market sector. The single purpose is to meet the needs of the people with given support and gifts. (Johnson, G. 2010; LA Porte, T. R. 1975; Tobey, J.A. 1974).

Finally explain the algorithmic phenomena of growing populations (Fibonacci math/ queuing process) in the lives of the children aging out of the foster care system. A system that continues to manage during economic hardship, poverty has its impacts on the country, it has become the nation's plague. Relative is true poverty or the never ending economic era of the Great Depression, embedded in the fabric of society: deficits, new taxing, poverty gaps, economic caps, financial ceilings, and vast disparities of welfare reform used to fill, balance, the nation's economic flow of wealth. Thus, resulting in the impact on the quality of life in services and the lack of managed outcomes from survival studies of the youth who have aged out of the system into adulthood. Where the need for absolute resources negative impact due to the nation's financial uncertainty to the support, supply, and demand. Alvercher, H., Ivanova, J. (2014); Andrews, W. K.,

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Barwick, P. J. (2012); Hudson, E. (2013); United States Black Chamber of commerce (2016); Walsh, C. E. (2014); Applebaum, D. (2004) For this reason, it is safe to say that policies do not discuss concerns within our society that can answer the many questions to managing and balancing poverty welfare in public policy of basic survival needs of African American women.

### **Literature**

Berger and Luckman (1996) in their research explore the lives of women through many backgrounds using this information to discuss existing impact of the social constructionism theory, data, models, and services in the field of sociology research analysis and public policy management. This is important to understating the means of forecasted financial, economics, and social policy through grounded theories: Multi-Stream Analysis (MS); Social Equity Theory (SET), that allows for the mixed methods process in a study's objective outcome with an economic analysis, that discuss the use of language in monetary savings. Diffusion of Innovation (DOI) discusses direct ambiguity in policy on the national level; Punctuated Equilibrium Theory (PET) explains stability and change in public policy and gives room for social change theory.

Findings from Banach, M. (1999); Bass, S. Shields, M. K. and Behrman, R. E. (2004) states “With new topics in the same or a related field, or with new populations, research design, or research methods” (p.56). Along with Walden University “(2015), theoretical frameworks” (par. 1), can affect the causal relationships within a multi-metho approach in a grounded streams analysis and cooperative building. (Social Research Methods 2015)

This phenomenon has become the strategic economic deploy to local agencies and community resources so much so that poverty has become the lab were experiments, test, studies and research questions, of in effective research methods explored, and continued theories re-introduced, Rosenbloom, D. (2009) Kulakowski, E. Chronister, L. (2006) discuss in their book the impact of theory and practice with “*Actual Outcomes vs. Targets; Children in foster care for Five or More Years* (p.185) *Number of Children Placed for the First Time by Year and Time until Discharge* (p.186); *Missing Data and Response Building in Outcome Measures*, (p.133)” (p.xiii). For this reason, the evidence to support a joint theory is a breakthrough and is not as in depth in the fields of public policy social and economic policy. From past grounded theory, foundation, and practice, to direct impact directing the focus on what needs to be addressed in current and future works of fighting generational childhood poverty (Fuller, T., Pacey, M.S., Schreiber, J.C. (2013); Ayala, N., L., Jiménez, L., Hidalgo, V., Jesus, S. (2014); Akin, B.A (2011).

Due to the epistemologies and philosophies of social theory and the evolving process of the social order, it is imperative to the lives of people that all sides of the planning include environment; that transformative inquiry and the transactional process of innovation can occur. That age support and development at all levels individually and systemically. Mantysalo (2002) states "By following Habermas, one is able to deduce how planners hold/act to allow social learning" (p.40).

Unaddressed from the research on poverty and foster youth aging out, it does not have the targeted nor specific outcomes to be measured. In 40 years, we have seen federal and local governments pass legislation and Administrations enforce laws to

combat the inefficient measures of poverty. (United States Census Bureau 2011) however current data and research outcomes shows social Constructionism in relation to poverty from the street level bureaucrat, using systematic data and information to improve on a greater percentage of service-based outcomes for children living in the system as well as those receiving services. The Child Welfare Congressional Research Services Reports (CRS) gives a thorough breakdown of information where there are vast disparities within child welfare in the United States from three federal entities, (Heng. L.H., et al. 2012) failure of transformative inquiry within the triple helix (education, economics, and government) of public administration (Johnson, R.G., 2011).

Braithwaite, J. (2014); Major Norman, K. (2015) said “Past research does not push greater outcomes in services, rather, what we can continue to do with the services being provided” (Intro), Kovach, J.J., et al., (2015) also add that this causes slack within the public sector that does not allow for personal growth out of the services and the resources offered within "dynamic environments" (intro); not allowing for the opportunity on the economic scale from poverty to wealth to become a reality on a measurable outcome; reliant not only on a relative scale but an absolute managed measure as well.

Sabatier, P.A., & Weible, C., M. (2014) said, “Policy models have been designed to explain either stability or change, punctuated equilibrium theory encompasses both.” (p. 60). When challenges arise in policy "Two area issues, definition, and agenda setting" (p.60). Therefore “Evolution of societies needs policy making to explain stability and change” (p.60), change poverty through formed and crafted policy implementation for

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measurement on control outcomes. (Keppel, G. & Wickens, T. 2004; Sani, H. A. 1994).

### **Social Construction Theory Understanding Deprivation**

Public policy research for minority women and workable solutions to balance inequities aging out of the foster care system is a problem supported by theory and the method. Social construction theory and the need for supportive mixed method outcomes in unmanaged social programs to aid, support, and help minority women. These women are not able to support themselves once leaving the system into retirement this is due to failed work force development clouded by means tested economic analyses and models. Unsupported finances drive a slack in wealth to support their social and economic status. (Levine, E., Greer, J., Rademader, I., CFED (2014) Muhammad-Asante, D., Collins, C. Nieves, E., Hoxie, J., CFED 2016; Urban Brookings Tax Policy Center 2015; United States Social Security 2016)

In the American Welfare System, there is not enough equity support in social security from minority women. (DuMonthier, A. Childers, C., Millie J., 2017; Prosperity Now 2017). Using accountability and ethics to address to examine, explain, and explore challenges in theory, method, and analysis. New method agreement analysis and progressive theory to focus on poverty, low economics, and unbalanced financing for minority women (Rosenbloom, D. H. 2009) welfare as it stands, in the past 20 years has given weighed measures of wealth to the ownership of the individuals material need for supply and demand, to the value of their personal wealth applied to the needed assessment of aid. If deprivation is not present, the value of personal wealth becomes the means to aid and aid, thus keeping women and her family on systemic roles. This is

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especially clear for minority women who have aged out of the foster care system. Where social construction has failed in: theory and the applied sciences, public policy, and social programs.

Welfare regulations and new tax codes impact systemic service savings and sustainable financial gains for African American women and their children? Deprivation as a new wealth gap value and means services. (United States Census Bureau 2017; US Department of Social Services; United States Social Security Bureau; Children's Bureau; Labor Department; Prosperity Now 2017)

Gomes, Kotlikoff and Viceria (2012) said, "We posit, calibrate, and simulate a realistic life cycle a model featuring best consumption, portfolio choice, and labor supply decisions in the face of uncertainty in earnings, lifespan, investment returns and government policy" (p. 126). Minority women are non-supported by both the socio and economic construct method theory, and analysis work force development in the labor force but means tested programming in the service sector unbalanced and unmanaged outcomes. This type of research analysis causes a problem for job stability and financial security for minority women aging out of the foster care system.

Is the war on poverty an absolute problem or a relative issue? A war strategy to combating poverty within the female head of household aged out of the system, through public policy, mixed methods, agreement analysis and new theory. Guimaraes, D., Ribeiro, A. P., Silva, S. (2012) states "Given the multidimensional nature of poverty, the phenomena because of rather difficult measurement to encompass different deprivation dimension" (p.26). Authors (Gray, D. & Sandstorm (ND); Strivers, C. 2000;



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Rosentraub, M.S. & Sharp, E. B. 1981; Coulter, P.B. & Pittman, T. 1983; Mark, G. & Brian, T. 1999; Coulter, P. B. & Pittman, T. 1983 Chow, A. 2014; Luttmer, E.F., Samwick A. 2015) discussions on poverty, issue of social equity and its inequality for women and children presenting new theory of the social constructionism as means tested deprivation also known as social security. (Schneider & Ingram 1993; Pierce, J, J., Siddiki, S., Jones, D. M., Schumacher, K., Pattinson, A., and Peterson, H. (2014).

In the United States, poverty analysis from the: national, state, county, and local block setting (United States Census Bureau 2014; Community Development Financial Institutions). The measurement tools (United States) and mathematics used to understand poverty is crucial to social equity and personal wealth (United States Census Bureau 2014) economic and social disparities of children living in poverty in the United States (Anyon, J., 2014) and ongoing into adulthood. The theory of social construction deprivation to a new theory of social equity the collaborative collection of data and inquiries that allow for asset growth and economic stability; through working policy (United States Census Bureau; United States Department of the Commerce, 2016; United States Department of Social Security, 2016; United States Department of Labor, 2016); the ability to show allocation of an efficient and effective measure of resources in a fair manner that can change generational wealth gaps; a continued effort to win the war on poverty. (Davis, K. E. 2014; Weiss-Gal, I., 2013; Evans, T., & Harris, J., 2004)

The Census Bureau (2014) has reported this past year stated, “Although, this is not a new strategy, we can, however, begin to change new societal measures in poverty especially in the inner city” (web page). Also, in (2016) reported “We can see fewer

pockets of poverty per family for longer periods of the time (redefining generational poverty” (web page) this can be carried out by adding savings plans that will help boost the economy, which will generate jobs and aid in ending generational poverty.

The complexity of the relative poverty (Guimaraes, D., Ribeiro, A.P., and Silva, S. 2012) is not only a complicated measure that can be managed via the U.S. Soft Powers, Chapel, K. (2015) states "To plan for equitable and sustainable regions, we need to start from an understanding of regional economies, economic opportunity, and family lives work today in each region around the world and then think to growth management planning" (p. Intro.). In such, poverty solvency alludes to the lack of the psychosocial economy, most affected are women and their offspring, the greatest impact causing generation poverty. Where the algorithmic phenomena has become the norm in low percentages in education, a constant financial strain on our government and a continuum of the new developments in social programs (Johnson, G. 2010; Chambers, D. 2013; Kingdon, J.W. 2011).

Thus, Major-Norman, K. (2015) states “Past research does not push greater outcomes in services, rather, what we can continue to do with the services being provided” (p.165). Kovach, J.J., et al. (2015) also add “This causes a slack with the public sector that does not allow for personal growth out of the services and the resources provided within "dynamic environments" (intro). This does not allow for a measurable opportunity on the economic scale of poverty to wealth a reality outcome; reliant not only on a relative scale but an absolute measure as well. A study that investigates social policy, social equity and the social contract in the complex adaptive system and

sustainability could remedy this problem (Johnson, G. R. 2011).

Purpose of Social Construction in this work, Children Families and Foster Care stated "Understand the major challenges faced by minority women, children and families experience in the service sector. How policy and practice recommendations can improve how children and families experience foster care" (p.5). As well as living through deprivation, "Outcomes refer to short or long-term consequences or impact of public policy on a society" (p. 5). Also, discuss issues of generational poverty, controllable poverty, and measurable outcomes in public policy. (Nam, Y. 2007) via new method and statistical analysis.

Using data sources such as: United States Social Security Bureau, Labor Department, Community Development Financial Institution, United States Children's Bureau and United States Census Bureau, impact to socio-economics on building assets through services, social equity, and equality aging out the foster care system to retirement. Foci begins a new strategy to ending generational foster care, from negative social inclusion, absent deprivation and low-income by (Pierce, J. J., Siddiki, S., Jones, D. M., Schumacher, K., Pattinson, A., and Peterson, H. 2014) correlating data from research on minority women and their families to other women and children: living in poverty, social equity, inquiry, complex adaptive systems, and the role of the Street Level Bureaucrat.

Significance of Social Construction researchers Keppel, G. & Wickens, T. 2004; Sani, H. A. (1994), states "For significance in the study" (p. 54) showing the gaps, ambiguity, and foci between research, design, and public policy. The Child Welfare

Congressional Research Services Reports (CRS) gives a thorough breakdown of information where there are significant disparities of child welfare in the United States. (Heng, L.H., et al., 2012) A cause of this problem is the failure of transformative inquiry within the triple helix (education, economics, and government) of public administration (Johnson, R.G. (2011); Braithwaite, J. (2014)).

Decades of existing data from research shows the numbers of children in the foster care system annually have a shock effect. If we are to look at the time spent in the system, there will be unbalance, in argument; poverty is the reactor to the effect of neglect and abuse. If this is the case, but if we were to challenge the theoretical premise based upon the survival and services received before entering the system and in the system, we will find, many caseloads meant, there were too many children in the system coming from impoverished/poverty and not the defined meaning and purpose given by Children's Bureau.

Poverty became the indicator of the abuse and neglect in social services (means tested programs), variables in research (monetary incentives) and themes within annual reports (public policy); thus, becoming the academic, social, and policy norm. So, the immense process of services becomes no longer families in need but a systemic error which is the shock in sociology means tested programs for foster youth specifically African American women aged out of the system. (United States Children's Bureau 2016, Department of the Labor 2016 and United States Social Security Bureau 2016) Science and research, agreement in the system is reversed; percentages and measurement analysis are not aligned, and program outcomes seem not to affect the targeted

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population. (Childrens Bureau 2016) ambiguity across sector stems from existing quantified surveys, and questionnaires found in United States Cencu.

### **Social Security Adaptive Complex Social Constructionism**

**How will welfare regulations change systemic service; will new public policy on social security have a measurable impact on African American Women who age out of the foster care system?** Social Security Administration (2015) said “Initially part of the Department of Commerce, the Children's Bureau was transferred to the Department of Labor in 1913” (web page). A large part of the Social Security Act of 1935 supports and discuss the programs of the Children's Bureau. Title V of the Act, Grants to the States for Maternal and Child Welfare. Mantsalo, R. (2002) stated “The social contract cannot be fulfilled unless the public sector is able to comprehend through: social, organizational, program inquiry, that change can only be met via the collective, collaborative process rather than” repressive force” (p. 252). Carrdoza, D. A. [D-CA] (2007-2008); Moore, G., [D-WI] (2014)

Data for the United Sates Census Bureau the Small Area Income and Poverty Estimates (SAIPE) for one of Washington, DC school district of youth ages 5-17, 28.1% of families live in poverty. Added resources and the data shows even more depressing statistics. The supplemental poverty measure of young people under 18 includes data from the Educational Attainment in the United States and the Department of the Health and Human Services and DATA from the ASPE the Assistant Secretary for Planning and Evaluation we will conclude that enough is not being done to support the youth aging out

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of the system. Support resources and the services must be used to target such the young people who fall within these census numbers and statistics.

The federal government has given the resources, yet we do not see success rates in the small school districts such as the District of Columbia the success rate for 2016 shows a 0.5% rate and in a \*-4.8% average of supplemental poverty measure. Finding agreement is crucial to the survival of future generations living in the foster care system while aging out shows, not a quality of the life and the fulfilled goals to getting opportunity. Will there be an agreement for foster youth who age out of the system? If not how can the systemic objective show and improve the systems process? Policy analyst must understand dynamic environments, where noise or uncertainty of the risk and critical areas, were big data coefficient correlation can become aggregate measures that will best support true population growth. (Congressional Budget Office Report 2013) Agee, M. D., (2013); Board of Governors of the Federal Reserve (2016); Bowles, L. (2013); Bradbury, D. E., & Oettinger, K., 1(962); Branch, H.E., and Hanley C. (2014); Braithwaite, J. (2014); Brayton, F. Lauback, T. Reifschneider, D. (2014); Brooks, A. C., (2009); Brooks, Gunn, Phelps, E., Elder, G.H. (1991)

An aggregated ANOM that will target first policy structures and administrative changes for youth gaining out of the system. This way enforcing the need to discuss language, method uses by change agents and the research measurements. Targeting the ability to achieve the American Dream that is both caught within the labyrinth of the working and the learning environments.

However, we find very few studies today within the public policy sector that gives evidence-based research. The reason being is quantitative data is more manageable for policy analyst and less cumbersome when dealing with significant data. Can evidence-based data/research through means tested programs agree in Public Policy and the collective outlook be met in means tested programs? The review focuses solely on environments were absolute poverty finds itself in programs of a limited financial status to qualify. Where any sign of wealth such as savings limits a person ability to receive aid or shortens the life span. Again, the Social Security Act Title E Foster Youth is the focus, these youths fall outside the scope and spectrum to receive services beyond the age of 18 in the recent passage of legislation. (United States Legislation 2016)

Therefore, these stratified groups of young people who fall below the absolute household low-income, or poverty are unequally measured in the thresholds and the levels within the serviced sector. Causing greater hardship for this population of youth in poverty studies. We will find that research methods pose two different approaches one specifically that speaks to evidence-based work, the information and the analysis of data that is crucial when discussing policy issues. The collections of such material can be so through mission statements, goals, and the agendas with in the service sector. It is assumed that the outcome achieved, is the standard set in place when implementing policy, only to find the lack of agreement when a quantitative sociological analysis is conducted. Carrdoza, D. A. [ D-CA] (2007-2009) Moore, G. [D, WI] (2014)

To discuss the issue and concern one must take existing resources and apply it within the individual household, our government calls this un-weighted or weighted

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numbers and percentages; there is also “poverty guidelines” poverty guidelines continue to be derived from the Census Bureau’s current official poverty thresholds; they are not derived from the Census Bureau’s new Supplemental Poverty Measure (SPM)” Federal Registry (2016). Federal Registry (2016) “Thresholds and the levels the latest published Census Bureau poverty thresholds by the relevant percentage change in the Consumer Price Index for All Urban Consumers (CPI-U)” Federal Registry (2016).”

U.S. Census Bureau (2016) According to the United States Census Bureau Office of Management and Budget (OMB) of Statistical Policy Directive said “The poverty levels used by the Bureau of the Census were developed as rough statistical measures to record changes in the number of persons and families in poverty and their characteristics, over time. While they have relevance to a concept of poverty, these levels are not developed for administrative use in any specific program and nothing in this directive should be construed as requiring as they should be applied for such a purpose” U.S. Census Bureau (2016). The Office of Management and Budget gives the definition of poverty for statistical purposes.

To continue the best explanation for this and how the system as failed children living in poverty and women and their inability towards upward mobility are prevention measures and a strategic path to exiting poverty and eliminating caught in the system queue and end generational poverty (algorithmic phenomenon) is to align new method and new theory. This is not so, resulting in the absolute experience of poverty (systems) and the relative systemic labyrinth (big data).

Social Service equity is a known theory has yet to be used as a practice in the



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field of public policy and administrative project outcomes. It often lacks in resources, poorly managed and untrained workers on an organizational hierarchy structure. This may be in part to the complexity of the system, never the less should not be an excuse to the wellbeing and welfare families living in poverty and or the prevention of the poverty-stricken families after retirement. If the field of social work continued to develop a process of across the board uniformity, we would begin to see perfecting percentages and shifts in social change for African American Women and children.

On the other hand, there is a plethora of research that speaks to the many problems in social services, where children are deprived social equity and where resources are deprived and in some cases not obtainable (Landsale, C. P., and Brooks-Gunn, J., 2014; Banach, M. (1999); Wells, F., Freer, R. (1994); Institute For Research on Poverty (2014) If, the focus in our service sector used open-ended strategic planning to address the issues of poverty, we will find research, data, and policies written from institutions, for example, where research conducted deals with the adult population of poverty, education and the training in the field of social service on civil rights, human rights, and criminal offenses. In the line of the public policy, should enforce more ethics; further resulting in more and better services. Policies and Administrative aims should be conscious of this in their work environments. (University of the Wisconsin-Madison Wisconsin, Center for Social Development, National Bureau of Economic Research and the Retirement Security Project 2015)

Policy in the past 50 years concerning children in the foster care system will focus on a triple national analysis that will address generational poverty via social services,

education, and markets where we know that inequality to social equity inhibits opportunity and produces areas of morbidity and deprivation (University of the Wisconsin-Madison (2014); Whelen, C. T. Layte, R. & Maitre, B. (2004).

The challenge of managed social services is no longer an agenda but keeping population control. The field of social work is no longer concerned with the improvement of the lives but the ability to understand the lives of people. This has become a negative impact for many people. The need to move research in the field of the social work towards improved outcomes can be achieved. United States Department of the Health and Human Services as well as the several mentioned federal agencies account for this information.

However, it will take those stakeholders to appreciate new levels of the inquiry and environments of the change. The Children's Bureau gave the Bureau equal status with the unemployment compensation and old-age provisions of the Social Security Act stated, "Title IV of the Act, the Aid to Dependent Children program, was also in furtherance of the general mission of the Bureau, although formal oversight responsibility for the ADC program was assigned to the Social Security Board." *SSA.gov (2015)* information to be collected and compiled that will show how to improve on resources and services with youth living in poverty aging out of the system to have long term effects. Godin, B, (2015)

### **Labor Department Applied Adaptive Complex Systems**

The issue within the foster care system, research does not show; the managed statistical analysis that affects policy and the program outcomes for foster youth in

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education and work force programs. (Board of Governors of the Federal Reserve System) Information and data, give measurements for young people living in poverty specifically youth aging out of the foster-care system using the Bayesian Multipole Hypotheses Approach (Dunn, W. 2011) education and workforce development.

In a research article written by Reilly, T. (2003) on issues with youth aging out of the system said, "Some studies of this population paint a disturbing picture. Between 10% and 40% of youth formerly in foster care were unemployed at the time of being contacted, and many had trouble keeping steady employment (Cook, 1991; Courtney & Piliavin, 1998; Festinger, 1983; Jones & Moses, 1984). Educational achievement escapes many of these youth, with completion rates of high school as low as 34% (Barth, 1990). Several studies have reported homelessness among youth formerly in foster care (Barth, 1990; Courtney & Piliavin, 1995, 1998). Health problems and lack of access to health care for this population are common. Barth (1990) found that 44% had serious health problems. Courtney and Piliavin (1995, 1998) said "Obtaining health coverage was difficult for more than 50% of the youth" (p. 278). Even though health care and education are stochastic programs supported by legislative bills we have not seen significant difference from youth aging out of the foster care system.

Researchers Mullen, E. Magnabosco, J.L. (1997) in their book, the chapter on *Outcome Measurement in the Human Services Crosscutting Issues and Method* as social analysis of organizations learning environment, are solutions to further research in service outcome measures. Ongoing efforts discuss the negative impact from this theory and the issues it creates. Children must thrive daily, must be done under this premise:

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Chapel, K. (2015) stated "Opportunity is the American Dream: regardless of origin or socioeconomic status. Americans should be able to achieve prosperity through arduous demanding work. This then creates a system of mobility: whatever economic situation a family starts with, its children can move to a higher one" (p. 268) ... additionally "Education and equitability make labor markets of opportunity (p.273, par.4)

In securing a working, open environment between government, education the public sector (PortilloS., & Rudes D.S., 2014), must push towards positive supply, demand and ongoing growth from social services, Gray, D. & Sundstrom (n.d.); Strivers, C. (2000); Rosentraub, M.S. & Sharp, E. B. (1981); Coulter, P.B. & Pittman, T. (1983); Mark, G. & Brian, T. (1999); Coulter, P. B. & Pittman, T. (1983); Chow, A. (2014). Weilber, G.M. &

Sabatier, P.A. (2014) stated, "Context of the public policy relates to the socio-economic conditions, culture, infrastructure, biophysical conditions and institutions" (p.5). The research found small programming can't meet the needs of growing populations but' stochastic dispersion meets the needs of all youth personal and economic demands. Auray., S., Eyquem, A., Houneau-Sion, (2014)

For example, the Welfare Reform Bill of 1996, address two areas of growth and need. The first was to implement an agenda that would service people living in poverty; the second was to meet the growing population by making them qualified and marketable to meet the economic structure of society. Research from that program shows that it failed in both areas, where the supply and demand of poverty to middle class did not make a significant difference, and as the welfare rolls dropped we saw and incline in

foster care numbers. (Federal Reserve 2016; Census Bureau 2016; and Children's Bureau 2016). To reiterate that the service sector, even though agencies are giving services in our local communities' in theory social inequality continues to exist. Gray, D. & Sundstrom n.d.; Strivers, C. 2000; Rosentraub, M.S. & Sharp, E. B. 1981; Coulter, P.B. & Pittman, T. 1983; Mark, G. & Brian, T. 1999; Coulter, P. B. & Pittman, T. 1983 Chow, A. 2014.

In a research study conducted by Whelan, and Maitre, (2004) on poverty and deprivation, they did an analysis that would present data different from the traditional longitude study on poverty Mattire (2004) said "However the conclusion to be drawn from a significant proportion of the literature adopting a multidimensional perspective on poverty measurement is that, not only do different methods lead to different conclusions regarding levels of poverty, but quite different groups are identified as poor depending upon the indicator on which one focuses" (pp. 287-288). Public policy in past research on children poverty and the foster care system, lacked the focus with an ethnography of government, service sector, street level bureaucrats and its constituents (Banach, M. (1999), and how this information will bring about a change through policy in the lives of children.

For example, the United States Chamber of Commerce Foundation (2016) report is the latest work of the U.S. Chamber Foundation's broader youth employment initiative, stated "Focused on closing the skills gap by providing customized tactics for the private sector to develop young talent as part of its overall business strategy" (web page). Also, the United States Chamber of Commerce (2016) said, "It's a win-win proposition:

Properly leveraging business-facing intermediaries as talent orchestrators can help tackle the youth employment challenge and help businesses meet their talent pipeline needs”

(web page). [www.USchamberfoundation](http://www.USchamberfoundation.org) (2016)

Research gives the outcome via data analyses and to expound on its intended purpose. Three questions behind Dunn’s theory of the experience, known as within study or practice. The first is, analyzing the means (ANOM), from means-tested programs, with an inquiry of aggregate stochastic dispersion, measurable outcomes, for evidence-based programs. This brings the understandings to narrowing down literature between poverty and means tested programs, vs, wealth, and equity programs as missing data.

How best in managed environments, supported by policies? How would policies such as the educational attainment bills and housing bills, impact implementing a means tested savings program, that would change the lives of children aging out of the foster-care system. Second, would the service sector uphold and manage services so to need or continue work with those who inquire; rather than offering an open opportunity. What is the difference between the two and how do we know when a service provider is offering the possibilities vs. the entrepreneur's willingness?

To juxtapose the positions of the current literature written to support the need of foci and ambiguity in policy and the program outcomes with the argument of the inequality, that poverty is unconstitutional and that our government is designed to discuss such a matter, women and children due to the balance between policy and the ability to meet stochastic dispersion, which has failed, and continues to be a burden on our economy. Agee, M. D., (2013); Board of Governors of the Federal Reserve (2016);

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Bowles, L. (2013); Bradbury, D. E., & Oettinger, K., 1(962); Branch, H.E., and Hanley C. (2014); Braithwaite, J. (2014); Brayton, F. Lauback, T. Reifschneider, D. (2014); Brooks, A. C., (2009); Brooks, Gunn, Phelps, E., Elder, G.H. (1991)

If so this work argues the inequality will continue until this balance is met. Programs are based resources, on an absolute (meaning state level) management then dispersers based on the grant funds to an organization or non-for profit, even to say a government entity. The problem lies within one's ability to know the true balance of the monies to run an effective and efficient program. To have programming that will help the number and the percentages of African American girls exiting the foster care system we must first have the true numbers. On the federal level it takes fiscal measures over time to change those numbers, with that said it is almost impossible to fund a program on the local level that can help the people in need. Beltran, D. O., Draper, D. (2016); Berger, Dale. (2014); Bergman, M. M. (2008).

It is for this reason that aggregate measures of sociology do not meet the aggregate numbers in economics, therefore causes a labyrinth of endless needs and growing poverty, especially for young girls aging out of the foster care system. The possibility of effective stochastic dispersion programming will have to come from a rolling basis of the financial resources. This is impossible and is shown by the inequality in equity found on a national basis, and states inability to have managed budgets causing slack in the financial growth of the individual households, let alone a foster child aging out of the system. Anyon, J. (2014); Barrett J. M., Ferris, J.A., Lenton, S., (2014); Bastedo M. N (2009)

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**Children's Bureau Adaptive Complex Social Constructionism**

Research from the Children's Bureau (2011) shows 402,378 children are living in foster care, and the National Center for Education Statistics said "The percentage of school age children living in poverty in 2013 (21 percent) was higher than it was two decades earlier in 1990 (17 percent). Even though the poverty rate for school- age children was lower in 2000 (15 percent) than in 1990; National Health Care for Homeless Council (2011). Between two most recent survey years, 2012 and 2013, the poverty rate for school age children did not change measurably" (par 2). Poverty cannot be expressed any less or take any lighter; that research shows children are experiencing the greatest percentage of negative social equity are those; (Vandermoortele, J. 2000) especially those living in the foster care system and homelessness. To support this daunting fact research from the United States Interagency Housing for Homelessness (2005) said there are 194,000 school age children and 45,000 individual children living in homelessness. United States Interagency Council for Housing 2014 (USICH). Brayton, F., Lauback, T., Reifschneider, D. (2014)

In theory, social constructionism impact via social change is working premise; however, we find from the Children's Bureau agreement from policy is yet actualized. Children lost in the system are measuring at an uncontrolled level. (web *UNESCO.org*) it will take actors and stakeholders to work in a collaborative effort, McDowell, I., & MacLean, L. (1998) states "Lies in how to capture the complexity of reality yet limit the potentially endless amounts of the information that must be collected" (p.15).



Foci that services are given on a needs base and should not be abused buy those seeking aid, there are limited resources to offer, and government does not give a profitable sustainable plan to overcome the barriers in the public service sector. Here is where government a relative cause in the social service sector, where social equity (Johnson, G. R. 2011) would be a common theme from government to the local service agencies.

On the other hand, the position seeming as if the work is neglectful in the fact that poverty does exist and that services must be given. To expound upon this very nature. The social contract cannot be fulfilled unless the public sector is able to understand trough: social, organizational, program inquiry, that change can only be met via the collective, collaborative process rather than “repressive force” (p. 123). Mantysalo, R. (2002) discuss the, not your agenda but the needs of other agenda. Explain, the need to base research upon a hypothesis is based on technologies breakdown of methods and analysis that are true to the environment and the providers.

Also, that open-ended questions are good, but themes and framework must be void biases during data collection. Lastly, technology is key, the choice of the correct technology is imperative to developing a result and outcome for the now forecasting and future challenges. Bryman, A. E.(ND); Patton, M.Q. (2010); McDowell, I. & MacLean, L. (1998). In securing the need for a working, open environment between government, education, and the people. That will then give the public sector, administration and management results to a positive supply and demand and ongoing growth in production. Gray, D. & Sundstrom (n.d.); Strivers, C. (2000); Rosentraub, M.S. & Sharp, E. B.

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(1981); Coulter, P.B. & Pittman, T. (1983); Mark, G. & Brian, T. (1999); Coulter, P. B. & Pittman, T. (1983) Chow, A. (2014).

Social Construction Foci in the focus in the field of social work brings about many challenges, challenges that have had a negative impact on children and families for the past 40 years. The many areas in the system that discuss the financial, health and wellbeing of children have become so entrenched in the bureaucracy, that our systems have failed to affect a population of people in a manner that would improve their conditions, lives and wellbeing. East, J. & Roll, S. J. (2015); Evans, T. Harris, J. (2004); Fallesen, P. (2016)

The field of social work discusses manageability within the context of services given and received, not the overall quality of the life, social inclusion, and ending deprivation. The focus of this section will be to bring new foci into the field. It will be to bring new dialog on poverty, first around the system of social services and then to children in the foster care system. The goal is to find a solution to continue improvements in the system that will have a positive impact on their lives. This can only be done with new alternatives in programming that brings about innovative agenda and the focus for improvement. The areas of the foci shift in management outcomes through legislation and programs. Mitchell, A. & Shillington, R. (ND); Micklow, A. C., Warner, M.E. (2014); Osgood, d. W. Foster, M., Falnagan, C. Ruth G. R. (2005)

To discuss the foundation or history of social services. This review will discuss the social security act and the implementation of Means Tested programs the changes in legislation and the process within the services sector. In the past 20 years there has been

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a great negative impact in the system to account for and balance out means tested programming. The foster care system was designed to aid and aid in the overall welfare of children. It was first placed in the department to f labor where the labor laws and legislation was placed into effect to protect the working venue of children; today known as the child labor laws.

Next the foster care program moved to the social security act (Social Security Administration (pre-1912-1933) the purpose would give the system itself the stability to continue funding programming for children in need. This was legislatively to support the monetary responsibility to youth. But we have failed to foresee the impact this would have on generations later. Without balanced outcome; generations later we are finding that many of our children have not made it into society with the ability to contribute back into the social security system, therefore causing a great strain on financially stable programs.

Means tested programs have become the gateway into dependency where job labor laws that protected the very purpose of the child safety has become the issue in securing future outcomes. The Social Security Act a program used to sustain the lives of the people once they have retired is in an unstable position today (Department of Labor 2016). it is because the significant percentage of the foster youth aging out of the system by retirement did not contribute into the system and will not, but continue to receive services called Social Security Disability (see appendix) This data can be found in the United States Census Bureau Small Area Income Poverty Estimates (SAIPE) of 2016.

During the new program for woman, children and families research found these significant analyses with the new means tested programs Temporary Assistance for Needy Families is a sample cluster population of youth living in poverty. This example will be supported selected states to break down cluster populations of poverty for multi variant statistical analysis with the study.

Current literature shows the new reform bill of means tested programs, persons receiving aid during this time from the age of 22, 20 years later would be 42 years old. What was the demographics of that time compared today. How many mothers receiving aid during that time were just aging out the system themselves, and what is the economic and the social conditions of those families today? Further the amount of times the single mom has had to revisit means tested programs and finally has the family were involved with foster care themselves? How can improvements on a system if these types of questions are made be available through open discourse and community home settings? How many families have had department of social service involvement due to financial hardship, and what was the impact of federal resources and the state programs? Have those mothers from the 1996 welfare reform moved out of the poverty rolls?

Social Construction Ambiguity in literature

Ambiguity across literature the information for the 2006 reformed temporary assistance for needy families (TANIF) bill could say for the sake of research today on the foster youth aging out the system, based on the national numbers and percentages, the average person would today be living in poverty. The specific data for foster youth form 2006 to present does not give such data, but we do know that the numbers and percentage

of the foster youth in the system and aging out of the system has grown and poverty percentages still be unmanaged. (United States Children's Bureau 2015)

The research will speak to this issue via existing data, compiled over the past ten years. What does research say about social inclusion, the quality of the life, and ending deprivation for youth in the foster care system? However, most important what is missing from the data that will enhance the lives of foster youth. Using the combined theory complex adaptive social constructionism argue that the percentages and the data do not speak to shown based outcomes, that targeted programs have failed and that, and the only way to the reach managed policy is through agreement analysis. Until then we continue to see an unmanaged population. Diagram 5 (appendix) shows the agencies that give statistical findings for youth living in the foster care system for the past 40 years from 1974 to 2014. Further that work-oriented programs and the pieces of legislation that has or not affected the lives of the children aging out to the system.

Now some crucial facts and data about the lives of the children who have kids aging out of the system. Generation foster care is an issue, concern, and a problem. We know it exists based on the poverty levels and thresholds used in support services, additionally the psychological and the mental conditions that derive from poverty as shown through research is an indicator too abuse and neglect. Federally funded programs such as Kinship and home parental training classes support this. The following information is either in theory or empirical research where poverty is a phenomenon.

Further research proving numbers statistical measurements to ensure a stochastic outcome to reducing financial shocks that impact programs on an absolute and relative

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measure. A model to ending generation poverty and change the lives of those living in the foster care and exiting the system. Existing Theoretical information on poverty from such programs does not have the correct improving volume needed within the larger scope and framework of data. From 1974-2015 on low-wage workers especially teenagers (Federal Congressional Budget Office, Ways, and Means Office) report on poverty incline. There should be the great concern for the foster youth aging out of the system and reentry especially those with dependents of their own. In this instance, we have failed to change the lives of many on as said earlier in the review outdated modes and no cross firing of information on a national level.

Services are centralized and localized as to manage the poverty gaps better. The following information stands for youth in the school system that is homeless (appendix) In this case, the scientific hypothesis that many of these young people are from a social work system that separated them from their families and are eligible to receive educational aid from the system the information is the provided by the National

The informational charts and graphs presented in the appendix discusses the disturbing reality of children born into poverty, single family homes, poor education, homelessness, and foster youth in the system and aged out with no measurable data that makes a difference in the real-life circumstances. The following is a relational flow chart shows process scientific data on youth in poverty and foster care on a national scale. Specifically looking at the impact of their lives through existing funded programs. Deri, D., Guoliang, W., Zidong, W., & Alsaadi, F. E. (2016)

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These will be the numbers used in the research section to analyze, and compare the social change impact of further research on the incidence of the federal and state legislation, regulations, policies, and programs. The information will discuss the need for better programming and focus implantation for youth in the system and aging out of the system. Has policy in the past 40 years affected the lives of families who have experienced the foster care system? And has the family structure of the core family strengthened? Have policy programs disabled social inclusion, quality of life and financial wealth (deprivation)?

In as much the target populations are a political strategy to bring about and discuss phenomenon or new theory. Along with research are discussions about awareness and concerns facing the problem the state and federal level, research on women specifically African American women and children in target population studies are a setback resulting in limited resources and out dated policies that have poor percentage or untrue outcomes that become the social norm and nuanced by stereotypical names such as the term Welfare Queen Blanchet, J. Chen, X. and Lam, H. (2014); Barrett J. M., Ferris, J.A., Lenton, S., (2014) Queuing is a scientific mathematical process used to undo chaos to a great system ( to understand the current use of the term Welfare Queen (queuing) as one example of the taboos of poverty and social construction.

**New Methodology Complex Adaptive Social Constructionism, Public Administration and adds Administrative Management**

Dunn (2012) states, "Methodology of policy analysis rest or should rest on epistemological foundations that differ from those of the disciplines of which policy

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analysis is composed" (p. XVII). The untold stories; policies are designed to help, is the inability to use the actual nature of policy that should give functional programs and opportunities for advancement. The nation's policies are designed to influence programs or vice versa.

New research needs to discuss decade old theory and practice. Laureate Education (2015) Application: Theoretical Frameworks, Walden University (2015) stated "Theory and Governance is where target populations result in denial of services or overlooked in process and operation by agencies where Street Level Bureaucrats then become the power organisms in dynamic environments" (web page) Generational poverty via the social services, education, and markets are the fact and not the reality of successful management outcomes. Where we know that inequality to social equity inhibits opportunity and produces areas of morbidity and deprivation (University of Wisconsin –Madison (2014); Whelen, C. T. Layte, R. & Maitre, B. (2004). Shafritz, Ott & Jang, (2016) "In order to understand and be able to apply theories to research in public policy and the administration, one must appreciate the historical context through which it has developed and the cultural milieus during which significant contributions were made to its body of the ideas and knowledge" (p.2).

Once again, the aim is to show social construction gaps in the research and how public policy research needs to discuss decade old theory and the practice; the success of children hinged upon the service outcomes from local agencies. Thus, ending generational poverty forms a social contract and the managed care in services.

To think foundation and the theory to actualized programming research



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hypothesis is taken from researches, Gomes, Kotlikoff and Viceira (2012) "The first such issue involves the political process leading to indecision. The second issue is that policy changes, no matter when announced, may affect more than one generation as the government proceeds to satisfy its temporal budget. A third issue is whether we need to consider how policy indecision affects the aggregate capital formation and the evolution of wage and interest rates" (p. 128) and, how to develop and study that will answer these questions based on the life satisfaction.

If we look at the data and information given by our federal government, we will find that there has been an unmanaged percentage of youth receiving help from means-tested social programs and continued to do so into old age. If we are to think about means to ending deprivation and generation foster care, we must look at how the system is a labyrinth for not only deprivation but generational poverty. Analysis of policy agreement and the measurable outcomes, test results will also include a forecast analysis to show how economic and social policy, the foci on equity especially homeownership and retirement will show policy agreement this can be positive impact from programs that are not in consideration for services.

There is a need to move social regulations that will open equity policy and decisions, implement programs that will enhance the quality of the life through social inclusion and specifically with the economic opportunity. Once aging out of the complex adaptive social contortionism in theory in practice aging from the system there is the need for a start. Leaving the system with only that which obtained through aid and help; we find as research and studies show; today, many are uneducated, homeless and have

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addictions. Services while in the system to support the quality of life are ineffective. Research can support this by looking at the low percentages of the high school completion and the high percentages of the low life quality life through examples of social inclusion.

So, to filling the poverty gaps with social programs that give no return has hindered the impact of services to youth in the foster care system and has outcomes in unmanaged or un balanced bottom lines. Resources are not being appropriated, channeled, or funneled to aid in the positive results. Means-tested programs and the family support services that would keep families together do not work together, therefore, causing generation poverty and in many cases generational foster care services.

While keeping families together, the federal government gives funding in many service areas to prevent the interference from the state into the home (United States Ways and Means Committee Green Book 2015). If there is a need in the home, the state, before removing a child should honor this process and give the steps needed to keep a family intact, such as The Family Reunification Act, the Kinship Act, and the Families First bill, (United States Legislation 115 Congress (2016). All measures in a mixed methods analysis to manages public and social policy. However, we have found in the past 40 years ineffective.

Support services funded by our government such as the Court Appointed Special Advocates (CASA) Court Improvement Project and National Foster Care Review Boards all selective programs, leaves many children in the service gap where over the past years policy programs has failed to produce managed youth outcomes. In this case, we find

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that there is no balance in the system, yet services are funded. What the question now becomes, what can be done to move a system into a position that will affect the quality of life when aging out and stop negative generational occurrences?

Currently, research shows that the existence of these programs has made no significant difference on youth aging out of the system. These programs are not new; they have been in existence over 40 years. To look at the census bureau results of youth from the system current age of the 42 years today who aged out at 18, we will find agreement. Families involvement with the foster care system because of poverty alone not abuse or neglect should be pushed into the Pipeline to Good Citizenship Program that consists of a savings plan, educational plan, and health care. (United States Ways and Means 2016) shown in unmanaged program outcomes on the state and local level .

The focus of research in this study on the social savings plan will be to aid in the ending deprivation when aging out by giving a soft start for all youth,

New theory paramount to the foster care population especially those that are aging out to retirement. Statistics will show that the percentages presented by state and local venues youth to adult are insignificant, but show high percentages of the homeless, incarcerated, mental health issues. So, where laws, legislation, and policy continue to pass, we do not see the evidence in the lives aging out of the system.

According to the a nationally known Foster Youth club that caters to the lives of foster youth, stated "25% of youth graduate from college 41% graduate from high school. Additionally, they sated that 33% of foster youth depend on government assistance and 75% of women depend on movement assistance" *Foster Youth Club (2016)*.

To obtain policy agreement in the population of foster youth 0- 18 years from educational programs, we begin with finding a managed number that will make a significant difference. Education bills within the last five years have specified the need to educate all children; poverty legislation structures itself around absolute financial growth outcomes. Where the whole is greater than the sum parts, to show how the impact must show a significant difference from the whole within the sum of the parts and vice versa.

How then does research discuss the issues through public policy and research, what ambiguity, foci, and existing issues exist in research methodologies and, statistics and models and the data information from the economist, and sociologist? This will be discussed further in the lit review of the methods section. The critical issue and concern to keep in mind are data changes; organizations focus on the several related or unrelated social issues but use the same data. So, the relationship between big data and aggregate research is necessary. It can change or effect program implementation and measurable outcomes. In the case with foster youth this study is taking parts of poverty and affect the whole of foster care.

Understanding, first; the position of monetary wealth, poverty gaps, thresholds, and the material wealth of youth aging out of the foster care system. Moreover, what will change and encourage the community through programming to get and keep monetary and material wealth? The achieved goal with collecting stratified research within the target population of foster youth, in the system and exiting out; against the larger population of absolute poverty and the relative support. Making a difference and

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preventing generational poverty considering social change agents like the 'The California Fostering Connections to Success Act signed into law September 30, 2010, through Assembly Bill (AB) 12 and entered into force January 1, 2012" Department of Social Services, (2016).

Studies depend greatly upon using the proper variables, especially when studying dynamic environments and ambiguities in classifying a type of variable Statistics (2016) states " How we categorize variables is somewhat of a choice. While we categorize gender as a dichotomous variable (you are either male or female) social scientist may not agree with this arguing that gender is a more complex variable involving more than two distinctions, but including measurement level like genderqueer, intersex, and transgender. At the same time, some researchers would argue that a Likert scale, seen with seven values, should be treated a continuous variable" (Statistics webpage). How does the system address this within research using the data collected to improve, write or change policy for foster youth? This missing data within the system of foster youth and poverty for future literature.

In conclusion, to focus attention in the ending childhood deprivation through means-tested programs, would improve or change the lives of the children by giving a means-based savings plan on a stochastic measure. By investing from existing funding from the system a percentage that will provide to the child at the time of aging out to begin a new life, what I have termed the "Pipeline to Good Citizenship"(2016) Giving the minor things needed to survive and begin a new in life. Youth aging out of the system will have an economic leverage as a startup opportunity. The implementation; this

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program will work with an administrative labyrinth of services having an ongoing impact for generations.

Will public policy for social programs have a significant difference?

Alternatively, can points of analyses be measured and satisfied across disciplines where conceptual error for economic morality communicates too statistical and 0 multiple level audiences; where samples are taken from dynamic environments that produce aggregated data? (Board of Governors of the Federal Reserve System 2016)

A significant difference can be reached where the uncertainty of noise and risk and origin of data association or correspondence uncertainty of as well as value, is the critical area of measures, can be done by transformative, cooperative and action evidence research is conducted specifically language in the agreement, coefficient correlations, and multi-streams analysis.

Currently, our federal government provides the resources to ensure that women and children living in poverty aided with means tested or welfare programs. However, these programs do not end poverty or the interference of the states into a home due to poverty. This causes a series of problems for women and children living in poverty. The first is poverty becomes generational due to the families' involvement with the system. Next social service is a field that deals with demographics, which correlated via the states and provision via the federal government. Based on the needs of the most deprived community in the very street and then household, the federal government gives states subsidies, vouchers, and grants. This aid is based on economic thresholds, levels, and absolute and relative poverty gaps. This does nothing to move a family from poverty,

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and only perpetuates poverty and systemic involvement. The idea of the family savings and wealth is not a concept; deprivation is set in, and ownership has been capped at a motor vehicle. This is the service sector normal advisement, never introducing a plan ending generational poverty.

What does this have to do with the foster care system and youth aging out of the system? There is not much research done on generational placement. However, it is the reality of many households living in poverty. The system takes one detrimental circumstance and then sets in motion a plan for a downward spiral. Where there is poverty there is managed services, and the street level bureaucrat finds the have and have not is a power struggle.

Anyone that has had an experience with receiving welfare understands that the system has the power. To still be getting help, the receiver must relinquish that control, and this includes the very personal stability of the home to where you live and go. In this study, I have labeled this deprivation, quality of life and social inclusion.

This can be proven by the means-tested programs for in forms of legislation that are to help those living in poverty, in this case, youth in the foster care system. The following sections will introduce policies and laws. The purpose of the following sections will be to show where our Federal and the State government has drafted and or passed legislation for the health safety and wellbeing of children in foster care. My research will speak to these specific areas and why there is an unmanageable percentage of youth in our system aging out with no higher achievement, life skills plans, and social security savings, youth social service laws, legislative bills, and regulations. An analysis of each

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area and will show where mixed methods approach and a multi streams analysis of stochastic dispersion from aggregate material can produce greater outcomes for balanced managed systems to discuss the ambiguity across states.

It is important to understand the complete process of the drafting and passing legislation. A mixed method multi streams analysis gives a greater understanding of the social and the political aspects of policy; it gives the economic and financial process of drafting. The transformative inquiry or story driven behind the numerical value of social change, is public policy, and mixed methods approach to answer the questions of the why a multi-stream analysis is necessary to understand the economics in policy, management, and program success. Now there is a lot of data missing that speaks to the successful lives of youth aging out of the foster-care system. Using a cause and the affect, I will give a forecasted analysis that will introduce a discussion on the supply and the demand vs., input, and output.

An integrative research design; on social policy, social equity, and the social contract, within complex adaptive systems and sustainability could remedy this problem (Johnson, G.R. 2011). Also the lack of information yet the magnitude of concern regarding poverty and social equity, from mixed methods/multilevel approach to conducting research is a paradigm relativism used to uncover the known and unknown, through the process within the construct of experiential phases of, as stated by Bergman, M.M (2008) "complex messy, compromise-laden research" (p. 14) in, of, or between social theories managing the complexity of states so to exist uniformity for the purpose of



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error? Policies are the control agents that influence program implementation, facilitation, and the outcomes. To understand the foci and ambiguity within social constructionism theory one must understand the theoretical approach used to develop to build on grounded theory. Grounded theory in foster youth aging out of the system based on multi-streams analysis, perpetuated equilibrium theory, and the diffusion of the innovation can be driven by working policies. Policies that give evidence-based research outcomes and supported by aggregate agreement analysis.

The population growth from the foster care system is a discussion yet had. An economic analysis of those aging out of the foster care system, will find better targets, and produce what is felt will be better outcomes. Having a value to work from for future aging out populations, can see improvements from supported stochastic dispersion within goals. Additionally, Underwood, D. Hackney, D. and Friesner, D., (2015) "Exogenous economic shocks" (abs, 2015) should apply econometrics found in transient populations to understand how environments impact policy. Policies are supported financially but without the correct data and information or missing data, we will find that it is almost impossible to prove a well-balanced and managed cost-effective measure to supply and demand, cause and effect of input and output return needed for successful economic analysis.

Therefore, the outcomes through evidenced based policy must show the ability to understand the dual ecosystem both economic and the social. In other words, population

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growth for youth aging out of the foster care system must be created with a mathematical theory such as Fibonacci and the queuing process; must be developed within the policy process and future analysis and research. (Ranga and Etzkowitz, 2013) The failure of non-existing data makes for ambiguity in policy and weak program outcomes. For this reason, a policy analysis for youth aging out the foster care system should be multi-streams.

Finally, youth enduring the foster care system will experience points of the environmental noise that can be managed for the sake of the long-term outcomes. However, we have yet to see research that provides that data and information. Generational foster care is an issue; this is a fact, due to current legislation passed in our 114 Congress to support the nontraditional family environment. Even still we have failed to see where deprivation, and social inclusion and life satisfaction on a national level has had a positively managed outcome in policy that speaks to complete ecosystem; that will allow for systemic growth that will speak to social support entering and aging out of the foster care system.

This is clear in the Congressional reports that discuss programs for low-income and poverty. For example, the Congressional Budget Office 2013 and the Board of Governors Federal Reserve's System gives information discussing the financial operations of the United States Reserve Banks This review discusses the wellbeing of those receiving aid from means-tested programs that fill the relative poverty Gap vs., absolute earnings: Means-Tested Health Care Programs, Means-Tested Cash Assistance

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Programs, Tax Credits and Means Tested Nutrition, Housing, and Education Programs.

Youth is the number one population that affects the poverty. With population growth we find the gap continues and means-tested program expenses grow with it.

Congressional Budget Office reports, in 40 years from 1972- 2011 a population growth of “50 percent” (web page) of people living in poverty receiving benefits. What population of those adults, are from the targeted foster youth system is a statically significant measure of unmanaged services (Congressional Budget Office 2013) If we are to discuss in Congressional briefings the issue of poverty and foster youth; we will find population growth within the service sector does not meet the supply and demand of youth aging out of the system. This past year 2016 new laws have been passed to discuss housing and health care, but we have yet to see where the ability to fill the poverty gap within the generation is met via less relative costs and the absolute earnings. (Beltran, D. O., Draper, D., 2016) Therefore, if these programs are based on earnings, it will affect negative financial shocks for a population that continues to grow. The new policy of stochastic measures in a means-tested program has not made an impact. Opportunity and open venues of the new policy; if we are to look at the growth of young people that has aged out the system in the past 40 years, we will find that the homeless population and those receiving Medicare will be statically unbalanced.

The application of social constructionism with new method shows how an intercorrelation agreement analysis conducted in noise and exogenous economic shocks research, using a multi streams process; results in thriving ecosystems and will evolve

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productive relationships. Moreover, the innovative communities of data analysis t-test, quasi-experiments study that will discuss wellbeing of CBO's (2013) report discussing programs and "population growth, economic downturns, or policy changes" (p.6) that discuss the issues of life satisfaction in: quality of life, deprivation, and social inclusion. Will an aim that considers their personal self-worth via early monetary exposure encourage better academic and the social behaviors? A meaningful change in the wellbeing of the youth aging out the foster care system in the 20 years can only be met when missing data, bias, ambiguity, and social measures are considered in the reliable reports that push agendas the greater good, with a means that will encourage a social contract that will change the lives of poverty in the foster youth. Children's Bureau definition of aging out and support services does not show any relevant changes in foster children's lives adding the reunification housing bill and education bills to the Social Security Act will give the evidence-based research, qualitative narratives. The story told will juxtapose the current unmanageable percentages and numbers aging out of the foster-care system. Braking grounds for new theory supported by aggregate agreement analysis and hypothetical Inquiry.

However, we still find a gap, a gap that must be filled not with social program, for wealth to become efficient in the lives of children sources and resources that most impact their lives. Moreover, that begins with those that have hands-on involvement the Street Level Bureaucrat. Research shows that we do not change the lives of children because we do not push our programs towards outcomes of success. Data driven on agendas and ideas and not evidence based research and the facts. We use data to justify outcomes

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rather than implement new strategies. Within the past 20 years, we have defined and redefined the quality of life around social programs. Our nation has driven education as an alternative rather than a priority. We have failed to update systems of economic stability but continue to push academic research on poverty. As the evolutions of society continue new systems must grow within it, we have failed many children and perpetuated the lifespan of social nuances by eliminating and the false targeting the gaps of poverty.

For example, as the number of young people in the system continues to increase, the system continues to expand, leaving microscopic room for systemic leverage in services. As the literature review shows there is no measured statistics for the past 40 years of the successful legislation and program outcomes, yet continue to use the same-targeted populations, samples, and methodologies. Poverty as the melting pot for social programs needs new agendas, alternatives, and opportunities that meet the needs of the people. In the past 10 years policies on poverty and youth aging out of the system are just becoming a priority. As change agents, we need to enforce innovative programs through on the ground organizational development and the management strategies that can affect youth aging out the system. Thus, in the greatest ability creating new manageable poverty gaps that produce good citizens and not dependents of social welfare. The legislation is there; the resources are there but across the nation, there is the inconsistency in systemic success, and the population keeps growing.

Social change in research is a defined theme of life satisfaction, research outcomes for social change can best be measured by the dependent variables: quality of life, social inclusion, and deprivation also independent variables: wealth and relative

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wealth. Youth exiting from the foster care system will need most of all personal finances. Now, youth are aging out of the system with un-resourced housing and limited educational programming and no opportunity of monetary savings. Where do we see this generation in the next 40 years? Will employment and Social Security be an issue by 2051[7]? The examination of theory and method today will and should supply the change in life satisfaction tomorrow. Implications for possible social change tools in the mechanics of social change in poverty, seeking virtue of agency, implementing education and workforce development within the Foster Care Social Security Act as a measurement strategy during the war on poverty, social issues to the following would affect low-income measured outcomes in higher education, higher waged employment resulting in the long term financial habits for retirement and investments (Hill, M. and Algate, J. 1996).

Families entering in the system due to economic hardships, intervention, and prevention to ending generational poverty. Design a plan to find implementation gaps that will change the financial lives of people. A compare and contrast in the triple helix theory, education, economics, and government; program measures and outcomes; especially in complex adaptive system with stakeholders: (Viale R., and Pozzali A. 2010); economic and policy think tanks, organizations and government offices such as: Association for Institutional Research (AIR) 2016; United States Ways and Means 2013-2016; United States Social Security Act Foster Care Bill Title IV 2016; United States Department of Labor 2016; United States Federal Reserve 2016; United States Chamber of Commerce 2016; United States Black Chamber of Commerce 2016; Federal Reserve

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System FRB/US Model 2016) working with these entities in the triple helix will continue to impact change. The future goal of this project is to begin economic analysis in service resource outcomes. Social change data analysis is crucial to funding and resources on the federal, state, and local levels that follow with new legislative bills/amendments, to the Social Security Act Title IV Foster Care Improvement. The impact of the Grounded theory in mixed methods study using evidenced based research speaks directly to this target population, as one poverty strategy to ending generational deprivation (foster care).

Mixed method chapter will begin first with understanding big data into aggregated data. Second the study will discuss the mixed methods approach in my study, qualitative and quantitative. The study will show how public policy can speak to data through statistical and mathematical analysis data and information that the written policy has a value to be measured as well. The study draws on a theoretical background and the purpose of the study on foster youth aging out of the foster care system.

Next, the goals are to show how stochastic dispersion is for young people in the foster care system aging out. Using a mixed method small studies process of data collection and the analysis each study final analysis will come directly from credited sources and will be followed up with any protocol, ethics, and procedures to use the system for data collection (Association for Institutional Research ethics online seminar, department of social services standards and training 2016). Additionally, the data and information that will come from Federal, State Government and local government and agencies will be given the same respect as the research institutions. In cases where there

is missing data, it will be noted for further studies. (Unrau, A. Y. Font, A. S. Rawls, G., 2011); (Merdigner, M.J. Hines, M. A. Osterling, L. K., and Wyatt, 2011).

The method section will speak to the main hypothesis, research and questions asked in this chapter as well as throughout the chapter of the literature review. Most are important to understand what policy process models and theory are used for implementation from the federal government's role, state, local government agencies. This public policy model presented in this review is relevant to social change. The next paragraph that will speak to amendments, implementation, and changes needed in the Social Security Title IV Foster Care Bill obstacles to fostering success in discussing and measuring social change. First, foster youth do not have a stable environment to consider for family wealth therefore measuring anything will be difficult other than personal belongings in this case computers and phones a vehicle.

However, if given individualized savings to create some statistical measurements; be to create a research environment from the dynamic population. Second address current studies that discuss matters of the foster youth, legislation and the social agendas that target the population. The end goal will be to discuss statistical significance of these youth while in the system, to exit with an added opportunity to meet the demands of society: supply, demand market exercising wealth and ending deprivation while obtaining social inclusion through educational attainments, not incarceration and quality of the life through housing and not homelessness.



### Chapter 3: Research Method

## **Historical Lens of Social Construction in**

### **Research and the Methodology**

#### **Introduction**

Through the historical lens of research and the method, in this chapter social construction theory will examine, explain, and explore method through research ingenuity and innovation. The Stanford University Triple Helix Research Group Ranga & Etzkowitz (2013) states “Within the concept of the Triple Helix Innovation” (p. 123), innovation presents joint theory; Complex Adaptive Social Constructionism; Public Administration and Administrative Management research on the aggregate level. How a joint theory: percentage population, analysis bias, error, or missing data, show social construction theory alone from existing big data via local programming and academic measures in research.

The purpose of this research will explain public policy from joint Complex Adaptive Social Construction; Public Administration, Administrative Management theory, examines how purpose becomes population; significance becomes sampling and the framework as analysis produces outcomes of job creation, social security, and a means for personal savings. And explain where the single analysis and social construction theory creates issues in the research outcomes and fails to have a positive impact.

This chapter examines program models’ outcome to advancement of minority women research in scientific measures of poverty and deprivation through evidence-based policy on African American women who age from the foster care system. To find a

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balance between the poverty gap amongst African American foster youth aged out the system in deprivation titled; Foster Youth Savings Model bridging the discussion of policy changes for life satisfaction. This focus on the deprivation of finances while exiting the system and denial while aging into retirement. The analysis; Static Means Tested Tax Program, the goal, the next four years and continues for generations to come.

Also, to present issues or concerns in the area where the lack of knowledge could present bias and where information gives an opportunity. How existing social equity, life satisfaction, valued citizenship and quality of life is difficult in dynamic environments for minority women who have exited transient environments. Experiencing poverty and deprivation, which is the cause or effect for the failure to transition into society on a successful level (Creswell, J. W., & Plano Clark, V. L. (2011).

Thus, to explore a method that will use the data from bias, error, and missing data to create a data analysis opportunity for African American who age out of the foster care system to job security and personal wealth showing and questioning; What should research speak to in a cluster/sequencing process and analyses in agreement outcomes, to affect the population of minority women who have experienced the foster care system. to job security and financial sustainability; show triangulation validity agreement, and multi streams data measures of coefficients correlations against the current poverty population of minority woman; research aging out of the foster care system to current job security and personal wealth? Using the mixed methods multi-level 2tailed t-test analysis, to argue the impact of federal means-tested programs where stochastic dispersion and agreement are not met, yet are open ended within policy goals (education,

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homeownership; savings) which do not fulfill managed outcomes. The question becomes why? For this same reason, using existing data from current research from academia, government, local agencies, and search engines from studies in social services, health, education, and finance (absolute and relative wealth).

There is a need to influence policy within the context of the author, and the ability of policy to tell the story of the purpose or need from a mixed method. Aggregate outcomes on minority women and poverty, what is known in research as the inside/outside approach depending on the position of the stakeholder, we find reasoning behind work, inductive, deductive, and as introduced by Dunn (2012) abductive thinking. For this to happen, know what managed outcomes where the sub-theory or theme can be approached; policy and agreement (Punctuated Equilibrium Theory) multi-streams for budgeting (Multi Streams Analysis and Economic Theory) and coefficient correlation in social work (Diffusion of Innovation). Grounded theory, in this case, will speak to the narratives of existing studies.

The template will only serve as an open interview session in research models; the same will apply for the career and labor analyses, educational, and means-tested services against income and savings. The information will come from primary sources: articles, annual federal public reports from bureaus, government agencies and econometrics ventures that offered information for program and policy improvements as well will give a history of past statistical analysis that bias from aggregate research outcomes gives incorrect measures and illegitimate results.

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So, the research will use government data, the coefficient will come from existing Government thematic resources and aggregate academic and local pilot programs. (Brayton, F., Laubach, T., Reifschneider, D. (2014) Used in a managed percentage, inside the field of foster care that moves toward stochastic measures of piloted or targets issues of validity, reliability, bias, and error in past study variables crucial to doing research. Especially sociology research with a quantitative method. (Backman, O., and Edling, E. (2016); Olusegun, A.A., Muktar, A., Kabiari, K. N., Adamu, I. A., Abubakar, U.A. (2015) they dictate the outcome by giving the data necessary for the analysis. But what happens when the variables are missing, show bias, error, not reliable or valid? How does this impact or affect life satisfaction outcomes for aged out African American youth in comparison to their peers?

For example research conducted by Hudson, E. (2013) focus on youth life satisfaction and wealth, they found a relationship between absolute wealth and life satisfaction. The control group, and the study group had access to a web-based survey and the questionnaire that ask them questions about social inclusion. This includes self-acceptance from family, peers, employers, and absent biological family members. Additionally, taken from Hudson, E. (2013) study;" During the past 12 months, how many times did you travel (Not at all [0] once [1]; Twice [2]; More than twice [3].) "How many computers does your family own? (None [0]; One [1]; Two [2]; More than two [3].); do you have your own bedroom for yourself (No [0]; Yes [1].); does your family own a car, van or truck (No [0]; Yes [1]; Two or more [2].)" (P41).

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Next area deprivation would be answered with ownership of computers, phones or another car and savings account. The control did not receive either or but had the opportunity to express openly any issues or concerns quality of the life which focused on college preparation, employment, and family. Each answer was answered with weak, medium, or good.

Is deprivation, tangible, non-tangible wealth (absolute and relative wealth) the data from the United States deprivation index of quasi-public goods (Federal Reserve Data Systems, (2016) These specified variables from the study shows need for research, and statistical analysis for this population. Current study targets and study samples are youth with mental illnesses, homelessness and incarcerated. But lack a ratio of studies and un- documented research on services around careers around higher achievement home ownership and financial growth and success. This research only exist in comparison to their peers. (United States Department of Health and Human Services 2016). This produces unbalanced outcomes and gaps in evidence-based research and unbalanced bias, error in policies and validity reliability in method.

The goal or aim of joint theory and mixed method argues significant difference in youth deprivation, social inclusion, and quality of life that will look at African American women who have aged out of the system managed percentages of financial stability. (Department of Labor Pipeline to Good Citizenship 2016)

**Research Strategy Significance Government Policy Program Agreement and  
Validity and Reliability**

With large systems in our federal and state government, medium systems education/ research think tanks and small systems local government, communities and the non-for-profit sector working together to balance economic deprivation, social equality and quality of life can be realized in the war on poverty and becomes realistic.

Government is the catalyst in the development of big data (Seinfeld, K. K. 2016) whole numbers there must be coefficient number (variables) to any statistical analyses. In this case, the data offered by the government acts as the factors used in the equations for what is called mathematical models. Exponents in the mathematical factor for state and local government research for example; integers will be showed as educational research this math is used to generate numbers in small scale research; however, if we do not use this process in our studies then we do not give a valid analysis.

In chapter 2, two theories are presented to support the process of foster kids aging out; Fibonacci and queuing theory. Using the two theories to explain the transitions and the process of supply and demand of services for youth entering the system and exiting the system; as stated, research does not give positive statistical outcomes for this population it is worse for African American females.

The most significant concern in the lack of positively managed outcomes for youth aging out of the system across the board are within failed circumstances. Investigating the issue of stochastic dispersion through programming for sparse numbers in higher education, savings, and homelessness, and give a solution. When the bias,

error, or missing data continues go unsolved; that is to use a macro model to obtain a financial balance and a managed outcome within dynamic environments. A model that can speak to uncertainty, and growth within its structure that Klein, R. L. (ND) titles a model as a Simplification of Reality.

With a policy model analysis goal that moves toward real-life experiences with the understanding of philosophy, that will offer stake holders from many venues a model to create relative but absolute outcome in the face of deprivation. In this case, use what is given to the states from the federal government and apply it to an absolute opportunity for taxable savings which would call Foster Care Financial Model within the Social Security Title IV Foster Care Bill or private investment. Klein, R.L. (ND) said "All policies have qualitative dimensions, and it is not adequate to argue for or against them on purely qualitative grounds" ... Additionally, "if policies that are analyzed through model comparisons are not adopted, it is difficult to determine if the analysis is correct because there is no observational material" (p. 15).

Also, this model can be applied to an aggregate research study where stochastic dispersion is met in the shock absorbed economic gaps and research across disciplines. Where the agreement, multi-streams, correlations, are either within an exogenous (targets and instruments); endogenous variables, target variables, or device variables in a study and parameter changes. (Klein, L.R., ND) In this piece of policy all youth entering and exiting, the system will have a financial savings advantage, therefore, ending aging out deprivation.

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Forecast example of Foster Care Savings Model. Figures 15, 16, and 17 (found in the tables) show the process of the entering the system, the branches represent the child in the system or social inclusion. The Stem (not shown) represent the quality of the life for the child. The leaf represents the child exiting the system or deprivation. For this model, we will show how at different time duration of stay in foster care which according to Kronhfwinkel, A. (2015) stated "Survival Analysis (also know as the event history) is a statistical method used, similar to standard multiple regression techniques...QCA approach used a notational system known as Boolean Algebra (based on logical operations such as And or NOT to examine how specific combination of attributes come together to create outcomes" (p.141). Krohwinkel, A. (2015) also says "Qualitative Comparative Analysis Fibonacci the advantages of linear regression which serves to single out explanatory variables that are significantly correlated to delay across the entire sample...which analyses cases according to various combinations of the variables that are relevant to discussing alternative paths to the reasons for delay" (p. 336).

This is where the Fibonacci theory Supply and Demand for Eco Growth ( Parveen. N. (ND); Reich, D. (ND) generational population growth is foreseen. The diagrams presented in the appendix explain how to use the Fibonacci theory to generate positive outcomes and foster change in the lives of children The seeds are planted in the environment, some systems are not as nourishing as others, tainted water and the bad soil blocks growth. Taking the systemic approach to change in unstable environments the tree as an example of the growth and systemic change and the impact of stochastic dispersion represented in figure 15 technology represented in the figure 16



economic and genealogy represented in the figure 17. (Derui, D., Guoliang, W., Zidong, W., & Alsaadi, F. E. (2016) Esfahani, P. M., Chatterjee, D., & Lygeros, J. (2016); Mahnke, R. Koupzs, J.K. & Lubashevskii, I. A. (2009); Applebaum, D. (2004); Auray, S., Eyquem, A., & Houneau-Sion, (2014); Makov 2014

The question ask how much of an impact does aggregate research have on such a dynamic environment with hidden variables? Can, would utilizing Dr. Burkholders the sum greater than the whole analysis show how statistical validity in this is useless if given no difference hypothesis and violated assumptions when 30% of the probability on outcomes from a priori type 1 error and does not represent whole quotient number but from stratified targeted outcomes.

Mixed Methods agreement triangulation analysis within dynamic environments, qualitative inductive evidence based and adductive quantitative statistical analysis (High-Jew, S. 2015) the study will identify literature that speak to limitations in qualitative and quantitative data from complex adaptive systems (Gilstrap, D. 2013) and the lack of visibility in the “science community and public policy settings. (p. 53) Prewitt, K. & Hauser, R. (2013) stated "Where an error is not accounted for" (p.55).

### **Complex Adaptive Social Constructionism Administrative Management Using Mixed Method Qualitative and Quantitative Analysis**

#### ***Quantitative Data Analysis***

The quantitative analysis plan will be to simplify complexity and chaos as explained in complex adaptive systems. This information will come from several sources of information: Children’s Bureau (state statistics), National Child Welfare Resource

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Center for Organizational Improvement, and the Child Welfare Information System (Interagency and Cross System Collaboration). Uncovering systemic data and information for explanation is the goal.

The ability to explain complex adaptive system allows organizations to implement programs with direction and strength (Educational Psychology 2015), creating manageable populations where the street level bureaucrat has direct contact. The instruments used will be adopted, adapted, and developed. I only plan to use adopted research as the foundation in the study analysis yet gives an understanding for further research using other instruments for more examples. Using adopted instruments to answer research hypothesis; do to the complexity of the study method (mixed method) narrowing data to one form will be more manageable in content validity, and parallel forms of reliability and accounting for data collection, error, and instrument construct. To do so, use technology based tools for statistical and percentage outcomes.

Researchers, methodologist, and statisticians such as (Creswell, J. W., 2013 & Plano Clark, V. L. (2011); Teddlie, C., & Tashakkori, A. (2009); Educational Psychology, (2015) Taylor Powell, E. (ND) gives the reason behind conducting and analyzing quantitative data, the researchers' stated "descriptive statistics because they help to describe raw data, these methods include numerical counts or frequencies, percentages, measures of central tendency (mean, mode, median) and the measure of variability (range, standard deviation, and variance) statistical significance, inferential or inductive statistics" (footnote p.1). In using the technology, to do a qual+ quant+ qual coding system which will allow to pull themes and concepts; missions and goals from federal

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and state level of human services for correlation. (Federal register 2015) Again the goal of the analysis is to fill in foci and to manage error in the data, supporting evidence-based outcomes in public policy. The final phase of the qual (quant) + analysis will be to find a significant difference in public policy. (Weaver-Hightower, M. B. 2014)

### ***Qualitative Analysis Plan***

Using innovative research models of efficient, effective, stochastic measures within architected design, this will dissolve issues of the secondary statistical analysis. I will begin with a qualitative strategy by collecting themes from across three fields, social policy, public policy, and economic policy. I will then code each thematic phase using JMP Statistics and Analysis (I will have kept a coding book throughout the collection process).

The goal is to crossfire reference information of quantitating data to the survey/questionnaire of open-ended questions, to conduct an observational analysis. I will then do correlations analysis with the free themes to test of the relative frequency of model values of class. In this case, my outcome is to understand social policy to law and order and economic policy. Therefore, the distribution of the variable will be dispersion here is where delimitation's and limitations in designs and statistics were considered.

The next phase will find the impact on the lives of children in the foster care system, homelessness and the department of the juvenile justice using multitype sampling and theory sampling (sociology and econometric) to account for one area of the method or error and bias in public policy research. The outcome here is too descriptive analysis for a statistical the significance of policy and the service sector outcomes.

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Further, this statistical test will be used to explain a stochastic measurement of error, bias from the regression analysis. Using themes in the project will be the source of the information used to create the database needed for my qualitative analysis, (a dummy code will be considered for missing information). I have experience with hand coding, but this project will be using technology to code and document themes. There are several areas of bias that must be discussed in my project especially because I am using a mixed method. Teddlie, C., & Tashakkori, A. (2009); Plano Clark, V. L., & Creswell, J. W. (2008).

For this reason, to discuss the area of bias/validity as Creswell, J. W., & Plano Clark, V. L. (2011) said, “Introducing potential bias through one data collection or the other data collection (adding qualitative data into a trial when a trial is going on)” ...Use a separate data collection, data at the end of experiment” (p. 240) a technique that will merge data or connect data. Apply typologies of the mixed methods data analysis, but implement the technique through a variable and the social indicator supply demand. Or add and extraction of current data from existing tables that address both service use and the support vs, service interference by demand poverty and the social indicators in the research and the study analyses outcomes via variable analyses and the social program themes (United States Ways and Means 2012-2013).

To discuss the issue of bias of technology measurements, stochastic measurements Cobb, L. (1998) for uncertainty and dispersion (regression analysis) University of the California (2015) UCLA will be used to discuss issues of the bias which is specifically used during analysis of social science research measurements Berkeley

(2015); Princeton, (2015).

To do so, a fully intergraded process where information and data sets, using typologies and techniques in the overall strategy during the data collection process, simultaneously and iteratively the qualitative research. Chapter 7 *Analyzing and Interpreting Data in Mixed Methods Research*, Creswell, J. W., & Plano Clark, V. L., (2011) stated “Transcribe, read data, develop qualitative code book, code labels, categories and themes (software program), represent findings in the discussion of themes or categories, assess how questions are answered compare findings with alternative reflection personal meaning and state new questions based on new findings” (ch.7).

There is one question that may or may not draw skepticism and questioning to my work. How well can threat be discussed in a single researcher study and what measures other than bias and threat are used to balance scientific error (Creswell, J. W., & Plano Clark, V. L., 2011; Plano Clark, V. L., & Creswell, J. W., 2008; Teddlie, C., & Tashakkori, A., 2009). Adopted information for this reason thematic process will have much of the work in place, using the adopted process to assess for "measuring agreement" Bland, J.M., and Altman, D.G. (ND) between Kass, R.E. (2011) real world, and the theory accounting for participation slack.

For this reason, using a statistical inferential model employed by Kass, R.E. (2011) who said, “There is a hypothetical link between data and statistical models, but here the data are connected more specifically to their representation and random variables” (p.6). See appendix

### **Hypothesis and Research Question(s)**

#### **Null Hypothesis (1): Diffusion Of innovation/Technology**

Can cross firing systems improve service barriers | support human error impact  
measure correlation poverty and Social Security via outcome of services received?

My research will show that no significant difference is being met.

RQ (1) Will Children living in poverty and the outcome comparison of the services  
received from transformed legislation, and policies have a significant difference on  
poverty measures?

Research will show the greatest impact can come from large systems only by ending  
biases and limitations and my research will show that new policy can help agents in the  
making change if applied through appreciative inquiry

#### **Null Hypothesis (2): Multi Streams Analysis**

New method in public policy researches with impact variables and the indicators  
outcomes that will improve the quality life?

RQ (1) Can manageable percentages in social issues be achieved using new models and  
structures; state improves on program outcomes by understanding issues in the pros and  
cons of an applied setting; there will be a large significant difference in the education  
results with extended services

RQ (4) there will be a larger significant difference in the higher education outcomes with  
the extended services to affect qualified long-term salaries. The success of children

hinged upon the service outcomes from local agencies. Thus, ending generational poverty is a social contract and the managed care in services.

Applied mixed methods approach given technology support will have a significant outcome on knowing where to apply service resources based on the needs assessment

### **Null Hypothesis (3): Punctuated Equilibrium/Means Tested Programs**

Within Econometrics Theory a technical Securities Savings plan will decrease deprivation and of the youth aging out.

RQ (1) there will be a significant difference in social equity that would help and be efficient enough to support monetary programs where the knowledge of themes and concepts such as ‘capability’ and “multidimensional poverty concept relevant for assessing deprivation” Gumaraes D., Ribeiro A. P. and Silva, S. (2012 para 1), make a significant difference in program design models?

**Methodology.** A mix methods/multi-metho approach to conducting the research "This qualitative study relies upon individual interviews, observation of focus group discussions, and collection of information in already existing produced documents." (P. 360) the quantitative research methods intend to manipulate theoretical premises to show how mathematical, economic, and statistical analysis methods in quantitative approach for social inquiry can have an impact during financial downturns and that research (theory, design, and method) must stand for that. (Sabatier, P.A., & Weible, C, M., (2014 p.42); East, J. F. Roll, S.J. (2015).

Using a Mixed Methods QUAL (quant) fully integrated simultaneous or

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concurrent design. The study will use forms of sampling: the first QUAL non-probability (convenience, purposive, quota), and second is quant, probability (cluster, stratified and systemic sampling). For consideration of targets an additive process analysis will be used within my sample population of foster care children and homeless youth in all the maturational phase. All ethical considerations will be taken and the proper process through Walden University internal review boards. Using a fully integrated mixed method transformative design and solid framework

with a QUAL (quant) analyses, and interpretation of the collected data. The decisions will be drawn around the labels, commonness, and inclusion. Taken from the design models in Creswell, J. W. (2011) p. 173. I will:

1. Find the sites to be studied
2. Name the participants for the study
3. Note the sample size
4. Show the purpose sampling strategy
5. Discuss recruitment strategies for participants

The following sequencing order of triangulation done simultaneously where influencing results will help in innovative design instruments.

The study will use several federal, state, local and community, sites to pull existing quantitative and qualitative data. Ethical issues to use existing documentation to develop themes from existing reports and added qualitative data such as the program designs/structures. closed-ended questioning. National Institutes of Health (2016)



[www.oir.nih.gov](http://www.oir.nih.gov) 2016

Creswell, J.W. (2011) gives several diagrams and maps to implementing the proper steps in a mixed method research report. The reason for using a triangular order that adds QUAL is to improve on evidence-based outcomes through policy and the reasons for investigation staging.

Creswell (p.192) gives the following grounds aligned research that will affect social change significance difference use in a fully-integrated model, where stochastic dispersion is shown against intraclass correlation coefficient (ICC) Lin, using quasi or t-test analysis only using demographics, or the lack of variable measurements. The goal is to show how theme, variables, and measurements, must have a significant impact for there to be social change. Now, there is no equality in past studies to show any significance. (L, Hedayat.A. S., and Wu., W., 2012) of multilevel mixed method sampling in a fully integrated mixed design for complex adaptive systems using an appreciative inquiry model. Each level will follow 5 levels of analysis and 8 sampling techniques (Teddlie, C., & Tashakkori, A. (2009) : The following is a flow chart that will discuss the issues within a fully integrated mixed method data collection process in a multilevel structure.

### ***Data Collection***

A data warehouse will store all material: journals, eBooks, and data resources. I will use an organizational system tools in an internet file cabinet (cloud). All sources of web storage clouds, external storage flash drives, and more technology at least three other systems. Finally, the earliest version of Microsoft-Apple with editing software to edit all graphs and spreadsheets and do final revisions.

The study will include an annotated bibliography of themes, data, and information. Each section will be collected under separate data titles and codes. Information will use a crossfire technique which will later be used in the analysis section. Both descriptive and interpretative data collection to examine relationships among variables. Using both will allow for validity and dependability within the study environments. The dynamic environment in which the study is being conducted is external to any specified office or building. environment acts as a catalyst to the producing the mixture of as said by Tashakkori, A., Teddlie C., (2003) "The standardized conformity and less structured exploratory observations alternating between participatory and non-participatory nuclear rules" (p.299).

The overall study will mirror that of researcher Crine, S.T., et al. (2016) who discussed the issue of the validity and sampling with between subject multivariate designs. Note: BSUD=Between-Subjects Univariate Design; BSMD=Between-Subjects Multivariate Design; RMD=Repeated Measures Design; CD=Covariance Design. To reach objective a balanced total in existing data outcome agreement policy in education and deprivation, multi-streams analysis; resources funding, correlation from social work populations, and target outcomes from foster care: graduation, enrollment, and employment to that of minority women receiving Social Security to Social Security Disability. The goal is to explain why a short and long term financial plan is important for youth aging out of the system from a population with little education and hard to employ. This can be success if a mixed method analysis missing big data in error, and bias in studies. And assess and understand the indicators of deprivation experienced by

minority women from the system such as unbalanced measures in home ownership, savings, and retirement.

***The Study***

Target Population:

African American Females 18 to 65 aged out of the foster care system

Setting and participants:

Wisconsin, Philadelphia, Georgia, New York; poverty counties (CDFI)

Dependent Variables:

Poverty, Equity, Equality, Means-Tested Programming, and Social Services

Independent Variables:

Absolute Wealth and Relative Wealth (Hudson, E. (2013))

Indicators: Life Satisfaction (Hudson, E. 2013; Social Security Bureau) Employment (Labor Department); Quality of life, social inclusion Deprivation, Low-income, Middle Class and Upper Class and United States Chamber of Commerce (2016)

***Themes:***

Educational Attainment, Employment, Savings and Equity

***Demographics:***

African American females private and government service sector Educational systems and means-tested programs. Modeling sample section from recent work of (Crine, S. T. et al. 2016) in interventions outcomes. Independent and dependent for this study were analyzed using a mathematical model to discuss issues of bias, slack, scope, and missing data and High-Jew, S. (2015) "Theoretical Sampling Section" (p.457)

The study looks at existing data from mandated and unmanaged reporting systems, funding and programming analysis for measurable outcomes of stochastic dispersion. Using studies with a mean statistic of .05, participants are from 275 to 330 study samples in quantitative research. For qualitative 75 to 100 study samples and an unknown number of mixed method studies that are dependent and independent of current policy and laws that may or may not have had an impact on the study samples. (High-Jew, S. 2015)

The study will follow the Children's Bureaus format for collecting data. It will target the three states the study will use California pilot program with Berkley.edu (2013) as a format. The result will be to discuss the states with the highest numbers and the lowest percentile and implement new programming and the economic forecasting Foster Youth Social Security Bill.

Qualitative and quantitative data will be collected on poverty and foster youth aging out of the system from the inner city, suburbs, and rural areas on education employment, homeownership, and savings. Race and gender will be found but will not be the focus of the study. but will not be the focus of the study.

### ***Technology***

The measures using variations of test, at the educational level, "SPSS: Discriminant (doesn't include Roy's greatest root or Pillai-Bbartlett) SAS: Candisc, Discrim (does not include any of the statistical test" or there is no known analysis for this case statistical measurement none" Social Research Methods (2015) Dunn (2012)

"Advanced graphics software for mapping and evaluating; policy arguments that cultivate

thinking skills in areas ranging from qualitative forecasting and statistical analysis to theories of justice" (p. XVII, Dunn 201).

### *Software Systems*

Processing and analysis and data collections will include: IBM Student software latest Version 2017, Cisco Student software latest version 2017 SAS Institute Inc. (2009) "scripting process" which is a technique used using SPSS-Quantitative, NVivo- Qualitative, to analyze means tested program outcomes. PROSUITE – QDA Miner with Word Stat & Simsta mixed methods using Boolean searches to name in percentages search themes, variables and social indicators are used in aggregated studies. JMP Statistics for charts and graphs and interactive material Haul, R. H. and Roussel. L. A (2014) "Ladder of the Abstraction" (p. 24) EViews (2016) Student Version for Economic Forecasting and Microsoft Word Processing latest version 2016

Existing materials will be both qualitative and quantitative data from government, state, and the local community data sources. The goal will be to affect social change for foster youth at the community level. The existing material will be the primary use for analysis. Future research generated surveys will be used to program development and analysis specifically understanding youth incentives for academic and social success Foster Youth Model Savings Program.

### *Conclusion*

systemic equity will evolve within the lives of youth aging out of foster care (Hill, M. and Algate, J. 1996) using a new social constructionism in welfare regulations that influence systemic services, education and job incentives for minority women who exit

the foster care system. Can new social service regulations have a positive impact on minority women job and financial security in the next 40 years? Using new method in public policy, to a significant difference in life satisfaction from deprivation to absolute and relative wealth. Bringing social changes, social inclusion, and quality of; life steps to ending generations of foster care and a strategy to combating poverty, showing the limitation in themes, variables and indicators in poverty, equity agreement analysis and measurements. Social Constructionism: Diffusion of Innovation, Multi Stream Analysis, and Punctuated Equilibrium Theory for public policy specifically economic i.e. and social measures in the Social Security Title IV Bill in theory and practice used for social change? Over the decade's social services has given resources and collaborative opportunities for women, children, and families. The problem, is there has not been a controlled percentage of poverty amongst women and especially children. Working towards positive change in the lives of those living in poverty should be enforced. Active and involved stakeholders create jobs and opportunity around education and skills development. We must enact on policy makers but first ensure that data and information, is adequate to build and craft legislation for social change are issues to be discussed in this study.

With this, in place, many lives will be seen active in their preservation rather than the product of the generational dependency. Public policy is the process of implementing laws that govern the daily activities of society. Then when immeasurable challenges arise the use of policy ensures that structure and foundation are applied. One area we find decision makers concerned in, is poverty and how to change poverty through formed

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and crafted policies that can then be implemented within an agency or office. This is done on the federal, state, local, and community sectors. It is used to push private, public and non-for-profit venues. In the end government policy, overall is the protective covering for social order. A further research suggests a social change is done through emerging method, theory in practice and new policy, in the end, is the solution to managed outcomes.

The transformation innovative means-tested social programs will have a significant impact on generational families' deprivation. Market value social equity and social inclusion can change the quality of life generationally absolute vs. relative wealth. If applied I believe there will be a significant difference with academic community collaborations and managed service outcomes. The continued use of the mixed methods approach in the research will show in states managed measurable outcomes on a national level where Punctuated Equilibrium Theory is visible.

## Chapter 4: Results

**Agreement**

Present your results here. Refer to the [appropriate dissertation checklist](#) for guidance on the content of sections in this chapter.

This is an example of a table in APA style (see Table 1).

Table 1  
*A Sample Table Showing Correct Formatting*

|       | Column A | Column B | Column C | Column D |
|-------|----------|----------|----------|----------|
| Row 1 |          |          |          |          |
| Row 2 |          |          |          |          |
| Row 3 |          |          |          |          |
| Row 4 |          |          |          |          |

*Note.* From “Attitudes Toward Dissertation Editors,” by W. Student, 2008, *Journal of Academic Optimism*, 98, p. 11. Reprinted with permission.

Table 2

*Another Sample Table*

|       | Column A | Column B | Column C |
|-------|----------|----------|----------|
| Row 1 |          |          |          |
| Row 2 |          |          |          |

**Validity and Stochastic Dispersion**



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Chapter 5: Discussion, Conclusions, and Recommendations

**Research Study Significance for Policy Programming**

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Appendix A:

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*Template updated March 2017.*

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 24, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 28, 2019        |
| <b>Tracking No.</b> 1k3-9a33-n831  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0242  
Iowa Department of Human Services

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## Submitter Information

**Name:** Matt Haynes  
**Address:**  
IA, 50319  
**Email:** Mhaynes@dhs.state.ia.us  
**Organization:** Iowa Department of Human Services  
**Government Agency Type:** State

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## General Comment

How the proposed rule impacts work and budgets:

- > The state of Iowa is generally in support of the NPRM
- > The new information is readily available, however much of the new information is not captured in the state SACWIS system at this time
- > Iowa is currently trying to minimize effort modifying current systems, while in process of developing new CCWIS system
- > Iowa would recommend implementation be 2023, which would allow the state to bake the AFCARS changes into the development of the new CCWIS system.
- > Iowa is currently unable to comment on effort/costs at this time, and recommend the timeline allow these changes to be part of the new system which supports Families First, and CCWIS requirements too.

Iowa Department of Human Services



# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 22, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> May 28, 2019        |
| <b>Tracking No.</b> 1k3-9a5s-kqm3  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0243  
Diane Oltarzewski

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## Submitter Information

**Name:** Diane Oltarzewski  
**Address:**  
Belfast, ME,

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## General Comment

See Attached

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## Attachments

Diane Oltarzewski

From: Diane Oltarzewski <dianeolta@gmail.com>  
Sent: Wednesday, May 22, 2019 9:19 PM  
To: ACF CBCComments  
Subject: ACF-2018-0003 / RIN 0970-AC72

Data collection related to informing, supporting, and sustaining the Indian Child Welfare Act should not be rolled back or minimized. It is incumbent on government at every level to ensure that these questions be asked and answered, and that children are not denied their right to grow up within the context and security of their tribal cultures and extended tribal families. I understand that many years and much effort on the part of tribes and child advocacy organizations have gone into the formulation of these final AFCARS regulations, and to suddenly scuttle them is indefensible. The "burden" on state governments is infinitesimal compared with the historic burdens and intergenerational trauma forced upon indigenous people century after century. We have no right in 2019 to oppose what tribes have overwhelmingly defined as in their best interest, and in the best interests of Native children.

Sincerely,  
Diane Oltarzewski  
Belfast, Maine

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> May 31, 2019      |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 04, 2019       |
| <b>Tracking No.</b> 1k3-9a7x-n5af  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0244  
Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous

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## General Comment

Well I won't assume I completely understand what this file is saying, what I gather is that the IV-E will not be required to obtain data on out of home foster kids. Honesty, why not though? Isn't the point of foster kid programs to make sure the kids have a safe and loving place to be looked after until they are actually adopted? And the way that this revision is being phrased, it makes it sound like the kids won't be checked up on, or there won't be a census or data on whether kids are being treated well or etc. Aren't statistics like this sort of important? Is it really necessary to not make the people run these statistics? Does it really take that much money to make sure that the kids are alright? If I'm misunderstanding this, I'd like to think it's because all of this writing is needlessly complicated.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 03, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 04, 2019       |
| <b>Tracking No.</b> 1k3-9a9i-yt3t  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0245  
Alyssa Carlin

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## Submitter Information

**Name:** Alyssa Carlin

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## General Comment

I think this is a good law. It's important to keep track of kids in foster care as much as possible considering the system isn't that great anyways.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 03, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 04, 2019       |
| <b>Tracking No.</b> 1k3-9a9s-rq8y  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0246  
Brittney Barros

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## Submitter Information

**Name:** Brittney Barros

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## General Comment

HHS must release and implement the newly required AFCARS data on sibling separation. If the Administration for Children and Families (ACF) of the Department of Health & Human Services (HHS) and policymakers implement the December 2016 Final Rule, siblings across the country will have one less traumatic experience to worry about: being torn away from the people closest to them. -Brittney, Michigan Alumni

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 04, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 04, 2019       |
| <b>Tracking No.</b> 1k3-9aab-q2ti  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0247  
anonymous

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## Submitter Information

**Name:** anonymous anonymous

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## General Comment

I totally agree with this Act.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 03, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 06, 2019       |
| <b>Tracking No.</b> 1k3-9abq-kq3j  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Paper      |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0248  
North Fork Rancheria of Mono Indians of California

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## Submitter Information

**Name:** Elaine Bethel Fink  
**Address:**  
North Fork, CA, 93643  
**Email:** efink@nfr-nsn.gov  
**Organization:** North Fork Rancheria of Mono Indians of California  
**Government Agency Type:** Tribal

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## General Comment

See Attached

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## Attachments

North Fork Rancheria of Mono Indians of CA



## NORTH FORK RANCHERIA OF MONO INDIANS OF CALIFORNIA

TRIBAL GOVERNMENT OFFICE  
P.O. Box 929  
North Fork, CA 93643-0929  
(559) 877-2461  
FAX (559) 877-2467

My name is Elaine Fink, I am the Chairperson of the North Fork Rancheria of Mono Indians of California.

Thank you for engaging in tribal consultation regarding the April 19, 2019 AFCARS Notice of Public Rulemaking regarding the data elements on the Indian Child Welfare Act. As a tribal leader and tribal citizen, I know our children are the future of the tribe. As Tribal leaders we work with our families, our tribal staff, the counties and the state to ensure our children, if removed, are returned home or placed with tribal families.

ICWA data elements are essential to tribes because capturing this data will improve outcomes for our children in the child welfare system. Capturing, securing and analyzing the ICWA data elements will ensure ICWA compliance, keep Indian families together whenever possible and prevent our Native children from entering the child welfare system. This helps strengthen tribes and endures our tribal children are able to be strong and resilient tribal citizens-politically culturally, and spiritually,

My tribal homeland is in Madera County California. Please be aware California is also home to the largest population of Native Americans in the country, and has 109 federally recognized tribes.

The California Department of Social Services (CDSS) is already underway with the implementation efforts and has provided written support to ACF to include ALL the ICWA data elements in AFCARS.

In fact- CDSS has written TWO letters to ACF in support of the FULL ICWA data elements as set forth in the final rule. In its latest letter of June 5, 2018, the State provided a strong message.

This letter is submitted **to once again reiterate California's steadfast and unequivocal support for the data collection set forth in the final rule, including the proposed collection of ICEA 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 in facilitating child welfare practice and in informing policy decisions and program management. Further, it is essential in maximizing utilization of limited resources and in achieving beneficial outcomes for children and families.

The North Fork Rancheria agrees with the State of California-the ICWA data elements are necessary not only to the State and agencies but for Indian children, parents, and tribes.

Thank you



# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 10, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 11, 2019       |
| <b>Tracking No.</b> 1k3-9aeh-75d0  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0249  
Ho-Chunk Nation

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## Submitter Information

**Name:** NICOLE HOMER  
**Address:** WI  
**Organization:** Ho-Chunk Nation  
**Government Agency Type:** Tribal

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## General Comment

See Attached.

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## Attachments

Ho-Chunk Nation



**HO-CHUNK NATION LEGISLATURE**  
*Governing Body of the Ho-Chunk Nation*

June 10, 2019

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

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

Re: RIN: 0970-AC72 **Adoption and Foster Care Analysis and Reporting System;**  
Notice of Proposed Rulemaking (4/19/2019)

Dear Madam,

The Ho-Chunk Nation 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. Despite the data points specific to the ICWA being direly needed, the Children's Bureau issued two additional notices in 2018, one delaying implementation until October 1, 2021, and the other soliciting further feedback on the AFCARS data points, despite there being ample time and opportunity through previous comment opportunities. There have been no material changes in circumstances justifying the agency's new approach of limiting the data points originally set forth in 2016. The Ho-Chunk Nation stands firmly that the data points specific to the ICWA included in the December 14, 2016 Final Rule should remain.

**General Comments:**

*Simplification of the ICWA data points fails to provide the data needed to see the full picture of ICWA compliance.*

It fails to be shown how the detailed ICWA data points in the 2016 Final Rule are “not appropriate for AFCARS.” First and foremost, the ICWA data points were deemed appropriate in 2016. Second, the data points being collected are all connected to information that is already required to be documented by the caseworkers as part of their individual burden of proof for ICWA. The 2016 Final Rule does not mandate the collection of anything above and beyond what is required for each individual case.

Further, ACF’s response that “using the information that will be reported for other data elements proposed in the NPRM, ACF, researchers, and others will be able to analyze aspects of ICWA to inform an assessment of ICWA that occurs outside of AFCARS reporting,” does not seem to be a fully accurate statement. This is because ACF declares later that it “will be unable to release certain information related to tribal membership or ICWA applicability, except to the Indian tribe of which the child is or may be a member.” ICWA applicability is the most crucial aspect of being able to adequately perform analysis of the ICWA points being deleted. Thus, it is unclear how anyone beyond ACF, or an individual tribe of just their cases, will have access to any real information of substance to be able to fully research ICWA matters.

*The data collection requirements of the 2016 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 2016 Final Rule.*

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

The Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action. Given the multiple opportunities to comment throughout this time period, any additional collection activity is unnecessary. In addition, tribes, tribal organizations, and advocates received notice of all of these opportunities, and with ample time to comment on this vital and important rule change. In fact, the Ho-Chunk Nation has provided comments in response to the SNPRM through the Department of Justice.

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

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

Since these regulations have been effective for over three years, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes and the state with our third largest population (263 enrolled members) after Wisconsin (5,515 enrolled members) and Minnesota (514 enrolled members), was already well under way with its implementation efforts in May of 2018, having relied on the Final Rule. **Even the 2018 Notice proposing the delay of implementation should not have ceased these efforts, as it was merely time afforded to proceed with making the necessary changes.** At this stage, any modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

*These regulations are important to tribes, tribal families, and state child welfare systems.*

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

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

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

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

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

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

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

*The regulations, as set forth in 2016, are important to the Ho-Chunk Nation.*

While the data will most certainly be of use for states in increasing their ICWA compliance, the states are not be the only ones to benefit. Tribes likewise have significant limitations in tracking tribal members and their children across the country- which in turn makes it difficult to begin to understand how best to collaborate with specific states.

Take the Ho-Chunk Nation for example. The Ho-Chunk Nation does not have a "reservation," or even a contiguous land base, but instead has pockets of trust lands with the largest concentrations of Ho-Chunk members residing within 15 counties in central Wisconsin and the urban areas of Minneapolis and St. Paul, Minnesota; Madison and Milwaukee, Wisconsin; and Chicago, Illinois. As of April 2019, there were a total of 7,849 tribal members. Of those, 2,334 lived outside of Wisconsin - in every state. Our tribal members have become extremely transient. As such, national data continues to be urgently needed.

Our April 2019 enrollment data for minors showed that there were 1,812 enrolled minors within the Ho-Chunk Nation. A total of 1,392 Ho-Chunk Nation minors lived in Wisconsin and 420 resided outside of the state. In March of 2019, our Social Services Department was involved in 102 county matters, so roughly 5.63% of those 1,812 children were involved in a county welfare system.

| <b>March 2019</b>                      |       |
|--|-------|
| <b>Ho-Chunk Nation Child Welfare</b>   |       |
| Type                                   | TOTAL |
| Intakes                                | 395   |
| Investigations                         | 77    |
| Tribal Child Protection (Tribal Court) | 64    |
| Indian Child Welfare Act (County)      | 102   |

**March 2019****Ho-Chunk Nation ICWA Case Placements**

| Type                                   | TOTAL      |
|--|------------|
| In-Home                                | 25         |
| Relative Placement                     | 19         |
| Non-Relative Placement                 | 24         |
| Treatment Level Foster Placement       | 0          |
| Residential/Treatment Center Placement | 1          |
| Initial Assessment                     | 16         |
| Other                                  | 17         |
| <b>TOTAL</b>                           | <b>102</b> |

However, we know that there continues to be non-compliance by states in ICWA matters. We know these numbers do not truly reflect an accurate number of ICWA cases. By mandating data collection of ICWA compliance, it will be one more reminder to the states that ICWA is an important federal statute, accompanied by equally important federal regulations, that must be followed. Thereby, allowing us to intervene in more actions affecting our children.

***Tribes have relied on the Final Rule.***

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

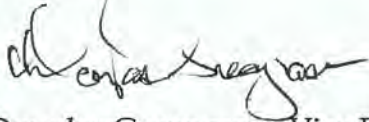
***Conclusion***

Each of the 2016 ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the 2016 ICWA-related data points are critical. Further, as discussed above, ICWA is the “gold standard” of child welfare and ensuring compliance with this federal law informs how the existing child welfare system may improve in whole.

**For the foregoing reasons, we do not support the simplification of the ICWA-related data elements. Instead, we strongly support each of the 2016 ICWA-related data points and believe, as your agency did in publishing the Final Rule in 2016, the benefits of this data collection outweighs any burden.**

In closing, the Indian Child Welfare Act is widely considered the “gold standard” of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any simplification 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,

A handwritten signature in black ink, appearing to read 'Douglas Greengrass', written in a cursive style.

Douglas Greengrass, Vice President  
Ho-Chunk Nation



# PUBLIC SUBMISSION

|                                    |
|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 11, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 11, 2019       |
| <b>Tracking No.</b> 1k3-9af1-nmuv  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Unknown    |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0250  
Sault Ste. Marie Tribe of Chippewa Indians

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## Submitter Information

**Name:** Aaron Payment

**Address:**

Sault Ste. Marie, MI,

**Organization:** Sault Ste. Marie Tribe of Chippewa Indians

**Government Agency Type:** Tribal

**Government Agency:** Sault Ste. Marie Tribe of Chippewa Indians

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## General Comment

See Attached

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## Attachments

Sault Ste. Marie Tribe of Chippewa Indians



**Aaron A. Payment,**  
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June 3, 2019

Atten: Kathleen McHugh  
US DHHS  
Director, Policy Division  
Children's Bureau  
330 C Street, SW  
Washington, DC 20024

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

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

Docket Number: 2019-07827

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

Dear Kathleen McHugh:

As the elected Tribal Chairperson of the Sault Ste. Marie Tribe of Chippewa Indians, I am providing the following comments on behalf of my Tribe. My comments will be limited to the Notice of Proposed Rulemaking (NPRM) regarding proposed changes to the Adoption and Foster Care Automated Reporting System (AFCARS). This NPRM was published in the Federal Register on April 19, 2019 (85 FR 16572). The Sault Ste. Marie Tribe of Chippewa Indians strongly opposes the proposed changes. We consider it an attack on Indian children and their families, part of the long history of the United States government attempting to destroy Tribes, Tribal culture, and the Tribal way of life.

The **continued practice** of removing Indian children from their homes is based, in large part, on remnants of former U.S. American Indian Policies. Therefore, it is important to review previous law and policy, which can be done through a *brief* examination of the six "eras" of U.S. American Indian Policy.

During the Treaty Era, the U.S. and the individual Tribes entered into 370 Treaties.<sup>i</sup> The Treaties reflect a government-to-government relationship.<sup>ii</sup> Typically, the Treaties were meant to last into perpetuity.<sup>iii</sup> Usually, Tribes agreed to give up their land and resources in exchange for the U.S. government's pledge to provide for the health and general welfare of each Tribe, and to provide reserved lands ("reservations") for Tribal settlement. In the Treaties, Tribes retained sovereign status.<sup>iv</sup> As more settlers arrived into the United States, the need for land grew. In response, the federal government adopted laws and policies that forced Indians from their reserved lands.<sup>v</sup> During what became known as the Removal Era, the United States forcibly moved Tribes, west of the Mississippi River.<sup>vi</sup> One well-documented example of this was the Trail of Tears, in which thousands of American Indian men, women, and children were taken out of their homes and forced to march hundreds of miles to reservations in the west. 4,000 people died of cold, starvation, and disease along the way.<sup>vii</sup>

The need for land grew, and by the 1880s, the United States shifted its Indian policy from "removal" to "assimilation." By forcing Indians to civilize themselves and to become less "Indian," it was hoped that Indians would assimilate into the dominate Caucasian culture and Tribes would dissolve, thereby freeing up reservation lands for U.S. settlers.<sup>viii</sup> To assist in this process, Congress passed "The Allotment Act" in

people, who did not understand the concept of individual ownership of land, were allotted plots of land and told to farm it. Later, when the Indian "land owner" (who often didn't even understand that he personally "owned" land to begin with) did not pay his taxes on the land, the federal government took it away.<sup>xj</sup> In this way, the Tribes lost millions of acres of land.<sup>xii</sup>

Also during the Assimilation Era, the federal government took American Indian children away from their families and Tribes and brought them to boarding schools to make them more "civilized."<sup>xiii</sup> Youngsters would be taken by force.<sup>xiv</sup> Their hair would be cut off and their belongings were destroyed.<sup>xv</sup> They would be beaten or starved if they used their Tribal language, worshiped their Creator, or talked about home or family.<sup>xvi</sup> Many children died from the horrible conditions<sup>xvii</sup> and others committed suicide.<sup>xviii</sup> Some tried to escape.<sup>xix</sup> The effort to civilize the children brought about the motto, "Kill the Indian, Save the Man."<sup>xx</sup> Those that survived found themselves unwelcome in the non-Indian world. The survivors did not fit into Indian Country, either: They no longer knew their own language, practiced their religion, or knew their own cultures. They did not *recognize* their mothers and fathers, sisters, brothers, or grandparents.<sup>xxi</sup> Although Tribes hid as many of their children from the government as they could<sup>xxii</sup>, thousands were taken during this time period<sup>xxiii</sup>.

By the 1920's, the United States reversed its Indian policy of Assimilation. Congress passed the Indian Reorganization Act of 1934<sup>xxiv</sup> and used it as a tool to provide protections to the remaining Tribal lands and a means of strengthening Tribal self-governing systems.

The Reorganization Era ended quickly and was followed by the Era of Termination.

By the 1950's, the United States government was again consumed by the idea of terminating its legal obligations to the Tribes.<sup>xxv</sup> One way to conclude its obligations was by terminating specific Tribes and refusing to acknowledge their existence. Terminated Tribes lost all sovereignty rights, as well as all lands, property, and any remaining resources. Between 1945 and 1960, Congress terminated more than 100 Tribes.<sup>xxvi</sup>

The federal government sought to end its treaty obligations in other ways. Congress passed legislation resulting in Bureau of Indian Affairs Relocation/Employment Assistance Programs, designed to lure Indians away from reservations and into urban areas.<sup>xxvii</sup> These federal government programs relocated thousands of Indians to urban centers where they were told good jobs and housing awaited them. Often, this was not the case.<sup>xxviii</sup> The programs left Tribal people isolated from other Tribal members, and separated them from the life they had known previously. Once in the cities, they often found themselves without job-related training, homeless and penniless.<sup>xxix</sup>

The federal government also attempted to terminate Tribes by taking American Indian children away from their families.<sup>xxx</sup> Children were taken from their homes on almost any pretext; most often however, officials would take children away from their Indian families based on findings of poverty<sup>xxxi</sup> or ambiguous charges of neglect<sup>xxxii</sup>. Thousands of children were removed from their Indian families during this time. In addition to utilizing the Indian boarding schools as a means to assimilate Tribal children, the federal government also approved an adoption program that would assimilate Indian children by placing them into Caucasian families<sup>xxxiii</sup>. This program continues to haunt Indian Country.

During the 1960's, Indian rights activists brought national attention to these and other atrocities. Tribal governments demanded more autonomy from the federal government. By the 1970's, the United States made a radical change to its American Indian Policies. This ushered in the Era of Self-Determination. Tribal governments were allowed to gain control over some federal resources allotted to them, and more control over Tribal resources within their borders. Tribal sovereignty rights were resurrected. Tribes were once again acknowledged as sovereign governments.

Although the Indian Adoption Project officially ended in 1967, the attitudes and biases of the project had profound and lingering impacts upon the country's social welfare system<sup>xxxiv</sup>. State social workers continued to use the prescribed vague standards of the Project to routinely remove children from their families.<sup>xxxv</sup> Native youth were sent to institutions, adopted into Caucasian families, or sent to non-Indian foster homes. Research indicates that in 1971, 17% of American Indian children were taken from their families and placed into boarding schools.<sup>xxxvi</sup>

Attempts to assimilate Indian children through adoptions also continued: Research conducted by the Association on American Indian Affairs found that between 1969 and 1974, 25%-35% of young Indian children were removed from their homes.<sup>xxxvii</sup> 85% of those children were placed in families outside of the Indian Country, even in cases where fit and willing relatives were available.<sup>xxxviii</sup>

During the Self-Determination Era, the federal government embraced the government-to-government relationship it had with Tribes. It worked to encourage the continued viability of Tribal self-government and worked to protect Tribal cultures. The fact that so many Indian children were being removed from their homes, and that so many of them were being placed in non-Indian settings stood in stark contrast to the federal government's new policies.

Tribal advocates successfully urged Congressional action: Congress passed the Indian Child Welfare Act in 1978.<sup>xxxix</sup> Designed to protect Indian children and Tribes,<sup>xl</sup> it remains the only legislation that protects the right of American Indians children to grow up in their families and in their Tribes.<sup>xli</sup> Initially, the law reduced the numbers of children being taken from their Tribes and families.<sup>xlii</sup>

Unfortunately the potential of the Indian Child Welfare Act was never achieved. The federal government provided no oversight of the law. There is widespread non-compliance with the Act, and significant numbers of children continue to be taken from Native homes.<sup>xliii</sup> Currently, Native American children are overrepresented in foster care at a rate of 2.4 time greater than non-Indigenous children.<sup>xliiv</sup> The rate of adoption of indigenous children outside Native homes also remains high: "In 2011, 56% of Indian children who were adopted were not placed in American Indian homes as dictated by ICWA. This number reflects a pattern of adoption cases where ICWA is purposely avoided or conveniently forgotten...."<sup>xliv</sup>

There is no question that the removal of Indian children, from their families and Tribes, is directly linked to U.S. federal laws and policies. According to Article 2(e) of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, genocide means: "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: ....forcibly transferring children of the group to another group."<sup>xlvi</sup> Arguably, the term applies to the on-going systematic removal of American Indian children.

The definition of "genocide," created out of the ashes of the Holocaust, continues to have relevance in the international community. For instance, look to the United Nations Committee on the Elimination of Racial Discrimination ("CERD"). In 2005 CERD adopted the Declaration of Prevention of Genocide.<sup>xlvii</sup> This is significant to American Indians because it requires action.

CERD requires each of its party members, including the United States, to submit a yearly report explaining how the rights of the Convention are being protected.<sup>xlviii</sup> The UN tacitly acknowledges that it is unlikely that a country will self-report a violation, so it welcomes "shadow reports" from individuals and non-profit organizations.<sup>xlix</sup> In other words, CERD accepts shadow reports as a means to obtain information on possible violations of the convention.<sup>l</sup>

In 2014 the National Indian Child Welfare Association submitted a shadow report to the CERD.<sup>li</sup> The report provided evidence of widespread noncompliance of the Indian Child Welfare Act as well as evidence proving the continued removal of Indian children from their homes.<sup>lii</sup> The removal violates American Indian children's internationally protected right to culture.<sup>liii</sup> It is an act of genocide.<sup>liv</sup> CERD responded by citing its concerns regarding the continued removal of Indian children and recommending the US "[e]ffectively implement and enforce the Indian Child Welfare Act of 1978 ...."<sup>lv</sup>

The resulting media attention sparked action.<sup>lvi</sup> Under direct guidance from the Obama Administration, the Bureau of Indian Affairs reviewed existing ICWA guidelines, and sought advice and comments from Tribal governments and intertribal organizations. On February 24, 2015 the Obama Administration announced Revised Guidelines to ensure Native American children and families receive full protections of the Indian Child Welfare Act.<sup>lvii</sup> June 8, 2016 the Administration declared the publication of new rules.<sup>lviii</sup> It was reported that the new federal regulations provided a more consistent interpretation of and promoted compliance with the Act by incorporating standard

procedures and requirements for state courts and child welfare agencies in Indian child custody proceedings.”<sup>lix</sup>

This was a huge victory for Indian Country. Until then, *the Indian Child Welfare Act had never even been reviewed*. The new rules made compliance easier, and the federal government had been put on notice that it must provide adequate oversight over the welfare of Tribal children. Unfortunately, the federal government did not have a system in place to track Native children going through the state welfare systems nor did it have a system to monitor state compliance with ICWA. This was soon changed.

*Forty years after the passage of the Indian Child Welfare Act*, the Obama Administration finalized regulations that required states to report ICWA related data into the national child welfare data system, the Adoption and Foster Care Analysis Reporting System (AFCARS).<sup>lx</sup> Comments collected regarding the proposed elements for American Indian and Alaska Native children received overwhelming support from Tribes and child advocacy groups as well as from the majority of states that submitted comments.<sup>lxi</sup>

Less than one year later, and in response to E.O. 13777,<sup>lxii</sup> the Department of Health and Human Services Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits. The department published an Advance Notice of Proposed Rulemaking, seeking comments regarding the burdens placed by the 2016 final rule. The Administration on Children and Family (ACF) then reviewed and analyzed all comments, costs, and burden estimates sent regarding an Advance Notice of Proposed Rulemaking, and considered them as they related to the requirements of E.O.13777.<sup>lxiii</sup> Based on this analysis, the ACF is now proposing the elimination of over 90% of the AFCARS data elements for American Indian/Alaska Native children from the 2016 regulations<sup>lxiv</sup> thereby endangering the only system which the federal government monitors ICWA compliance and tracks native children through state welfare systems.

#### EO 13777 - Regulatory Considerations

The Sault Ste. Marie Tribe of Chippewa Indians urges the ACF to reconsider. Study of E.O. 13777 asks that regulations be identified by whether they (1) eliminate jobs, or inhibit job creation; (2) are outdated, unnecessary, or ineffective; (3) impose costs that exceed benefits; (4) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; (5) are inconsistent with the requirements of section 515 of the Treasury and General Government Appropriations Act, 2001 (44 USC 3516 note), or the guidance issues pursuant to that provision, in particular those regulations that rely in whole or in part on data, information, or methods that are not publicly available or that are insufficiently transparent to meet the standard for reproducibility; or (6) derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.<sup>lxv</sup>

The Sault Ste. Marie Tribe of Chippewa Indians notes the following: (1) The data requirements established through 81 FR 90524 do not eliminate jobs or inhibit job creation. (2) Having just been made effective less than two years ago, 81 FR 90524 is relevant and necessary. In fact, it was lauded immediately by virtually all federally recognized Tribes, child advocacy organizations, and many state governments.<sup>lxvi</sup> As for its “effectiveness”, most Tribal commenters to the ANPR noted that the data requirements were needed for the following reasons:<sup>lxvii</sup>

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

(3) Sault Ste. Marie Tribe of Chippewa Indians notes that 81 FR 90524 has not been shown to interfere with regulatory reform initiatives and policies. (4) The data required to be collected by the regulations are all easily

accessible; (5) and are necessary to track Tribal children in the system and compliance with the Indian Child Welfare Act, which has continued to be upheld by the federal courts.

As the National Indian Child Welfare Association noted, the primary justification given by the ACF for the dramatic reduction in data elements, is that the 2016 regulations overly burden state governments by imposing costs that exceed benefits.<sup>lxviii</sup>

At first blush, the justification is outrageous. Tribal children and their families are the parties that have been “overly burdened” by federal and state entities. As noted above, federal and state authorities have systematically taken Tribal children from their families and Tribes as a means to assimilate Indians into the non-Indian culture. This fact is recognized by the federal court system, the United States Congress, former Presidents, and the United Nations. It has been the TRIBES and the TRIBAL CHILDREN that have paid exceedingly high costs....not the state governments.

Reviewing ACF’s primary justification in the way in which the ACF *must have meant* it to be interpreted, one still finds the justification for reducing major data elements to be outrageous.

Claims that the additional work needed to comply would pull valuable resources away from the field and decrease the amount of time caseworkers have to work with families and children toward reunification, safety and risk assessments and planning, adoption, and other permanency activities are overstated. Prior to 2016, AFCARS hadn’t been updated in decades and adjustments to child welfare case management should be expected. Moreover, states need to update their systems and processes regardless. States’ data systems need to face increasing demands of children and families and stay current with the latest technology and data exchange advances as a matter of course. Furthermore, the additional information required by AFCARS will likely “reduce the need for researchers and states to negotiate multiple data sharing agreement on *ad hoc* bases, provide assistance and oversight on the use of data, answer questions regarding the data, and review the interpretation of data to ensure quality.”<sup>lxix</sup>

Statements made requiring the additional data elements could adversely impact their ability to provide safety, permanency, and well-being for youth in their care are not logical. The information being collected will actually *enhance* states abilities to provide safety, permanency, and well-being for youth. For the first time, Tribal children and their families will be tracked. This information will enable federal resources be allocated in areas that prove need. Additionally, it must be recognized that the data related to the Indian Child Welfare Act only needs to be collected on children and families that are ICWA eligible. This small percentage of cases cannot possibly be considered an overwhelming hurdle.

Assertions that many new data elements are qualitative and therefore more accurately evaluated by quality assurance staff, through a case review or other monitoring efforts, are simply false. The data elements are appropriate for a national data system like AFCARS. As various Inter-Tribal organizations point out,

*The activities related to the data are required by federal law, such as ICWA, and should be documented in any child welfare case file. The vast majority of the data would come from state agency activities with a few data elements coming in the form of state court orders, which should also be included in any well documented case file. To assume that some data may not be retrievable if it comes from judicial determinations is essentially saying that case files do not need to contain court orders, which would be out of alignment with nationally recognized standards in child welfare case management. In addition, not having this information in a case file poses risk that court orders are not being properly implemented and places children in jeopardy of not receiving the benefits of court oversight in child welfare.*<sup>lxx</sup>

Previous attempts to capture ICWA data through case file reviews have failed. In the past, they have proven insufficient.

*Existing qualitative methods, like case file reviews under the Child and Family Services Reviews; have demonstrated the limitations of this data for informing Congress on how best to address critical concerns for AI/AN children. Case file reviews in many states include only a handful of cases involving AI/AN children and the data retrieved does not lend itself to adequately informing local efforts to address serious concerns related to outcomes for this population, much less issues of national concern. AFCARS is much better suited to collecting the type of data required for AI/AN children and efforts to shift data collection to other less comprehensive data systems with less regular data collection and reporting will have a negligible effect on improving data for this population.<sup>lxxi</sup>*

The requirements of 81 FR 90524 for states to follow standard procedures and uniform reporting are essential to meet the needs of Tribal children going through state welfare systems.

The ICWA data elements within AFCARS meet all 6 considerations required for review by the EO.<sup>lxxii</sup> Claims that the costs outweigh the benefits are easily refutable and can be viewed as attempts to get out of complying with the Indian Child Welfare Act.

#### Conclusion

The Sault Ste. Marie Tribe of Chippewa Indians finds it intolerable that Tribal children remain at risk. Despite the fact that the Indian Child Welfare Act has been in place for over forty years, little data exists as to where our children are within the state welfare system.

81 FR 90524 has been in place for less than three years. It needs to stay intact. All of the data elements were carefully researched and chosen. Today, some state commenters argue that the costs associated with meeting 81 FR 90524 requirements outweigh its benefits, but to date, the benefits of the regulations haven't had time to come into fruition. Moreover, each data element is necessary to meet full compliance of the Indian Child Welfare Act.

Ultimately, the President's Executive Order to identify and cut regulations thought to be burdensome or unnecessary must be balanced by reasonability and responsibility to the law. **The United States' failure to protect Indian children is serious. As noted previously, the continued "taking" of Tribal children meets international definitions of genocide.** Just five years ago, the United Nations, citing the continued removal of Indian children from their families, directed the United States to "[e]ffectively implement and enforce the Indian Child Welfare Act of 1978 ...."<sup>lxxiii</sup> The resultant federal decision to monitor state compliance and follow Tribal children going through state welfare systems via the regulations found in 81 FR 90524 is responsible, reasonable and necessary.

If you have any questions or need any additional information, please do not hesitate to contact me or the Sault Ste. Marie Tribe of Chippewa Indians Legislative Director, Mike McCoy at [MMcCoy@saulttribe.net](mailto:MMcCoy@saulttribe.net)

**Respectfully Submitted,**



**Aaron A. Payment, Chairperson**

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<sup>l</sup> Quote from Senator Daniel K. Inouye, "It is because of these treaties that Indian tribes retain a government-to-government relationship with the United States, and it is that relationship which distinguishes Indian people from other ethnic or racially-identified groups of American citizens." Challenges Confronting American Indian Youth, Vol. 1: Hearing Before the Committee on Indian Affairs, United States Senate, One Hundred Fourth Congress, First Session; Oversight Hearing on Challenges Confronting American Indian Youth; February 9, 1995, Washington DC.

See also General, K. E. (n.d.). Treaty Rights and the UN Declaration on the Rights of Indigenous Peoples. Retrieved 2016, from <http://indianlaw.org/content/treaty-rights-and-un-declaration-rights-indigenous-peoples>.

<sup>ii</sup> The United States Constitution recognizes Tribes in the same way it recognizes foreign countries: See U.S. Constitution, Art. I, sec. 8, cl 3.

<sup>iii</sup> Kevin Gover, "Nation to Nation: Treaties between the United States and the American Indian Nations," Summer/Fall 2014, American Indian Vol. 15 No. 2. Retrieved 2016, from <http://www.americanindianmagazine.org/story/nation-nation>. Quoting the late Senator Daniel Inouye (D HI), "Too few Americans know that the Indian nations ceded millions of acres of lands to the United States, or that...the promises and commitments made by the United States were typically made in perpetuity. History has recorded, however, that our great nation did not keep its word to the Indian nations...."

<sup>iv</sup> Tribes are described as domestic dependent nations. See *Cherokee Nation v. Georgia*, 30 U.S. 1, 13 (1831).

<sup>v</sup> Indian Removal Act, May 28, 1830, ch. 148, 4 Stat. 11

<sup>vi</sup> "Armed conflict and removal of tribes from traditional lands became the norm. Numerous Tribes faced "long walks" where many, if not the majority, died from disease, fatigue, and starvation. As the reservation system developed, tribal groups were often forced to live together in restricted areas. When lands were found to be valuable to the government and Whites, more often than not, ways were found to take them and resettle Natives elsewhere...." *The American Indian Holocaust: Healing Historical Unresolved Grief* by Maria Yellow Horse Brave Heart and Lemyra M. DeBruyn, *Journal of the National Center, University of Colorado Centers for American Indian and Alaska Native Health*, Vol. 8 No. 2 (1998), pp 60-82.

<sup>vii</sup> "A Brief History of the Trail of Tears," Cherokee Nation at:

<http://www.cherokee.org/AboutTheNation/History/TrailofTears/ABriefHistoryoftheTrailofTears.aspx>

<sup>viii</sup> See Geoffrey D. Strommer and Stephen D. Osborne, "The History, Status, and Future of Tribal Self-Determination and Education Assistance Act," *American Law Review*, Vol 39, No.1, 2015.

<sup>ix</sup> Codified, as amended, 25 USC Ch 9. secs 331 et seq.

<sup>x</sup> See 25 USC Ch 9, sec 331 et seq. A good description of the law is found at, "History of Allotment," Indian Land Tenure Foundation, see <https://www.iltf.org/resources/land-tenure-history/allotment>

<sup>xi</sup> Duane Champagne, "How U.S. Allotment Policy Devastated Native Lands," *Indian Country Today Media Network*, November 18, 2013.

<sup>xii</sup> Judith Royster, "The Legacy of Allotment," 27 *Ariz. St. L.J.* 1 (1995): "By the end of the allotment era, two-thirds of all the land was allotted – approximately 27 million acres– had passed into non-Indian ownership."

<sup>xiii</sup> "National Native American Boarding School Healing Coalition Applauds FLOTUS Statement Acknowledging Boarding School History, Encourages POTUS to Do Same, The National Indian Native American Boarding School Healing Coalition, June 2, 2016. See also at: <http://www.boardingschoolhealing.org/flotus-acknowledgement>

<sup>xiv</sup> Ann Piccard, "Death by Boarding School: "The Last Acceptable Racism" and the United States' Genocide of Native Americans, *Gonzaga Law Review*, 138, 151. Vol 49:1 2013/2014. Additionally, see "Indian Boarding Schools," *Indian Country Diaries*, PBS, see <http://www.pbs.org/indiancountry/history/boarding2.html>

<sup>xv</sup> "History and Culture – Boarding Schools," American Indian Relief Council,

[http://www.nrcprograms.org/site/PageServer?pagename=airc\\_hist\\_boardingschools](http://www.nrcprograms.org/site/PageServer?pagename=airc_hist_boardingschools)

<sup>xvi</sup> Andrea A. Curcio, "Civil Claims for Uncivilized Acts: Filing Suit Against the Government for American Indian Boarding School Abuses," 4 *Hastings Race and Poverty Law Journal* 45, Fall, 2006.

<sup>xvii</sup> Tabatha Toney Booth, University of Central Oklahoma, "Cheaper than Bullets: American Indian Boarding Schools and Assimilation Policy, 1890 – 1930.

<sup>xviii</sup> Brandon Ecoffey, "Death Rate Cover-Up at Carlisle Indian School," *Native Sun News*, September 5, 2013. Additionally see, Brenda Norrell, "Auschwitz in the US and Canada: Indian Boarding Schools" *The Narcosphere*, February 16, 2009, at <http://narcosphere.narconews.com/notebook/brenda-norrell/2009/02/auschwitz-us-and-canada-indian-boarding-schools>

<sup>xix</sup> Some schools offered bounties for children that were brought back to the school. "Each School Had a Graveyard: Native American Boarding Schools," Copyright© 2004, Teaching For Change [www.civilrightsteaching.org](http://www.civilrightsteaching.org)

<sup>xx</sup> "History and Culture – Boarding Schools," American Indian Relief Council,

[http://www.nrcprograms.org/site/PageServer?pagename=airc\\_hist\\_boardingschools](http://www.nrcprograms.org/site/PageServer?pagename=airc_hist_boardingschools)

<sup>xxi</sup> "This was....the federal government's policy of dealing with the "Indian problem" by using education as a



weapon. The intent was to remove all traces of tribal cultures—language, spiritual traditions, family ties, etc. and replace them with European Christian ideals of civilization, religion, and culture. “Kill the Indian, Save the Man” was the slogan and cultural genocide was the result” from, “Carlisle: The Icon of An Era,” The National Native American Boarding School Healing Coalition, at <http://www.boardingschoolhealing.org/join-the-call-for-carlisle-boarding-school-to-send-the-children-home> Additionally, see “American Indian Boarding Schools – An Exploration of Global Ethnic and Cultural Cleansing,” A Supplementary Curriculum Guide. Saginaw Chippewa Indian Tribe of Michigan, at: <http://www.sagchip.org/ziibiwing/planyourvisit/pdf/aibscurrguide.pdf>

<sup>xxii</sup> “Parents taught their young children a “hide and seek game” to avoid capture.” “American Indian Boarding Schools – An Exploration of Global Ethnic and Cultural Cleansing,” A Supplementary Curriculum Guide. Saginaw Chippewa Indian Tribe of Michigan, at: <http://www.sagchip.org/ziibiwing/planyourvisit/pdf/aibscurrguide.pdf>

<sup>xxiii</sup> “[Between] 1880 and 1900 the number of Indian children enrolled in school more than quadrupled, from 4,651 to 21, 568, the latter figure representing over one half of all Indian children of school age...” Quoting David Wallace Adams, in “Fundamental Considerations: The Deep Meaning of Native American Schooling,” Darek Hunt, “BIA’s Impact on Indian Education is an Education in Bad Education,” Indian Country Today Media Network, January 30, 2012.

<sup>xxiv</sup> 25 U.S.C. ch 14 subch. V, sec 461 et seq.

<sup>xxv</sup> “Under the leadership of Commissioner of Indian Affairs Dillon Myer, the BIA in the early 1950s attempted to eliminate most of the privileges and benefits American Indian tribes and reservations received from the government. These attempts by the federal government to forfeit its responsibilities to different American Indian peoples reflected many of the dominant attitudes of the McCarthy Era which emphasized conformity to the values and attitudes of mainstream, Anglo-American society. These views are articulated in August 1953, when the U.S. Congress passed House Concurrent Resolution 108.” Ned Blackhawk, “I Can Carry On From Here: The Relocation of American Indians to Los Angeles,” *Wicazo Sa Review*, Vol. 11, No.2 (Autumn, 1995), 16 – 30. A simpler discussion of the history can be found at: U.S. Department of Health and Human Services, Indian Health Service, Office of Urban Indian Health Programs, “History,” see: <https://www.ihs.gov/urban/history/>

<sup>xxvi</sup> Casey R. Kelly, “Orwellian Language and the Politics of Tribal Termination (1953 – 1960)” *Western Journal of Communication*, 74 (2010): 351 – 371. 109 Tribes were terminated, over 1 million acres of Tribal land was taken, and thousands of Indians lost their “Indian” status. Additionally see: “The Termination Era,” *Native American Netroots*, May 16, 2013, at: <http://nativeamericannetroots.net/diary/tag/termination> .

<sup>xxvii</sup> U.S. Department of Health and Human Services, Indian Health Service, Office of Urban Indian Health Programs, “History,” see: <https://www.ihs.gov/urban/history/>

<sup>xxviii</sup> “Relocation,” National Council of Urban Indian Health, see: [http://www.ncuih.org/action/document/download?document\\_id=120](http://www.ncuih.org/action/document/download?document_id=120).

<sup>xxix</sup> “Report on Urban and Rural Non-Reservation Indians: Final Report to the American Indian Policy Review Commission,” by the United States: American Indian Policy Review Commission, 1976.

<sup>xxx</sup> Claire Palmiste, “From the Indian Adoption Project to the Indian Child Welfare Act: The Resistance of Native American Communities,” pages 3-4, *Indigenous Policy Journal* Vol. XXII, No. 1 (Summer 2011).

<sup>xxxi</sup> B.J. Jones, “The Indian Child Welfare Act – The Need for a Separate Law,” *American Bar Association- Solo, Small Firm, and General Practice Division*. See [http://www.americanbar.org/content/newsletter/publications/gp\\_solo\\_magazine\\_home/gp\\_solo\\_magazine\\_index/indianchildwelfareact.html](http://www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/indianchildwelfareact.html)

<sup>xxxii</sup> Stephanie Woodard, “Native Americans Expose the Adoption Era and Repair its Devastation,” *Indian Country Today*, December 6, 2011. The article also provides real-world examples: “Two Native people interviewed prior to the summer [the First nations Repatriation Institute’s Second Annual Adult Adoptees Summit] said they were separated from their families after hospital stays as young children, one for a rash, the other for tuberculosis. A third was seized at his baby-sitter’s home; when his mother tried to rescue him, she was jailed, he said. A fourth recalled that he was taken after his father died, though his mother did not want to give him up. A fifth described being snatched, along with siblings, because his grandfather was a Medicine Man who wouldn’t give up his traditional ways....No home studies or comparable investigations appear to have been done to support the removals.”

<sup>xxxiii</sup> “The Indian Adoption Project”, a U.S. federal program funded by the Bureau of Indian Affairs, placed Indian children into non-Indian, Caucasian homes. For more information, please see: U.N. Committee on Elimination of Racial Discrimination. Examination of the United States of America. 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Periodic Reports Of June 12, 2013. The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture.” Alternative Report B, Submitted by National Indian Child Welfare Association, July 1, 2014. Additionally, see a concise summary of the program, by: Pauline Arrillaga, “America’s ‘Lost Birds’ Fly Home – Adopted Indians Find Their Way Back To Their Tribes,” Associated Press, June 2001.

<sup>xxxiv</sup> Adrian Tobin Smith, National Indian Child Welfare Association; Nicole Friederichs, Suffolk University Law School; Lorie M. Graham, Suffolk University Law School, “Stakeholder Submission on the Welfare and Best Interests of Indigenous Children in the United States,” Submission to the United Nations Universal Periodic Review of United States of America, Second Cycle, 22<sup>nd</sup> Session of the Working Group on the UPR Human Rights Council, April-May 2015.

<sup>xxxv</sup> “New Regulations Will Improve Compliance with ICWA and Keep Families Together,” National Congress of American Indians, June 8, 2016.

<sup>xxxvi</sup> Tonya Gonnella Frichner, Esq., “The Indian Child Welfare Act: A National Law Controlling the Welfare of Indigenous Children,” American Indian Law Alliance at

<http://www.un.org/esa/socdev/unpfii/documents/The%20Indian%20Child%20Welfare%20Act.v3.pdf>

<sup>xxxvii</sup> Multiple sources including, “Setting the Record Straight: The Indian Child Welfare Act,” National Indian Child Welfare Association, September 2015 and Tonya Gonnella Frichner, Esq., “The Indian Child Welfare Act: A National Law Controlling the Welfare of Indigenous Children,” American Indian Law Alliance at

<http://www.un.org/esa/socdev/unpfii/documents/The%20Indian%20Child%20Welfare%20Act.v3.pdf>

<sup>xxxviii</sup> Multiple sources, including “Setting the Record Straight: The Indian Child Welfare Act,” National Indian Child Welfare Association, September 2015.

<sup>xxxix</sup> Indian Child Welfare Act, 25 US Code, ch21.

<sup>xi</sup> The Act recognizes Tribe’s inherent jurisdiction in proceedings that involve the welfare of its children; it sets minimum standards for state court proceedings involving the custody of an Indian child (such as requirement placement preferences favoring the child’s family and Tribe), and it acknowledges the federal trust responsibility to ensure the protection of Indian children, providing funding to Tribes that can be used to properly care for the children within the Tribal culture. See: U.N. Committee on Elimination of Racial Discrimination. Examination of the United States of America. 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Periodic Reports Of June 12, 2013. The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture.” Alternative Report B, pages 5 and 6. Submitted by National Indian Child Welfare Association, July 1, 2014.

<sup>xii</sup> “Children and Family Policy Update,” National Indian Child Welfare Act, December 2014.

<sup>xiii</sup> U.N. Committee on Elimination of Racial Discrimination. Examination of the United States of America. 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Periodic Reports Of June 12, 2013. The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture.” Alternative Report B, page 6. Submitted by National Indian Child Welfare Association, July 4, 2014.

<sup>xliii</sup> Submission to the United Nations Universal Periodic Review of United States of America. Second Cycle. 22<sup>nd</sup> Session of the Working Group on the UPR Human Rights Council. April-May 2015. Stakeholder Submission of the Welfare and Best Interests of Indigenous Children in the United States. Submitted by the National Indian Child Welfare Association, Association on American Indian Affairs, and the National Congress of American Indians, September 14, 2014.

<sup>xliii</sup> U.N. Committee on Elimination of Racial Discrimination. Examination of the United States of America. 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Periodic Reports Of June 12, 2013. The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture.” Alternative Report B, Submitted by National Indian Child Welfare Association, July 1, 2014.

<sup>xliii</sup> U.N. Committee on Elimination of Racial Discrimination. Examination of the United States of America. 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> Periodic Reports Of June 12, 2013. The Continued Removal of Indigenous Children from Their Families and Communities and its Impact on the Right to Culture.” Alternative Report B, Submitted by National Indian Child Welfare Association, July 1, 2014.

- <sup>xlvi</sup> Article 2, United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Adopted by Resolution 260 (III) A of the U.N. General Assembly on 9 December 1948. Entry into force: 12 January 1951.
- <sup>xlvii</sup> The Declaration on the Elimination of Genocide “urges the international community to look at the need for a comprehensive understanding of the dimensions of genocide, including in the context of situations where economic globalization adversely affects disadvantaged communities, in particular, indigenous peoples.” See: “Eliminating Racial Discrimination: The Challenges of Prevention and Enforcement of Prohibition,” UN Chronicle, September 2007.
- <sup>xlviii</sup> The National Indian Child Welfare Association explains CERD to its’ members. See: “Child and Family Update,” National Indian Child Welfare Association, December 2014.
- <sup>xlix</sup> The National Indian Child Welfare Association explains CERD to its’ members. See: “Child and Family Update,” National Indian Child Welfare Association, December 2014.
- <sup>l</sup> The National Indian Child Welfare Association explains CERD to its’ members. See: “Child and Family Update,” National Indian Child Welfare Association, December 2014.
- <sup>ii</sup> Side Note: In recent years, American Indians have begun to utilize legal systems combined with existing international human rights laws as a means to achieve justice. See: Kristen A. Carpenter and Angela R. Riley, “Indigenous Peoples and the Jurisgenerative Moment in Human Rights”, 102 Cal. L. Rev. 173(2014). Carpenter and Riley also state: “Increasingly, international human rights law serves as a basis for indigenous peoples’ claims against states and even influences indigenous groups’ internal processes of decolonization and revitalization.”
- <sup>iii</sup> Report to its members: “Child and Family Update,” National Indian Child Welfare Association, December 2014.
- <sup>lii</sup> “NICWA Testimony to UN Convention Yields Progress and Early Comments,” NativeNewsOnline.net, 15, August 2014.
- <sup>liii</sup> “Albert Bender: Stopping Genocide on Indian Children in South Dakota,” Indianz.com, March 8, 2016. See also, Albert Bender, “Judge Rules Second Time for Tribes in South Dakota Indian Child Welfare Case,” People’s World, March 7, 2016. See also, Benjamin Madley, “OP-ED: It’s Time To Acknowledge the Genocide of California’s Indians,” Los Angeles Times, May 22, 2016.
- <sup>liv</sup> “Concluding Observations on the Combined seventh to ninth Periodic Reports of the United States of America,” pages 11-12, United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, 25 September 2014.
- <sup>lv</sup> “Child and Family Policy Update,” National Indian Child Welfare Association, February 2015.
- <sup>lvii</sup> “Assistant Secretary Washburn Announces Revised Guidelines to Ensure that Native Children and Families Receive the Full Protection of the Indian Child Welfare Act,” U.S. Department of Interior, February 24, 2015.
- <sup>lviii</sup> “Breaking: BIA Publishes Final ICWA Rule,” Indian Country Today Media Network, June 8, 2016. See <http://indiancountrytodaymedianetwork.com/2016/06/08/breaking-bia-publishes-final-icwa-rule-164738>
- <sup>lix</sup> “Breaking: BIA Publishes Final ICWA Rule,” Indian Country Today Media Network, June 8, 2016. See <http://indiancountrytodaymedianetwork.com/2016/06/08/breaking-bia-publishes-final-icwa-rule-164738>
- <sup>lx</sup> 81 FR 90524
- <sup>lxi</sup> December 2016 Final Rule, 81 Fed. Reg. 90524, 90527
- <sup>lxii</sup> E.O. 13777 of February 24, 2017, “Enforcing Regulatory Reform Agenda.” The Executive Order directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification.
- <sup>lxiii</sup> See 84 FR 16572.
- <sup>lxiv</sup> Taken from the National Indian Child Welfare Association, May 2019 at: <https://www.nicwa.org/policy-update/>. NICWA also noted that the proposal, 84 FR 16572, was published April 19, 2019.
- <sup>lxv</sup> EO 13777 of Feb 24, 2017.
- <sup>lxvi</sup> December 2016 Final Rule, 81 Fed. Reg. 90524, 90527
- <sup>lxvii</sup> 84 FR 16572
- <sup>lxviii</sup> National Indian Child Welfare Association, May 2019 at: <https://www.nicwa.org/policy-update/>.
- <sup>lxix</sup> Comments submitted to Kathleen McHugh, Director Division of Policy Division, Children’s Bureau, Administration for Children and Families re RIN 0970-AC72 Adoption and Foster Care Analysis and Reporting System (AFCARS) from Carol Emig, President, Child Trends. June 13, 2018. See [https://www.childtrends.org/wp-content/uploads/2018/06/ChildTrendsCommentsAFCARSandStateBurden\\_ChildTrends\\_June2018.pdf](https://www.childtrends.org/wp-content/uploads/2018/06/ChildTrendsCommentsAFCARSandStateBurden_ChildTrends_June2018.pdf)

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<sup>box</sup> Comments submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Policy Division re RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System; Advance Notice of Proposed Rulemaking (3/15/2018) from the National Indian Education Association, the National Congress of American Indians, the National Indian Health Board, and the National Indian Child Welfare Association, June 13, 2018. See <https://www.nicwa.org/wp-content/uploads/2018/07/FK1st-AFCARS-comments-letter-final.pdf>

<sup>boxi</sup> Id at lxx.

<sup>boxii</sup> EO 13777 of Feb 24, 2017.

<sup>boxiii</sup> "Concluding Observations on the Combined seventh to ninth Periodic Reports of the United States of America," pages 11-12, United Nations, International Convention on the Elimination of All Forms of Racial Discrimination, 25 September 2014.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 11, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9af3-b3gl  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0251  
Oklahoma Dept of Human Services

---

## Submitter Information

**Name:** Elizabeth Roberts  
**Address:**  
OK,  
**Email:** e.roberts@okdhs.org  
**Organization:** Oklahoma Dept of Human Services  
**Government Agency Type:** State  
**Government Agency:** Oklahoma Dept of Human Services

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## General Comment

Oklahoma Department of Human Services  
Child Welfare  
Please see attached commentary.

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## Attachments

Oklahoma



**Oklahoma Department of Human Services  
Child Welfare Services**  
PO Box 25352  
Oklahoma City, OK 73125-0352



## **Commentary to NPRM**

**45 CFR Part 1355**

**84 FR 16572**

The State is in agreement with the proposed reduction of elements in the NPRM. The State acknowledges a reduction in cost to data collection estimates with the proposed reduction of report elements; however, the State does not anticipate a significant reduction to recurring administrative costs, training costs, or costs associated with design and business requirements, programming and testing of the application or programming and testing of the data extraction. The State submitted costs tables and explanations with its commentary to the ANPRM (45 CFR Part 1355; 83 FR 1149) dated June 12, 2018.

Even with the proposed reduction of elements, the State has a significant concern regarding the current lack of information about requirements and time to effective date. Oklahoma is in the process of determining information requirements for Families First legislation and Oklahoma is in CCWIS development. CCWIS development will be occurring over the next 6 – 8 years with incremental releases. State staff are currently engaged in both the maintenance of the SACWIS and the development of the CCWIS.

The State continues to have the following concerns:

Child and Family Circumstances at Removal 1355.44(d)(4) – The additional values **proposed are not in the State's current information system.** The significant increase in the number of values does not lend itself to better information being received for analysis or evaluation. The state suggests that 1355.44 (d)(4)(iii) through 1355.44(d)(4)(vii), (d)(4)(ix) and (d)(4)(x) are basic overall reasons to remove a child. The remaining values should be labeled as conditions (or circumstances) that existed at the time of removal rather than being grouped with actual reasons for removal. Family circumstances are part of an assessment and should not always have a *direct* connotation as a reason for removal which is how this data will be perceived.

Total number of Siblings 1355.44(b)(19) – This information is neither readily available nor easily validated and while family composition is necessary to fully assess family relationships and dynamics, and should be included in narrative content, it does not

appear to serve a purpose to report this to the federal government. This will be a summary number with no context; no way of knowing if the number reported is inclusive of minor siblings or adult siblings, or possibly, a deceased sibling.

Siblings in Foster Care 1355.44(b)(20) – This information is available when children exist within the same case.

Siblings in Living Arrangement 1355.44(b)(21) – This information is available; however, would it not be useful to determine if siblings were together at any time during the 6 month reporting period and then subsequently on the last day of the reporting period?

Pregnant or Parenting 1355.44(b)(13) – The State is currently working on a system update to collect this data; however, these fields are not mandatory for children under the age of 12.

Sex Trafficking 1355.44(d)(5) and 1355.44(d)(6) – The State is currently working on a system update to collect this data; however, there has been no guidance or clarifying information as to how these elements should be developed.

**Data File and Extraction** – It is difficult to estimate time and resources required for developing the data file/extraction without element specific clarification and specificity of the file type for extraction.

**Validation/Compliance/Data Quality** – The 2016 final rule listed additional types of errors for which the state will be held accountable; however, utilities/tools for monitoring were not specifically discussed, nor were error thresholds or data quality thresholds. The burden related to developing tools for field staff related to compliance/data quality errors cannot be determined at this time.

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9afs-8ovx  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0252  
Daniel Wells

---

## Submitter Information

**Name:** Daniel Wells  
**Address:** 02118  
**Email:** wells.da@husky.neu.edu  
**Organization:** Northeastern University School of Law

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## General Comment

Re: ACF-2018-0003-0224

To Whom it May Concern,

Thank you for the opportunity to comment on ACFs proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. I am a law student at Northeastern University School of Law who is interested in equal rights for all.

In particular I am concerned the fact that LGBTQ youth are tragically overrepresented in foster care, and this attempt to erase them and important data on adoptive and foster parents undermines efforts to address the marginalization, harassment and discrimination that LGBTQ youth in foster care and families face.

The implementation of this rule means that the relevant data can only be collected at the removal of that youth from their foster care, where asking a parent or parents if the child's gender expression or sexual attraction was a factor, there is a real concern that the answer may not be accurate.

States, tribes and agencies cannot improve care and outcomes for youth if they do not have data to measure their efforts. 12.9 percent of LGBTQ youth report being treated poorly by the foster care system compared to 5.8% of non-LGBTQ youth.

These amendments should not be implemented.

Sincerely,



Daniel Wells.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9afs-95j6  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0253  
Olivia Hess

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## Submitter Information

**Name:** Olivia Hess  
**Address:** 17067  
**Email:** livie812@yahoo.com

---

## General Comment

Thank you for the opportunity to comment on ACFs proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. I am Olivia Hess, and I am a law student.

In particular I am concerned about the fact that LGBTQ youth are tragically overrepresented in foster care, and this attempt to erase them and important data on adoptive and foster parents undermines efforts to address the marginalization, harassment and discrimination that LGBTQ youth in foster care and families face. I am also concerned with how States, tribes, and agencies cannot improve care and outcomes for youth if they do not have data to measure their efforts. 12.9 percent of LGBTQ youth report being treated poorly by the foster care system compared to 5.8% of non-LGBTQ youth.

For the foregoing reasons, these amendments should not be implemented.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9afs-p3of  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0254  
Anonymous

---

## Submitter Information

**Name:** Andrea Anonymous

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## General Comment

To Whom it May Concern:

Thank you for the opportunity to comment on ACF's proposed amendments to foster care regulations. I am against these amendments.

LGBT youth are at a higher risk of victimization than other youth, and in fact experience homelessness, substance abuse, and other harms at disproportionate rates. To reduce or eliminate the scant protections these children possess is grotesque. In order to address systemic issues of homophobia and transphobia which affect LGBT youth in the foster system, there must be rigorous data collection, which can then be used as the basis for solutions and programs to aid this vulnerable population of children.

I urge you to reject the amendments.

Thank you,  
Andrea

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9afs-cmfw  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0255  
Morgan O'Grady

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## Submitter Information

**Name:** Morgan O'Grady  
**Address:** 02143  
**Email:** ogrady.morgan@gmail.com

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## General Comment

To Whom it May Concern,

Thank you for the opportunity to comment on ACFs proposed amendments to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. I am a queer woman whose sister works in the foster care system, particularly with queer youth.

In particular I am concerned about the degree to which queer youth are overrepresented in foster care, and the dangers that can arise by failing to identify and count these youths. First, there is a significant risk that these youth could be placed in homes that are unsafe for them. Second, it is likely that any scant resources already existing for these youth would decrease when it becomes less clear how many queer youth are in the foster care system. Third, there will be decreased visibility for the issue of queer youth in the foster system generally, which will obscure the marginalization faced by queer youths generally as they come out to their families and communities.

Additionally, the argument that this will improve the confidentiality of such data is not convincing. Critical information collected by caseworkers is already confidential. If there were actual concerns about confidentiality, the solution would be to improve procedures in place for collecting and storing data, rather than to cease collecting data.

Ultimately, the failure to collect data on an issue does not prevent it from being an issue. This proposed regulatory change is really frightening, for both queer youths in foster care and for our society generally.

For the foregoing reasons, these amendments should not be implemented.

Sincerely,

Morgan O'Grady  
Law Student at Northeastern University School of Law

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9aft-89lq  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0256  
David Wall

---

## Submitter Information

**Name:** David Wall  
**Address:** 14424  
**Email:** dwall342@gmail.com

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## General Comment

Re: ACF-2018-0003-0224

To Whom it May Concern,

Thank you for the opportunity to comment on ACF's proposed amendments to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. I am a law student who is concerned about the deleterious consequences that would result from HHS's proposed elimination of data collection regarding LGBTQ youth in the foster care system. Effective data collection is crucial to the efficacy and equity of any government-run program. This is especially true when those data track the status and treatment of marginalized individuals, like LGBTQ youth. I am very concerned that the proposed amendments at issue here would allow abuse and discrimination against LGBTQ youth to go undetected in the foster care system, or else critically underreported.

The fact remains that LGBTQ youth are overrepresented in the foster care system. By refusing to collect important data on adoptive and foster parents, HHS will undermine the need to protect LGBTQ youths--who are already subject to abuse, harassment, and discrimination-- and will lead to more marginalization and harassment.

Further, because the implementation of this rule means that the crucial data can only be collected when a youth is removed from their foster care. There is understandable and real concern that the answers provided by foster parents when asked if the child in question's gender identity and expression or sexual attraction was a factor in that child's experience. If this information is inadequate or inaccurate, then problems like abuse or neglect may persist undetected, imperiling the entire foster care system.

Lastly, how can states, tribes, and agencies improve care and outcomes for all foster care-involved youths, including LGBTQ youths, without data to measure their efforts? Current estimates state that 12.9% of LGBTQ

youth who have spent time in the foster care system report that they have been treated poorly. This compares with the much lower reported proportion of non-LGBTQ youths who state that they have been treated poorly, which is 5.8%. This disparity is unignorable, but if the proposed changes are approved it will be, and will likely grow more concerning.

For the foregoing reasons, these amendments should not be implemented.

Sincerely,  
David Wall  
J.D. Candidate, Northeastern University School of Law

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9aft-o9s0  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0257  
Aly Madan

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## Submitter Information

**Name:** Aly Madan  
**Address:** 02119  
**Email:** alymadan2@gmail.com  
**Organization:** Northeastern University School of Law

---

## General Comment

Re: ACF-2018-0003-0224

To Whom it May Concern:

Thank you for the opportunity to comment on ACFs proposed amendments the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. I am a law student and personally, am adopted so am familiar with the adoption/foster care system.

In particular I am concerned about the fact that LGBTQ youth are tragically overrepresented in foster care already. This attempt to erase them and important data on adoptive and foster parents undermines efforts to address the marginalization, harassment, and discrimination that LGBTQ youth in foster care and families face already.

For example, caseworkers who are trained to collect data on children in foster care have always collected information that is highly personal, private, confidential. This data collection provide tools to making positive change in the lives of many foster youths and is critical to providing the right resources, information, and placement for youth in friendly and accepting homes.

The implementation of this rule means that the necessary data will only be collected upon the removal of that youth from their foster home. So, where asking a parent or parents if the childs gender expression or sexual attraction was a factor in the removal, there is a real concern that the answer may not be accurate as many people might lie or not recognize their underlying bias.

Lastly, States, tribes and agencies cannot improve care and outcomes for youth if they do not have data to



measure their efforts. Roughly 13% percent of LGBTQ youth report being treated poorly by the foster care system compared to approximately 6% of non-LGBTQ youth. Foster youth often already have few options, as do LGBTQ youth, especially those in this system. They are at higher risk of abuse and violence, discrimination, drug and substance use disorder and homelessness if the proper resources and support are not provided.

For the foregoing reasons, these amendments should not be implemented.

Sincerely,  
Aly Madan  
Northeastern University School of Law

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9agd-vz7j  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0258  
Texas Dept of Family and Protective Services

---

## Submitter Information

**Name:** Debra Emerson

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TX, 78751

**Email:** debra.emerson@dfps.state.tx.us

**Organization:** Texas Dept of Family and Protective Services

**Government Agency Type:** State

**Government Agency:** Texas Dept of Family and Protective Services

---

## General Comment

Please see attached from the State of Texas

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## Attachments

Texas Dept of Family and Protective Services



## Texas Department of Family and Protective Services

Commissioner  
H. L. Whitman, Jr.

June 01, 2019

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. 84, No. 16572-01 /Friday, April 19, 2019

Dear Ms. McHugh:

The 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* (45 CFR Part 1355) on April 19, 2019, for the Administration for Children and Family Services (ACF) of the U.S. Department of Health and Human Services.

As stated in DFPS's previous letter dated May 29, 2018, Texas is in agreement with the Regulatory Reform Task Force created by Presidential Executive Order 13777 in its identification of the AFCARS regulation as one in which the reporting burden imposes costs that exceed the benefits. The AFCARS final rule, published December 14, 2016 (81 FR 90524), requires DFPS to make extensive, costly changes to our Informational System known as IMPACT, and also places an arduous burden upon the staff who will be responsible for the gathering, data entry, and technology implementation of these additional elements. While the new proposed rules do remove some reporting requirements, most of which are related to the Indian Child Welfare Act of 1978 (ICWA), P.L. 95-608, many elements still remain.

Previously, on April 7, 2015, Texas submitted comments to ACF in response to the Notice of Proposed Rulemaking (NPRM) published in the *Federal Register* (80 FR 7132) on February 9, 2015. Texas' position, as clearly stated in the 2015 comment letter, still stands today, as does its previous

comments submitted on May 29, 2018 in regards to the specific cost and burden estimation for the state. For section-by-section comments, including comments on individual data elements, please see the attachment entitled Provisions of the AFCARS Final Rule. DFPS appreciates the opportunity to provide this information for consideration.

While in the most recent NPRM ACF has proposed deletion of certain elements which does reduce the burden on states, many of the final rule's data elements remain. As required by 42 U.S.C. §679(c) (1), any data collection system implemented must avoid unnecessary diversion of resources from agencies responsible for adoption and foster care. Complete implementation of the final rule will certainly continue to divert much needed resources from child protective agencies that would be significantly better spent on direct services to children and families.

### **Increased Burden on Caseworkers**

Workers continually report significant increases in their workloads associated with case documentation related to federal expectations of data collection. With so many demands already competing for their time, even tenured and experienced caseworkers find they cannot adequately serve children and families with complex and often immediate needs while having to perform extensive documentation for AFCARS. To fully meet the new data requirements and expectations of the proposed rule, Texas will still need to add an additional number of staff as the new data elements require additional time needed to document the information in a collectable format.

To analyze the impact of the data elements upon a caseworker's time, Texas assumes a conservative average of one additional minute per data element needed for the actual collection of data and/or one additional minute for the entry of the data into the IMPACT system. Accounting for the time required to ask a question and receive an answer, staff with the supervisor, and document the information into IMPACT, the agency estimated the need for an additional \$16,263,273 for 85 additional staff (caseworkers, supervisors and infrastructure), even with the deletion of certain elements made by the NPRM published on April 19, 2019. This information is based on the current number of caseworkers, children being served, and time to complete all current state and federal expectations, including the data collection of AFCARS elements as well as other tasks associated with case management services.

### **Increased Complexity of Information Technology (IT)**

IMPACT, particularly from an IT perspective, is complex; adding a large number of new data collection elements increases the complexity, reliability, and consistency of the system, even without consideration of all future IMPACT enhancements. This includes, but is not limited to, system capability to case and person merge, case file print, auditing, and training. Increasing the complexity of Texas' IMPACT system to meet the demands of the proposed rule still places a significant burden on the state's IT resources, requiring more staff resources and more state monetary resources than currently available.

New data elements require vast modifications of Texas' IMPACT system and a complete re-write of the state's AFCARS extraction code. Of the 170 new AFCARS data elements contained in the proposed rule, Texas must implement 74 of them into its IMPACT system. Texas started the process of implementing the 27 data elements related to the Preventing Sex Trafficking and Strengthening Families Act, Public Law (P.L. 113-183), and the total business cost of implementation, training, and

maintenance of these elements alone amounted to approximately \$8,182,393.00. With 47 remaining elements not currently covered or budgeted through the state legislative process, it is anticipated that it will cost Texas an estimated \$15 million to fully cover the implementation, training, and maintenance of these additional data elements.

The insertion of new data fields into the Texas case management system follows a specific process to ensure the changes meet federal requirements, prevent unintended data integrity issues within the system and to other corresponding systems, and meet other program requirements. In addition, once the agency updates the case management system with these changes, IT staff further update the AFCARS data extraction. DFPS Program and IT staff must coordinate the implementation of the IMPACT changes while still engaged in existing project schedules, which include many legislative mandates.

The detailed process to implement changes within the Texas IMPACT system is not an easy undertaking. While the proposed rule does remove elements to be collected, mainly related to the Indian Child Welfare Act (ICWA), there is still a significant burden and cost that is necessary to integrate the remaining new data elements. For the State of Texas, when its child welfare program, Child Protective Services (CPS), identifies a need for a new data field, IT staff initially perform research to see if the data can currently be obtained from the data elements within the IMPACT system. If the data is already being collected by IMPACT, IT staff implement changes to the AFCARS Extract Transform Load (ETL) process and deploy the changes to production. If the data field does not yet exist in the system, IT staff first must gather and document the requirements for the new data field. Next, IT staff add and test the new data field in the IMPACT application and database. After the data field has been successfully tested, IT staff will implement changes to the AFCARS ETL process. Once the AFCARS ETL process properly includes all of the needed data, the changes are deployed to production. As outlined, although this is a very time consuming, expensive, and tedious process, it is required in order to ensure data quality and integrity.

In closing, Texas supports all efforts to streamline the AFCARS data elements and remove the undue financial burdens placed upon states to collect data that may not improve child welfare practice or outcomes for children and families. Any new requirements should be cost-efficient with respect to the child welfare workforce capacity and a state's informational requirements.

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 DFPS lead on this matter. She can be reached by phone at (512) 438-3291 or by email at [ELIZABETH.KROMREI@dfps.state.tx.us](mailto:ELIZABETH.KROMREI@dfps.state.tx.us).

Sincerely,



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

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

**Attachment**

### **Provisions of the AFCARS Final Rule**

**Note:** These comments submitted to ACF by DFPS on May 29 2018, in response to the NPRM dated March 15, 2018, have been amended and updated to reflect the new proposed rules published April 19, 2019.

Texas strongly supports the removal of several elements pertaining to the Indian Child Welfare Act of 1978 (ICWA), P.L. 95-608. However, considering there is current federal litigation concerning the applicability of ICWA and its provisions, eliminating, at this point in time, all ICWA elements would be a better course of action. Having states modify their informational systems prior to resolution of this lawsuit could prove to be an unnecessary expenditure of resources for states.

In addition, Texas strongly supports the removal of the following elements: authority for placement and care, private agency living arrangement (i.e. designation of the type of contractual relationship with the private agency), juvenile justice designation as to whether the child is a status offender or adjudicated as delinquent, and interjurisdictional adoption or guardianship jurisdiction. Texas agrees with the April 19, 2019 NPRM assessment that not only would this information be too detailed or qualitative for a national data, but some elements could be interpreted differently and others reported inaccurately.

**Section 1355.41: Scope of the Adoption and Foster Care Analysis and Reporting Systems.** Texas DFPS believes the proposed foster care reporting populations will improve consistency across the country.

**Section 1355.43: Data Reporting Requirements.**

Texas DFPS supports submitting data files on a semi-annual basis, which is a continuation of the current AFCARS rule. Additionally, Texas fervently supports the 45 day reporting period that is in the proposed rule. Texas has solid performance on data integrity, and the 45 day period is crucial to ensure quality data. If the period was shortened, we would need to make significant and costly modifications to our monthly data warehouse population process in order to create and submit the AFCARS data files in a timely fashion.

**Section 1355.44(a): Out-of-Home-Care Data File Elements.**

Overall, Texas DFPS is extremely concerned with the extensive increase in the required data elements. While longitudinal information relating to foster care episodes and placement events can be valuable, the value of the specificity of such information needs to directly correlate to achieving positive outcomes for the children and families we serve. In addition, the value of the data needs to be carefully weighed against the burdens on caseworkers to collect and enter that data into a state's informational system, as doing so takes away precious time needed for face-to-face interactions with children and families.

Further, states differ in how they define various terms, such as the types of homes or living arrangements, and these differences make it challenging to effectively and accurately gather and analyze data from a national perspective. State differences must be considered in the utility of

collecting such types of data that have definitional variances across the country. Any national research that is based on data containing differing definitions will produce skewed results, which could lead to inaccurate conclusions concerning child welfare issues

Data analysis is only as good as the quality of the data collected. From our perspective, data collection projects should perform interrater reliability tests to ensure accuracy of data collection. With the release of the NPRM and subsequent final rule, and the re-release of new proposed rules, it is apparent that this important step was overlooked. It must be completed for quality data to be collected uniformly across the states. Finally, much of the new information sought is already collected by Texas DFPS, but it is currently collected in narrative form and would require extensive caseworker time to transform the child and family information into data files for AFCARS. The narrative form is an important casework tool because it explains the significant *why* and *how* surrounding the unique child and family dynamic. Casework is not data and it is not data entry. If the ultimate focus is truly on positive child and family outcomes, then the data system should be built to help caseworkers and managers accomplish their work, and not to just generate information. If the desire is to have greater detail in foster care information on the federal level for research purposes, policy development, or other appropriate purposes, then additional federal funding needs to be provided to states in order to collect and enter such data without impeding upon crucial caseworker practice.

**Texas DFPS offers these comments on the following specific data elements:**

**Section 1355.44(b) (12) & (b) (11) (ii), in the final rule: Timely Health Assessment and date of most recent health assessment.** Texas strongly agrees with the removal of these two elements. First, states have different time frames for Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) and health assessment schedules. As a result, gathering this information on a national basis does not provide a qualitative picture on health assessments. Second, the guidance accompanying the NPRM implies that the purpose of this new element is mainly to determine if states are timely meeting the requirement at 42 U.S.C. § 622(b) (15) (A). Rather than adding these elements to AFCARS, this information or regulatory assessment would be much better assessed or implemented as part of the CFR (or another type of qualitative review) that focuses on child well-being outcomes.

**Section 1355.44(b) (10): Health, Behavioral or Mental Health Conditions.**

There are too many response options for this element. We strongly recommend including only the following options: "Child has a diagnosed condition," "Child does not have a diagnosed condition," and "Unknown." The proposed response option of "Exam or assessment conducted but results not received" should be eliminated, as the caseworker effort required to capture this particular response would be higher than any value achieved from the information. If the date of the health assessment is populated and "Unknown" is the response for this element, then, it is apparent that the results have not yet been received.

**Section 1355.44(b) (10) (i)-(xi): List of Conditions with the Responses of "Existing/Previous/Does Not Apply."**

Texas DFPS recommends that the list of health, behavioral or mental health conditions have only two response options: "Existing Condition" and "Does Not Apply." Data submissions over time would create a history of any diagnosed conditions for each child. Thus, the proposed response option of "Previous Condition" is not needed since the previous conditions can be ascertained by comparing the answers to each condition using the history of previous submissions.



**Section 1355.44(b) (11) in the proposed rule & Section 1355.44(b) (16) (i)-(vii) in the final rule: School Enrollment and Educational Stability.**

School enrollment is redundant if states are also collecting educational level. Texas DFPS proposes deleting the school enrollment element and just reporting the educational level. Texas strongly supports the removal of the Educational Stability elements as the reasons a child changes schools are far more complex than the listed options offered in this element. Most importantly, listed options are not reflective of the need to make school changes to ensure positive permanency outcomes for children. Therefore, this information is best assessed in a qualitative review such as the CFSR.

**Section 1355.44(b) (15)-1355.44(b) (ii): Prior Adoption(s), Prior Adoption Date(s), and Prior Adoption Intercountry.**

Information regarding private adoptions and out-of-state public adoptions can be difficult to collect, as the adoptive parent may be unwilling to disclose such information. If this information is collected, Texas recommends deleting the response option of “Abandoned” and adding response options of “Declines” and “Unknown” for when it cannot be determined. The selection of “Declines” would apply only when the individual refuses to give the information and the state agency cannot otherwise obtain the information. Further, prior adoption date(s) and prior adoption intercountry are discretionary reporting components under 42 U.S.C. § 679(d). Considering the final rule already proposes numerous new elements and because the caseworker effort required to collect this information would be higher than any value achieved, any discretionary reporting elements should be removed.

**Section 1355.44(b) (16)-1355.44(b) (16) (ii): Prior Guardianship(s) and Prior Guardianship Date(s).**

Information regarding private guardianships and out-of-state guardianships can be difficult to collect, as the guardian may not be willing to disclose such information. If this information is collected, Texas recommends deleting the response option of “Abandoned” and adding response options of “Declines” and “Unknown” for when it cannot be determined. The selection of “Declines” would apply only when the individual refuses to give the information and the state agency cannot otherwise obtain the information. Further, prior guardianship date(s) is a discretionary reporting components under 42 U.S.C. § 679(d). Considering the final rule already proposes numerous new elements and because the caseworker effort required to collect this information would be higher than any value achieved, any discretionary reporting elements should be removed.

**Section 1355.44(b) (17): Child financial and medical assistance.**

Texas supports the narrowing of the types of financial assistance to be reported under this data element from 13 to 8. This reduces the reporting burden on states and helps to streamline this particular element.

**Section 1355.44(e) (4): Other living arrangement type.**

Texas supports the proposed rule’s modifications of this data element to include the new living arrangements that are available under Family First Services and Prevention Act, Public Law 115-123.

**Section 1355.44(e) (8) and 1355.44(h) (2): Child’s relationship to the foster care parent and Child’s relationship to the adoptive parent or guardian.**

Texas supports the simplifications of the types of relationships from 7 to 3 groups for the relationship of child to the foster care parent, and from 8 to 4 groups on the child's relationship to the adoptive parent or guardian. These changes allow the essential information, that is, is the child related or not to the foster care or adoptive parent/guardian, to be captured without placing undue reporting burdens on states.

**Section 1355.44(f) (5)-(6): Caseworker Visit Dates and Location.**

The guidance accompanying the final rule indicates that these elements are included mainly as a regulatory compliance tool for 42 U.S.C. § 624(f). Requiring caseworkers to enter all face-to-face visit dates and locations creates unwanted emphasis on caseworkers engaging in data collection rather than on the important clinical case work. Clinical case work is where the true problem-solving occurs and where safety, permanency, and well-being issues are resolved—emphasis should be placed accordingly. Thus, this type of information is best reviewed in a qualitative review such as the CFSR, and Texas highly recommends that this data not be collected in AFCARS.

**Section 1355.44(b) (2) (ii) in final rule: Child's Sexual Orientation.**

Texas strongly agrees with the removal of this element, there are important concerns with including this information in AFCARS: (1) LGBTQ youth do not always feel comfortable enough to disclose their sexual orientation to their caseworkers, and nor should they be made to; and (2) many youth in the AFCARS population are still struggling with sexual identity issues. Therefore, collecting LGBTQ data will yield a serious undercount and an undercount will not serve this population well. Discounting the number of youth in the LGBTQ population will drive resources away from this group and their specific issues. Consequently, Texas DFPS strongly recommends not including this element in the AFCARS file. Rather, ACF should consider including LGBTQ information in the NYTD survey. NYTD would be the more appropriate database for the following reasons: (a) the participants are at least 17 years of age and may be more sure of their identities; (b) in follow-up surveys, there are participants that are no longer associated with the child protective agency and may feel more comfortable being open about such issues; and (c) the survey is voluntary so the information is more likely to be useful in learning about LGBTQ experiences in foster care.

**Section 1355.44(e) (19) and (e) (25) and Section 1355.44(h) (8) and (h) (14) in final rule: Sexual Orientation of First and Second Foster Parents and of First and Second Adoptive Parents or Legal Guardians.**

Texas strongly agrees with the removal of these elements. As noted in Section 1355.44(b) (2) (ii): Child's Sexual Orientation, collecting LGBTQ data will yield a serious undercount and an undercount regarding foster and/or adoptive parents and legal guardians. To include information in the file for individuals who identify as lesbian, gay, bisexual, transgender, and questioning (LGBTQ) is best suited in case narrative and home assessments.

**Compliance and Penalties:**

**Section 1355.46: Compliance.**

Texas DFPS firmly agrees with maintaining the 45 day data submission timeline. Maintaining this time is crucial to ensure data quality, not only for states but for any entity that uses the information in AFCARS to conduct research.

Further, Texas DFPS strongly recommends that the new requirements proposed by the final rule be delayed to allow Texas the opportunity to succeed. The implementation date of October 1, 2020 is

not enough time for Texas to make changes to its informational system to include all the new AFCARS elements and adequately train caseworkers to collect and report on these elements. In addition, the development of the code extractions needed to report the required data elements are extremely complex, particularly with the longitudinal data, and play a significant role in compliance. The complexity of code extractions coupled with an undefined file format makes it challenging, if not impossible, to accurately project the additional costs and staffing levels necessary to implement these proposed changes.

In addition, Texas DFPS strongly supports the expressed intent to close out all current AFCARS Improvement Plans without penalties in order to allow state staff to focus on the changes needed for compliance with the final rule, which would also allow ACF staff to spend their time providing consultation and support to states during the implementation process.

**Section 1355.47: Penalties.**

Given the extensive new requirements, Texas strongly recommends that any penalties not be imposed until states have been given a meaningful and realistic amount of time to make the required changes and implement the new requirements. Furthermore, additional funding will be required to comply with this mandate, and this funding will need to be requested and appropriated from our state legislature, which meets every other year



# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9agk-c9d2  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0259  
Anonymous

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## Submitter Information

**Name:** Anonymous Anonymous  
**Address:** 02116

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## General Comment

Re: ACF-2018-0003-0224

To Whom it May Concern,

Thank you for the opportunity to comment on ACFs proposed amendments to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. I am a law student concerned about the impact the proposed amendments would have.

In particular I am concerned about the fact that LGBTQ youth are tragically overrepresented in foster care, and this attempt to erase them, and important data on adoptive and foster parents, undermines efforts to address the marginalization, harassment and discrimination that LGBTQ youth in foster care and families face.

Second, I am concerned how caseworkers who collect data on children in foster care have always collected information that is highly personal, private, confidential, and that this data collection provide tools to make positive change in the lives of so many foster youths.

Third, the implementation of this rule means that the relevant data can only be collected at the removal of that youth from their foster care, where asking a parent or parents if the childs gender expression or sexual attraction was a factor, there is a real concern that the answer may not be accurate.

Finally, how states, tribes and agencies cannot improve care and outcomes for youth if they do not have data to measure their efforts. 12.9 percent of LGBTQ youth report being treated poorly by the foster care system compared to 5.8% of non-LGBTQ youth.

For the foregoing reasons, these amendments should not be implemented.

Sincerely,  
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# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9agl-zfz5  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0260  
American Academy of Pediatrics

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## Submitter Information

**Name:** Lucas Allen  
**Organization:** American Academy of Pediatrics

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## General Comment

See attached

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## Attachments

American Academy of Pediatrics

# American Academy of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN®

## AAP Headquarters

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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  
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June 13, 2019

Kathleen McHugh

Director, Policy Division

Administration for Children and Families

U.S. Department of Health and Human Services

330 C St. SW

Washington, DC 20201

**RE: RIN 0970-AC72**

Dear Ms. McHugh:

On behalf of the American Academy of Pediatrics (AAP), a non-profit professional organization of 67,000 primary care pediatricians, pediatric medical sub-specialists, and pediatric surgical specialists dedicated to the health, safety and wellbeing of infants, children, adolescents, and young adults, we appreciate the opportunity to provide input on the Administration for Children and Families' (ACF) Notice of proposed Rulemaking (NPRM) to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS). The AAP does not believe that further changes to the 2016 final rule are necessary, opposed the delay of the 2016 final rule, and opposes many of the revisions in this NPRM. We strongly urge you to move forward with implementation of the 2016 final rule without delay.

Children in foster care experience disproportionate exposure to trauma and, as a result, often have complex health needs, including medical, developmental, educational, and behavioral and mental health care. 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 wellbeing of children in foster care are three key precepts that inform the work of ACF, state child welfare agencies, and professionals serving children in foster care, including pediatricians. A thorough understanding of a child's health status and the work of professionals to promote child health play a critical role in advancing those three precepts. Wellbeing remains the most complex to define, measure and improve. While the 2016 AFCARS final rule did not capture every data element AAP would propose tracking, it was a significant step forward, particularly around the factors of wellbeing such as health. For this reason, we strongly supported the 2016 final rule.



Quality child welfare data collection is crucial to the improvement of children's health and wellbeing. As state and local child welfare agencies look to improve the overall health of the children in their care, effective and robust data collection tools are increasingly necessary. AFCARS offers states a critical tool to conduct this important work, and provides ACF with essential information for enforcing federal child welfare laws. By collecting information related to child health and identifying trends, AFCARS allows state agencies and the federal government to better promote the health and wellbeing of children in the foster care system. This can provide long-term benefits to the youth and save costs in the long term.

The health-related elements within the 2016 AFCARS final rule lend themselves to the improved coordination of the health and social services necessary to support the safety, permanency, and wellbeing of children in out-of-home care. Ongoing trends in child welfare data improvement, including ACF's work to transition the Statewide Automated Child Welfare Information System to the Comprehensive Child Welfare Information System, underscore the importance of ensuring the collection of child welfare and health data to improve child outcomes. These ongoing trends point to the critical importance of collecting quality data through AFCARS to support improved child health and wellbeing.

AFCARS plays a key role in tracking the experience of children in foster care and the success of implementation of federal child welfare law at the state level. The AAP supports the 2016 final rule as an important improvement to AFCARS, particularly the expansion of the Children's Bureau's ability to collect and analyze information about the health of children in foster care and the health services they receive. In addition, the update created important new data elements and structures to examine the extent to which states are complying with the health-related requirements of federal law, particularly the Health Oversight and Coordination Plan (HOCP) requirements that are part of states' Title IV-B Child and Family Service Plans, as required under the *Fostering Connections to Success and Increasing Adoptions Act of 2008*. AAP also applauded ACF's decision in the 2016 final rule to expand the perspective of AFCARS to allow for longitudinal and cohort analysis, which would improve providers' ability to help children in foster care.

We urge ACF not to rescind the progress made towards better data collection of the health information of children in foster care represented by the 2016 final rule. With increasing numbers of children entering foster care because of the opioid epidemic and the associated traumas that come with that, it is critical that states and ACF collect useful data that support improved access to care for vulnerable children. These proposed revisions to the 2016 final rule would be a significant obstacle in the advancement of children's health for those within the foster care system, and we strongly oppose them. These comments highlight the importance of key AAP-supported AFCARS provisions and outline our concerns regarding the overall NPRM to revise the 2016 final rule.

***(Formerly §1355.44 (b) (2) (ii) in 2016 final rule): Child's sexual orientation***

Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth who come to the attention of the child welfare system face additional trauma and have unique vulnerabilities and needs. The AAP opposes the removal of these data elements, as they will make it more difficult to ensure appropriate

access to needed resources for LGBTQ youth. Understanding the sexual orientation of children entering foster care would provide insight into the types of supports and services they and their caregivers may need, and ensure that they receive the most culturally competent and appropriate care possible. It is imperative to maintain this data element to address disparities in wellbeing related to sexual orientation. In addition, the AAP would support including data on gender identity and expression, given the similarly unique vulnerabilities and trauma gender diverse youth in the child welfare system face.

***(Formerly §1355.44 (b) (3-8), (c) (6-7), (d) (3), (e) (8-11), (f) (10), (h) (20-23) in 2016 final rule): ICWA-Related Elements***

AAP works extensively to promote the health of Native children and to support policies that ensure their access to needed health services and address the unique disparities they face. The Indian Child Welfare Act (ICWA) is a critical federal child welfare law, promoting maintenance of familial and cultural ties to promote children's health, safety, permanency, and wellbeing. Appropriate ICWA implementation is important for minimizing child trauma and promoting optimal parent-child attachment. ICWA also has a critical role in addressing the historical trauma related to federal policy promoting the removal of Native children to non-Native families. Collecting data on ICWA within AFCARS is necessary for ensuring the law's effective implementation and the related child health benefits it offers. The AAP opposes the proposed rule's removal of data elements related to ICWA and urges the inclusion of all ICWA elements from the 2016 final rule.

***(Formerly §1355.44(b)(11)(ii) and §1355.44 (b) (12) in 2016 final rule): Date of Health Assessment and Timely Health Assessment***

The AAP opposes the proposed removal of these data elements, which note the date and timeliness of a child's health assessment within AFCARS. This information is important for assessing access to care for a significant portion of the foster care population at the state and national level. This is an important aspect of measuring a state's compliance with its HOCP. We greatly appreciate the inclusion of health assessment dates in the 2016 final rule, which provide a baseline understanding of the health of children entering the child welfare system. ACF needs this data to assess whether states are complying with important federal requirements under the Title IV-B program.

The inclusion of the date of a child's health assessment is particularly important given the nationwide increase in parental substance use disorders, which has resulted in more children entering the foster care system with significant trauma. Children can manifest this trauma by developing various physical, developmental, educational and mental health conditions. Timeliness of health assessment is critical to ensuring that child welfare agencies can appropriately identify health needs such as trauma-related behavioral challenges and developmental delay and provide access to appropriate services as indicated by the assessment. By having a greater understanding of how this trauma is affecting children, they can receive needed services sooner and better heal from the trauma that they have experienced.

***§1355.44(b)(10): Physical Health, Developmental, Behavioral, or Mental Health Conditions***

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

***§1355.44(b)(11): School Enrollment/ §1355.44(b)(12): Educational Level/ (Formerly §1355.44(b)(16) in 2016 final rule): Educational Stability***

The AAP supported these school-related elements in the 2016 final rule as they have important health implications. These data are important for assessing the educational experiences of children in foster care. While the AAP had also suggested the inclusion of more detailed elements to capture information on child development and early childhood education, the 2016 final rule struck an appropriate balance. We oppose the removal of the educational stability data element in this NPRM, as this has important health implications that are important to better understand.

***§1355.44(b)(14): Special Education***

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

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

***§1355.44(b)(15): Prior Adoption; §1355.44(b)(16) (i-ii): Prior Guardianship***

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

***§1355.44(b)(17): Child Financial and Medical Assistance***

The AAP applauded the inclusion of this element in the 2016 final rule and its subsequent descriptive individual elements denoting type of assistance, particularly the inclusion of state and tribal child

financial and medical assistance. These fields would provide a more robust analysis of all such assistance a child is receiving, with important implications for their medical coverage. This would improve efficiency in caring for children by ensuring efficient service delivery and financing. Removing data elements related to Medicaid, SCHIP, and other programs sacrifices important information that is not extraneous for collecting data on child health. We strongly oppose the removal of these important data elements.

***§1355.44 (b) (19-21): Sibling Information***

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

***§1355.44 (d) (3): Environment at Removal:***

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

***§1355.44 (d) (5): Victim of sex trafficking prior to entering foster care/ §1355.44 (d) (6): Victim of Sex Trafficking while in Foster Care:***

The AAP strongly supported the inclusion of this information to review implementation and effectiveness of P.L. 113-183 in the 2016 final rule. This collection of data can prove to be an enormous resource in combatting such a traumatic experience as sex trafficking and also identify youth at risk of pregnancy and sexually transmitted infections and more extensive medical evaluation.

***§1355.44 (e): Living Arrangement and Provider Information***

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

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

***§1355.44 (f) (1): Permanency Plan***

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

***(Formerly §1355.44 (f) (5) in 2016 final rule): Juvenile Justice***

The AAP opposes the removal of this data element. Collecting this data would improve our ability to examine the overlap of children in the Child Welfare and Juvenile Justice systems. This examination could be used on the national level to determine how the intersection of Title IV-E dollars serve children in both systems and how best to improve their health and wellbeing.

***§1355.44 (f) (5-6): Caseworker Visit Information***

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

***(Formerly §1355.44 (f) (8) in 2016 final rule): Transition Planning***

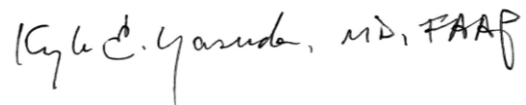
AAP opposes the removal of transition planning elements, particularly those related to health. We suggested a more deliberate inclusion of health data elements into this field, to further encourage the healing of the children transitioning out of the foster care system. The 2016 final rule already struck an appropriate balance between collecting important data and limiting burdens. Health practitioners play an important role in providing developmentally appropriate advice and support for youth and families during transitions, linkages to ongoing primary and subspecialty care, prescriptions for medications and health education.

**Conclusion**

The AAP greatly appreciates the improvements already made to AFCARS by the 2016 final rule, which we strongly supported. We are concerned with the proposed rule's removal of data elements that are important to improving child health and wellbeing. We strongly encourage the reinstatement of the 2016 final rule immediately. We strongly oppose the scaling back of the elements listed in the rule and potential delays in the implementation of the 2016 final rule. The 2016 rule included elements that are a significant improvement over the previous system, and those should be maintained to promote the health and wellbeing of children in foster care.

Thank you again for the opportunity to provide input on this important rule. If the AAP can be of any further assistance, please do not hesitate to contact Zach Laris in our Washington, D.C. office at 202/347-8600 or [zlaris@aap.org](mailto:zlaris@aap.org).

Sincerely,

Handwritten signature of Kyle E. Yasuda, MD, FAAP in black ink.

Kyle E. Yasuda, MD, FAAP

President

KEY/zml

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 11, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah2-ws3e  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0261  
Elk Valley Rancheria

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## Submitter Information

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**Address:**  
Crescent City, CA,  
**Organization:** Elk Valley Rancheria  
**Government Agency Type:** Tribal  
**Government Agency:** Elk Valley Rancheria

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## General Comment

See attached

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## Attachments

Elk Valley Rancheria

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June 11, 2019

**VIA ELECTRONIC SUBMISSION**  
[CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov)

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


Re: RIN: 0970-AC72; Agency: Children's Bureau; Administration on Children, Youth and Families; Administration for Children and Families; Department of Health and Human Services; Action: **Adoption and Foster Care Analysis and Reporting System**; Notice of Proposed Rulemaking (4/19/19)

To Whom It May Concern:

The Elk Valley Rancheria, California, a federally recognized Indian tribe, 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.

By way of background, tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS because there is no other national method to track ICWA compliance, and there are few if any state systems. The initial rules were changed due to comments made 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. 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, and included the ICWA data elements. The current NPRM seeks to modify or eliminate a significant number of the ICWA data points found in the 2016 Final Rule.

**General Comments:**

***The Goals of the Families First Prevention Services Act and ICWA are Parallel and Support One Another.***

As the current NPRM reminds us, there is a new Title IV-E prevention services program, the Families First Prevention Services Act. The 2019 Title IV-B Program Instructions state, “[c]reating a system that sees the prevention of child abuse and neglect as the goal of child welfare changes the current system toward working with families sooner through upfront prevention efforts.” (ACYF-CB-PI-19-4 (2019).) Those same Program Instructions “recognize that tribes have long embraced a vision for child welfare that focuses on strengthening families and native communities and that seeks to avoid the unnecessary removal of children from home.” (ACYF-CB-PI-19-4 (2019).) Indeed, for over 40 years, the Indian Child Welfare Act has required active efforts be made to prevent the breakup of the Indian family, making it the “gold standard” of child welfare practice. (81 Fed Reg. 90527.) Additionally, placement under Families First aligns with the placement preferences of ICWA. The placement goal of Families First is to place children in family foster care, only utilizing congregate care as a last resort. ICWA’s placement preferences have long taken this approach, again making it the “gold standard” of child welfare practice.

The ICWA data points in AFCARS were to be a significant step in the direction of improving child welfare practices for not only AI/AN children, but for all children. As noted in the NPRM, “states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.” (84 Fed Reg. 16574.) In its comments to the April 2018 Advanced Notice of Proposed Rulemaking, the California Department of Social Services (the state with the largest Native American population) “unequivocally supported 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 in facilitating child welfare practice and in informing policy decisions and program management.”



Having data on ICWA would provide States with a valuable tool that would help to shift the system in the direction Families First intends, toward prevention, toward placement in a family setting and toward collaboration between all parties in the system.

Importantly, the 2016 Final Rule was intended to identify more effective ways for tribes, States and the federal government to work together to advance the well-being of Indian children and families. This again is directly in line with Families First, where it includes as a goal, “a strong, healthy child welfare workforce to achieve better outcomes.”

To that end, all of ICWA data points included in the 2016 Final Rule should be retained. Moreover, we strongly encourage a review of the data points being revised, in order to ensure they do not inadvertently encourage non-compliance with ICWA, whereby the well-being of Indian children would be harmed.


### ***The NPRM's One-Sided Focus on Compliance Costs is Arbitrary and Capricious***

This NPRM relies on information obtained through the April 2019 ANPRM which sought information only on burdens, making a reasoned cost-benefit analysis.

As required by law, the 2016 Final Rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule streamline compliance costs. The Agency “determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data.” 81 Fed. Reg. at 90528. The Agency explained how its weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the Final Rule at 81 Fed Reg. 90528:

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

There have been no material changes in circumstances justifying the Agency’s new approach. Executive Order 13,777 is not a sufficient basis for the Agency to reverse course. Further, Families First legislation does not amend ICWA, and so does not operate as a sufficient rationale to modify ICWA data points.



*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) to 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 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."


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.

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

Since these regulations have been effective for over two years, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes and the largest population of American Indian/Alaska Native residents, is already well under way with its implementation efforts, having relied on the Final Rule. At this stage, the proposed modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

The primary challenge faced by States in their implementation of ICWA data elements is the failure of ACF to provide the required data map. Through this failure, the current administration effectively blocked their implementation, seemingly pending the current streamlining action.

The NPRM "commend[s] the willingness of states to collect a more comprehensive array of information." (84 Fed Reg. 16575.) However, in the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements, frustrating Section 479's mandate to create a "national," "comprehensive," and "uniform" data collection system. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.



Further, modification to the existing data points requires states to start over on collaborations with their tribal partners and further delays implementation. This comes at the expense of the health, safety, and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the Final Rule would cost resources that are system-wide.


*These regulations are important to us, to our families, and also to 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 that data collection is necessary to protect Indian children, families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions. And there have been no changes in circumstances that would alter the burdens or benefits of the Final Rule's data collection requirements.


***Tribes have relied on the Final Rule.***

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the Final Rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the expected data elements. Tribes which have worked to develop and update agreements to reflect the data elements in the Final Rule and the 2016 BIA ICWA Regulations (since a goal of both is to increase uniformity) will see more of their limited resources wasted.

**Specific Comments Regarding Data Elements.**

While we strongly encourage retaining all of ICWA-related data elements of the 2016 Final Rule, we provide these specific comments to identify concerns regarding the suggested data elements and to offer methods of increasing the utility of streamlined data points.

Notice: We suggest adding the following additional data elements:



The NRPM includes a data element that would capture whether notice has been sent to a child's tribe. We recommend also including a data element that would capture the date of the notice (as found on the return receipt), as well as the date the petition was filed. These dates are easily located and are not qualitative or too detailed in nature, but do provide important additional information regarding whether notice was timely.

Placement: We suggest adding the following additional data elements:

Data points exist regarding whether a child is placed with a relative. The NPRM proposes to also collect data on whether a child is placed with a tribal member. We suggest adding these two additional data elements:

1. If the child is not placed with either a relative or a tribal member, was a good cause finding made to deviate from ICWA's placement preferences? (yes or no)
2. If yes, what was the basis of the good cause finding? (drop down list from the 2016 ICWA regulations)

This information will provide a more complete picture of what is occurring regarding placement and is consistent with the goal of Families First to place children in a family-like setting.

Transfer to Tribal Court: We suggest modifying this data element as proposed.

As written, this data element is confusing. We suggest the following set of questions:

1. Was a transfer to tribal court requested? (yes or no)
2. If so, was it granted? (yes or no)
3. If it was denied, what was the reason? (drop down menu based on 2016 ICWA regulations).

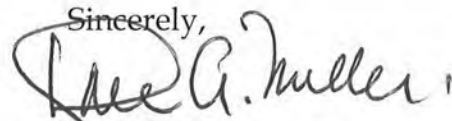
This data will enhance understanding regarding transfers to tribal court. There is no other mandatory mechanism for this data to be collected. The Court Improvement Program data would be voluntary, not mandatory.

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

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 will significantly impact tribal children and families, as well as county agencies trying to better follow the law. In the interest of

increasing compliance with the ICWA, and ultimately in protecting our children and families, we respectfully submit these comments.

Sincerely,

A handwritten signature in black ink that reads "Dale A. Miller". The signature is written in a cursive style with a large initial "D".

Dale A. Miller  
Chairman



# PUBLIC SUBMISSION

|                                    |
|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah2-v7o3  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0262  
North American Council on Adoptable Children

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## Submitter Information

**Name:** Mary Boo  
**Address:**  
St. Paul, MN,  
**Organization:** North American Council on Adoptable Children

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## General Comment

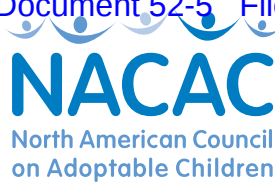
See attached

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## Attachments

North American Council on Adoptable Children





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

June 12, 2019

Kathleen McHugh  
US Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street SW, Washington, DC 22024

**Re: Response to Request for Public Comments on the 2019 NPRM to Revise the 2016 Final Rule on the Adoption and Foster Care Analysis and Reporting System (AFCARS)**

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

Dear Ms. McHugh,

The North American Council on Adoptable Children (NACAC) appreciates the opportunity to share comments regarding the 2019 NPRM to Revise the 2016 Final Rule on the Adoption and Foster Care Analysis Reporting System (AFCARS). Pursuant to the notice published in the Federal Register on April 19, 2019 (84 Fed. Reg 16572), NACAC submits the following comments:

With more than 40 years of experience in child welfare, NACAC recognizes the importance of well-thought improvements to data collection related to foster care and adoption. Today, we reiterate the sentiments of past comments submitted in response to numerous NPRMs, encouraging robust data collection that allow states and tribes to make effective decisions based on comprehensive and accurate information. By collecting data on key areas in child welfare such as 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, location of living arrangements, and others outlined more specifically below, we can identify how to better ensure safety, permanency, and well-being for children and evaluate how their successes might be replicated in other communities.

Specifically, NACAC encourages the retainment of data collection related to:

- **The Indian Child Welfare Act** — The 2019 NPRM to Revise the 2016 Final Rule proposes to eliminate 90 percent of the AFCARS data relating to Native children in state child welfare systems and applicable requirements of the Indian Child Welfare Act (ICWA). Currently, there is very little useful data collection related to American Indian and Alaska Native (AI/AN) children who are under custody of state child welfare authorities and an overrepresentation of Native children in state foster care systems (in some places by as much as 10 times the general population). We cannot afford to place more obstacles in the way of understanding and addressing the persistent, long-term poor

outcomes for Native children and families by further limiting data collection. The data elements threatened by the 2019 AFCARS NPRM promise to help allocate federal program resources more effectively, evaluate the extent to which states are working with tribes to successfully implement ICWA, help the Administration for Children and Families (ACF) effectively implement the Family First Prevention Services Act with Native children and families, and give tribes and states a consistent set of data to address ICWA challenges and other child welfare issues. Collecting and analyzing such data is an important part of ACF's oversight role related to ICWA. For these reasons, NACAC recommends that the data elements in the Final Rule related to ICWA be retained.

- **Sexual Orientation and Gender Identity** — The 2019 NPRM to Revise the 2016 Final Rule also proposes to eliminate the data elements in the Final Rule related to sexual orientation and gender identity, specifically the voluntary sexual orientation question for youth over the age of 14, the “family conflict related to child’s sexual orientation, gender identity, or gender expression” option for the reason for removal of a child from a family home question, and the voluntary sexual orientation question for foster and adoptive parents. Lesbian, gay, bisexual, transgender, and questioning (LGBTQ+) children and youth are overrepresented in foster care, face bias in foster care, and are not often placed in families where their safety and dignity can be assured. It is critical to collect data on these youth at the state and federal level so we can understand how their outcomes differ from other children and then continue to improve outcomes, reduce costs, reduce disparities, and create federal laws and policies that support them. NACAC recommends that the data elements in the Final Rule related to sexual orientation, gender identity, and gender expression be retained so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by LGBTQ+ youth in care. We also recommend that a voluntary gender identity question for youth over the age of 14 and a voluntary gender identity question for foster and adoptive parents and guardians be added.
- **Education** — The 2019 NPRM to Revise the 2016 Final Rule proposes to eliminate data elements in the Final Rule related to educational stability. As it stands, little national data about the education of children in foster care currently exists, making it challenging for agencies to know how to improve efforts to meet the educational needs of children in care. Education is a huge part of a child’s well-being, and well-being is one of the three pillars on which federal child welfare law is built (safety, permanency, and well-being). As such, NACAC continues to support the inclusion of the education stability data point in AFCARS as it is set out in the 2016 Final Rule, and we recommend that this data element be retained and not further reduced, so that states and tribes can monitor the implementation of federal law like *Fostering Connections to Success and Increasing Adoptions Act* of 2008 and the *Every Student Succeeds Act* and work to meet the educational needs of children in care.
- **Health elements** — The 2019 NPRM to Revise the 2016 Final Rule proposes to eliminate the data elements in the Final Rule related to the date and timeliness of a child’s health assessment, which is critical to assessing the foster care population’s access to care on a state and national level, particularly in recent years given the nationwide increase in

parental substance use disorder and the corresponding increase in children entering the foster care system with significant trauma that manifests in physical, developmental, and mental health conditions. NACAC recommends that the inclusion of the health assessment dates in the 2016 Final Rule be retained, so that states and tribes can have baseline understandings of the health and well-being of children entering the child welfare system — including what services are necessary to help them heal from trauma — and whether states are complying with important federal requirements under the Title IV-B program.

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.

We strongly urge you to not delay or scale back state data collection related to AFCARS.

Sincerely,

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

Mary Boo  
Executive Director

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah2-mm3u  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0263  
Confederated Tribes of the Umatilla Indian Reservation

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## Submitter Information

**Name:** Gary Burke

**Address:**

Pendleton, OR,

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

**Government Agency Type:** Tribal

**Government Agency:** Confederated Tribes of the Umatilla Indian Reservation

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## General Comment

See attached

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## Attachments

Confederated Tribes of the Umatilla Indian Reservation

**Confederated Tribes of the  
Umatilla Indian Reservation**



46411 Timine Way  
Pendleton, OR 97801

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email: bot@ctuir.org  
Fax: 541-276-3095

**Board of Trustees**

June 10, 2019

Attn: Jerry Milner, Acting Commissioner  
United States Department of Health and Human Services  
Administration for Children and Families  
330 C Street SW  
Washington, DC 20024

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

Rolling back the rule would be a significant step backward in federal policy as it relates to tribal children and would impede future data driven and data informed laws and policies geared toward the protection of native children. The Government Accountability Office (GAO) itself has indicated the need for improved data in this area. In 2005 the GOA report on ICWA implementation (GAO-05-290) indicated the Office was hindered in their ability to research and understand questions raised by Congress due to unavailability of reliable data. This lack of basic data is problematic for everyone, unnecessarily cobbles policy development, and prevents lawmakers from understanding the issues. The minor burden the Final Rule may place on states in order to obtain basic and critical information regarding native children in state child dependency systems is minor in comparison to the great need for this information in the development of effective future law and policy at both the state and federal level.

Information regarding tribal court transfer requests and denials is an important dataset to track. Currently, we do not know how often basic transfer requests are made and how often they are denied by States. That information can prove valuable to tracking State compliance with the ICWA-- both with regard to the letter of the law and the intent of the law. It often appears to tribal nations that State courts go to great efforts to prevent the transfer of cases to tribal courts thereby thwarting a critical aspect of the ICWA. Tracking this data will show if those concerns are founded, and if so, provide a basis for tribal nations to work with States on improving their tribal court transfer practice either through education and consultation or State legislative changes.

The heightened standards and procedures for the termination of parental rights in the ICWA and related federal regulations are important in reducing the historical practice of improperly removing Indian

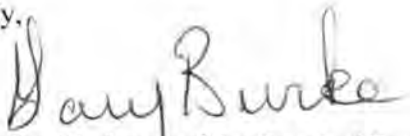
Jerry Milner, Acting Commissioner  
Page 2 of 2

children from their families and culture and alienating them from their tribal nations. These provisions not only have an increased burden of proof, but also require the use of qualified expert witnesses. There is a good deal of concern that States are not upholding the heightened standard of proof beyond a reasonable doubt, and particularly that findings supporting terminations are not based on the testimony of individuals who have actual experience with, and understanding of, a child's Indian tribe. Presently, this information is not tracked or required to be tracked. It is basic information tribes need to determine if States are complying with the ICWA.

Similarly, information regarding active efforts and placement preferences is critical to tracking State compliance. We know that disparities in case outcomes of Indian children versus non-Indian children is often significant. This should not be the case if caseworkers are using active efforts to prevent the breakup of an Indian family. We also know that Indian children are often continuing to be placed in non-Indian families or otherwise with families that do not have close ties to the Indian child's tribe or culture. These things should not be occurring if ICWA is being complied with. However, we do not currently have data showing whether or not States are actually ensuring active efforts and placement preferences are being followed. This is basic information that every State should be able to provide because if they are not currently tracking it, they, and tribes, have no way of knowing if they are complying with federal law.

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

Sincerely,



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

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah2-zevo  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0264  
Movement Advancement Project

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## Submitter Information

**Name:** Naomi Goldberg  
**Address:** United States,  
**Organization:** Movement Advancement Project

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## General Comment

See attached

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## Attachments

Movement Advancement Project



June 12, 2019

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street S.W.  
Washington, D.C. 20024  
cbcomments@acf.hhs.gov

**Re: Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) System to remove questions relating to sexual orientation (Apr. 19, 2019) [RIN 0970-AC72]**

Dear Ms. McHugh:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) at 84 FR 16572 that proposes to eliminate data collection on sexual orientation for foster youth and prospective parents in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

The collection of sexual orientation data from foster youth and adoptive families is critical to help identify trends in types of placements, rate of disruptions and the number of foster placements. Research shows that youth who identify as lesbian, gay, or bisexual (as well as those who may identify as transgender) (LGBT), are overrepresented in the child welfare system. For example, a federally-funded study from 2013 of Los Angeles county's foster care system similarly found that nearly 20% of youth identified as LGBTQ -- almost twice the percentage of LGBTQ youth estimated to be living outside of foster care.<sup>1</sup> Collecting information about foster youths' sexual orientation will inform federal law, policy and funding determinations.

Additionally, there is research from the U.S. Census Bureau showing that same-sex couples foster and adopt at much higher rates than other couples. A 2018 analysis of American Community Survey data found that same-sex couples are seven times more likely to be raising

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<sup>1</sup> Bianca D.M. Wilson et al., *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST., at 6 (Aug. 2014), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf) [hereinafter "*Sexual and Gender Minority Youth*"].



foster and adoptive children than different-sex couples.<sup>2</sup> Having information about their experiences navigating the system will help ensure that the most number of families are able to step forward to provide needed foster and adoptive homes for children in care.

Eliminating the sexual orientation variable from this national dataset will undermine the ability to track demographic trends and identify gaps in services and will place youth and prospective parents at continued risk of harassment and discrimination. We urge you to rescind the NPRM and proceed with the AFCARS 2016 Final Rule as promulgated.

The Movement Advancement Project (MAP) is a think tank dedicated to advancing equality and opportunity for all. As part of this mission, our work has focused on reducing discrimination against LGBT people and youth as well as removing barriers to fostering and adopting by single people, people of faith, unmarried couples, and others.

MAP strongly opposes the elimination of the collection of sexual orientation information for youth and adults. Without the data in the 2016 AFCARS Final Rule there is not national data the experiences of sexual minority youth or parents in the system. We welcome the opportunity to work with ACF to assist the implementation of these important reforms.

Sincerely,

A handwritten signature in blue ink, appearing to read "Naomi Goldberg".

Naomi Goldberg, MPP  
Director of Policy Research

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<sup>2</sup> Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex couples are Raising Children?*, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 12, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah2-xjen  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0265  
New York State Office of Children and Family Services

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## Submitter Information

**Name:** SheliaP Poole

**Address:**

Rensselaer, NY,

**Organization:** New York State Office of Children and Family Services

**Government Agency Type:** State

**Government Agency:** New York State Office of Children and Family Services

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## General Comment

See attached

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## Attachments

New York State Office of Children and Family Services



**Office of Children  
and Family Services**

**ANDREW M. CUOMO**  
Governor

**SHEILA J. POOLE**  
Acting Commissioner

June 12, 2019

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

Re: April 19, 2019 Amendment of Statewide Data Indicators for Child and Family Services Reviews: Request for Public Comment

Dear Director McHugh:

On behalf of the New York State Office of Children and Family Services (OCFS), I respectfully submit the following comments in response to the notice in the Federal Register (84 FR 16572) on the Children's Bureau's proposed amendments to the Adoption and Foster Care Analysis Reporting System (AFCARS) regulations that require title IV-E agencies to collect and report data to the Administration for Children and Families (ACF) on children in out-of-home care, who exit out-of-home care to adoption or legal guardianship, and children who are covered by a title IV-E adoption or guardianship assistance agreement.

OCFS conducted a detailed review of the amendments, many of which we support. We also agree with the findings of the Health and Human Services Regulatory Reform Task Force, which identified the AFCARS regulation as one in which the reporting burden imposes costs that exceed benefits due to over reporting of data elements that provide little value. However, there remain concerns (addressed below) regarding a need for clarity on certain data points that are requested by ACF. In addition to commenting on the proposed amendments and data collection efficiencies, it is OCFS' position that the changes proposed would require child welfare agencies to make changes to their information technology systems and complete other preparatory activities to enable compliance with the new AFCARS regulations. These necessary changes will require additional time as further explained below.

OCFS lauds ACF's goal of amending and streamlining relevant data elements to ones with a specific purpose for title IV-B/IV-E statute and program monitoring, Congressional reporting, budgeting, and areas where reporting of required information to AFCARS would improve the accuracy and reliability of the data in AFCARS. OCFS does, however, have concerns regarding the scope of certain data elements that remain required, particularly the scope of the adoption file. Current AFCARS adoption files cover only children newly discharged to adoption and guardianship (about 1800 children in the most recent file). The proposed file would be for all children receiving adoption and guardianship assistance during the period for which the population will likely be between 25,000 to 30,000 children. OCFS questions whether it was the intention of ACF to expand the scope so widely and whether if so, this decision truly improves the quality and accuracy of data collected. Additionally, OCFS has concerns with the scope of tracking with respect to financials. The proposed rule requires agencies to report for each child in foster care whether the child received assistance under various financial categories including IV-B. This data element will require systems changes at OCFS and most importantly will be difficult to track.

There are several points in the proposed regulation for which OCFS seeks clarification. In the proposed rule, there are a number of elements where "each" of "living arrangements" or "dates" are to be reported. Because these terms are not defined, it is unclear exactly how the file should be constructed. Without a firm understanding of how the file must be constructed, it is very hard to estimate workload and systems changes that may be needed to accomplish the necessary reporting. OCFS would also appreciate clarification regarding timeframes and effective dates concerning this proposed rule. On page 16573 of the proposed rule it says, that "we will revisit the implementation date to provide title IV-E agencies time to comply" while page 16578 provides an implementation date of, "no sooner than the start of the second fiscal year following the publication of final rule". This is made less clear by language on page 16589, which says, "title IV-E agencies must comply....., which is scheduled to begin on October 1, 2020 (FY 2021)." It is significant for our agency to have clear direction with respect to effective dates for state compliance on all required AFCARS data elements.

Regarding timeframes for compliance, OCFS would request additional time to make the necessary systems changes required to achieve compliance with the new AFCARS reporting elements. To that end, we highlight that once the final rule regarding the submission file is released, the file structure details are then released. States will need additional time for programming and coding following the release of the more intricate structural details. It is also our position that imposing sanctions for the inability to achieve compliance by October 1, 2020 date is unnecessarily harsh and requests that sanctions be eliminated for states that can provide ACF with evidence that they are working in good faith to come into compliance. Currently, states must submit data files that contain no more than 10% missing/invalid data for each element submitted. OCFS would propose that if a state was for example at 15% in the current submission and was at 17% in the prior submission, this would be sufficient evidence of good faith to avoid a penalty, even if not yet below the desired threshold. OCFS would like to propose the concept of a graduated schedule of compliance targets that would enable States to more successfully meet the expectations of the new AFCARS reporting.

Thank you for the opportunity to offer our comments on these amendments. OCFS looks forward to continuing our partnership with the Children's Bureau in the important work of supporting children and families in the child welfare system.

Sincerely,



Sheila J. Poole  
Acting Commissioner

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah3-unxw  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0266  
Kinnect

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## Submitter Information

**Name:** Shannon Deinhart  
**Address:**  
Cleveland, OH,  
**Organization:** Kinnect

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## General Comment

See attached

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## Attachments

Kinnect

June 12, 2018

Kathleen McHugh

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

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

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

Dear Ms. McHugh:

I am writing on behalf of Kinnect, a Cleveland, Ohio based non-profit organization dedicated to helping ensure that every child in Ohio achieves permanency as quickly as possible. **Kinnect strongly opposes reducing the data elements in AFCARS as proposed in the current ANPRM. The costs of *not* collecting the data far outweigh the costs of collecting it.**

It would be negligent to make this change and ignore the serious plight of LGBTQ youth who are involved with child welfare. Numerous studies show that LGBTQ youth are overrepresented in child welfare; experience poor health, safety, and well-being outcomes compared to their cisgendered, heterosexual peers; are subject to higher placement changes and lower permanency rates; and are more likely to live in congregate care.

I am currently co-leading Affirm, a four-year pilot program funded by the Quality Improvement Center at the University of Maryland School of Social Work to improve permanency outcomes for LGBTQ youth in foster care. In partnership with Cuyahoga County Division of Child and Family Services, we are working to:

- 1) Empower child welfare workers to engage in conversation to safely identify youth in their care with diverse sexual orientation, gender identity, and/or gender expression (SOGIE)
- 2) Recruit and train foster parents who are affirming to youth with diverse SOGIE
- 3) Increase permanency outcomes for those served through intensive family search and engagement and reducing families' rejecting behaviors

An essential component of this program's effectiveness is distinguishing whether a young person's diverse SOGIE is *coincidental* to the factors that brought the child into custody, or is the *primary reason* the child was brought into custody, due to rejection by his/her/their family. These two circumstances require very different interventions.

National data indicate that 19% of children in care identify as having diverse SOGIE. With 2,700 children currently in custody of the Cuyahoga County Division of Child and Family Services, there are likely more than 500 LGBTQ youth among them—yet the county’s own data identifies only 50. Before we have even begun, we have already failed 95% of LGBTQ youth in care and 13% of *all* children in care—because without properly identifying this population, we are unable to provide the appropriate intervention to meet their needs.

Collecting this data is critical to developing evidence-informed interventions to meet these youth and their families’ unique needs. We need this data to:

1. Increase the likelihood of these youth being connected with families
2. Inform service providers practice changes (e.g., to eliminate discrimination in congregate care, to support case workers to safely identify youth)
3. Ensure that sufficient funding is dedicated to properly support this population

As the entity responsible for protecting *all* children’s safety and well-being, the U.S. Department of Health and Human Services has an ethical, professional, and urgent responsibility to ensure the continued collection of this data. Further, the Department also bears the responsibility of enforcing the collection of this data.

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

Sincerely,

Shannon Deinhart  
Associate Director and Co-Founder  
Kinnect

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah3-xw0v  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0267  
Pascua Yaqui Tribe

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## Submitter Information

**Name:** Robert Valencia

**Address:**

Tucson, AZ,

**Organization:** Pascua Yaqui Tribe

**Government Agency Type:** Tribal

**Government Agency:** Pascua Yaqui Tribe

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## General Comment

See attached

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## Attachments

Pascua Yaqui Tribe



# PASCUA YAQUI TRIBE

## OFFICE OF THE CHAIRMAN

Chairman Robert Valencia  
Pascua Yaqui Tribe  
7474 S. Camino de Oeste  
Tucson, Arizona 85757

June 11, 2019

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

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

RE: RIN: 0970-AC72

Agency: Children's Bureau; Administration on Children, Youth and Families;  
Administration for Children and Families; Department of Health and Human Services

Action: Adoption and Foster Care Analysis and Reporting System; Notice of  
Proposed Rulemaking (4/19/19)

Dear Ms. McHugh,

The Pascua Yaqui Tribe hereby submits these comments on the Notice of Proposed Rulemaking (NPRM) on 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), published in the Federal Register on April 19, 2019 (85 FR 16572).

The Indian Child Welfare Act of 1978 (25 U.S.C. 1901-1963) was enacted to "protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique value of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs." The Final Rule published on December 14, 2016 (81FR 90524) establishes data collection to ensure compliance with the Indian Child Welfare Act.

Data points specific to ICWA were incorporated into the AFCARS as detailed in the Final Rule published on December 14, 2016. The inclusion of ICWA related data points in the AFCARS was novel and crucial because there is no other national method to track ICWA compliance, and few, if any, state ICWA tracking methods. The ICWA data points in AFCARS were to be a significant step in the direction of improving child welfare practices for tribal children because data collected could inform policy decisions and program management to enhance child welfare programs. Furthermore, the data collected would be a valuable tool to determine if mandates of the Indian Child Welfare Act were being complied with, such as timely notice and service, tribal intervention, prevention of removal, placement with relatives and tribal members for both foster care and permanency plans, family reunification rates, preference for guardianship over severance and adoption, and tribal community connections. This national data collection would identify needs so tribes, states and the federal government could work together to improve the outcomes and reduce the disproportionality of Native American children in foster care.

The Pascua Yaqui Tribe recognizes that our Yaqui children are our future. Our vision is to strengthen families and promote the well-being of our children through prevention, intervention, education and advocacy. Together in genuine partnership with families, our community, and governmental agencies we strive to provide support for children and families to reach their full potential. The Pascua Yaqui Tribe intervenes in every state court Indian Child Welfare Act proceeding we receive notice of, and actively participates in all aspects of each case. In addition, the Pascua Yaqui Tribe collects its own data, documenting ICWA compliance, and complies with the Bureau of Indian Affairs data collection. However, without being able to compare our data with that collected by a state or the federal government, the Pascua Yaqui Tribe is not able to compare our outcomes with all Title IV-E children and other Indian Tribes because that data is not available without AFCARS. Also, we are still experiencing not receiving notice, or late notice, and non-compliance with placement preferences, even though we have a good working relationship with the Arizona Department of Child Safety. By requiring case workers to input all of the detailed AFCARS ICWA data points, it instills a conscious effort to comply with ICWA and an automatic training tool for case workers so they know what efforts ICWA requires.

The Pascua Yaqui Tribe requests that the ICWA data points included in the Final Rule published on December 14, 2016 be retained, and any additional data points that are necessary to protect Indian families and tribes will be added.

Sincerely,



Robert Valencia  
Chairman, Pascua Yaqui Tribe

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah3-11kq  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0268  
North Dakota Department of Human Services

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## Submitter Information

**Name:** Lauren Sauer

**Address:**

Bismark, ND,

**Organization:** North Dakota Department of Human Services

**Government Agency Type:** State

**Government Agency:** North Dakota Department of Human Services

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## General Comment

See attached

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## Attachments

North Dakota Department of Human Services



June 12, 2019

ND Department of Human Services  
Children & Family Services Division  
600 E. Boulevard Ave #325  
Bismarck, ND 58503

RE: AFCARS Open Comment Response Period  
RIN:0970-AC72

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

Administration for Children & Families:

Thank you for the opportunity to respond to the request for AFCARS public comment dated Apr 19, 2019. North Dakota is a state supervised- county administered child welfare system including four Title IV-E Tribal agreements, 53 county agencies, eight regional offices as well as statewide Division of Juvenile Services working collaboratively to meet the needs of foster children.

Since 2009, North Dakota has utilized an internal data management system, FRAME. FRAME was developed and is managed by ND Department of Human Services (NDDHS) Information and Technology Services (ITS) to meet federal compliance with reporting requirements based upon all case management activity from child protection, in home prevention services, foster care and adoption. Overtime, North Dakota has worked to adapt FRAME to ensure compliance with Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements.

The comment period was specific to hearing from states related to the data elements proposed. It was helpful to have the 272 data elements reduced to 183 in the most recent proposed rulemaking. Our state is not concerned about the information required in the remaining data elements; however, North Dakota continues to face challenges with capacity to begin and complete the data system accommodations. North Dakota is experiencing many changes in our child welfare system including:

1. North Dakota just completed the ND legislative session in April 2019 where a number of legislative bills passed that directly affect the ND Department of Human Services. The legislative process will require state law, rule and policy changes; a large undertaking from

**CHILDREN AND FAMILY SERVICES DIVISION**

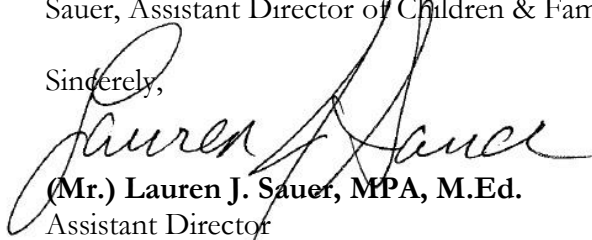
Lauren J. Sauer  
June 12, 2019  
Page 2

Children and Family Services, the division who would also lead the efforts of implementing the data extraction for AFCARS.

2. North Dakota did not delay implementation of the child welfare federal regulation Family First Prevention Services (PL 115-135); the effective date on the many new federal initiatives is October 1, 2019. The federal implementation is a large undertaking requiring commitment from Children and Family Services, the division who would also lead the efforts of implementing the data extraction for AFCARS.
3. North Dakota is fully operationalizing a statewide county social service redesign. The county redesign efforts require NDDHS to engage in the theory of constraint process to create more efficient and effective child welfare service delivery for clients. The state redesign implementation is a large undertaking requiring commitment from Children and Family Services, the division who would also lead the efforts of implementing the data extraction for AFCARS.
4. North Dakota is fortunate that Children and Family Services has not experienced a large volume of staff turnover in the division from the positions required to move the many projects along, however the division has limited staff and position vacancies that exist do require current staff to cover duties. Overall the capacity to complete required effort, federal implementation, program improvement, quality assurance and any additional projects a large concern at this time.
5. North Dakota is working to implement a number of technological changes specific to internal data collection, payment, state and federal reporting requirements in two data management systems. The technology changes required for the state data management system, FRAME, and payment system, CCWIPs, require a great commitment from Children and Family Services, the division who would also lead the efforts of implementing the data extraction for AFCARS.

In order to best accommodate the requirements of AFCARS, North Dakota requests a delayed of implementation of all AFCARS data requirements until October 2023 or two federal fiscal years after the effective date of the final rule. Please provide North Dakota with a response regarding the delayed implementation by contacting Lauren Sauer, Assistant Director of Children & Family Services.

Sincerely,



**(Mr.) Lauren J. Sauer, MPA, M.Ed.**

Assistant Director  
Children & Family Services Division  
ND Department of Human Services  
600 E Boulevard Ave #325  
Bismarck, ND 58505  
[lsauer@nd.gov](mailto:lsauer@nd.gov) or 701-328-1709

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah3-jhdl  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0269  
Inter Tribal Association of Arizona

---

## Submitter Information

**Name:** Shan Lewis  
**Address:**  
Phoenix, AZ,  
**Organization:** Inter Tribal Association of Arizona  
**Government Agency Type:** Tribal  
**Government Agency:** Inter Tribal Association of Arizona

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## General Comment

See attached

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## Attachments

Inter Tribal Association of Arizona



# Inter Tribal Association of Arizona

21 TRIBAL NATIONS

June 13, 2019

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

RIN: 0970-AC72

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

**Re: Notice of Proposed Rulemaking—Adoption and Foster Care Analysis and Reporting System—Federal Register (April 19, 2019)**

The Inter Tribal Association of Arizona (ITAA) is pleased to provide comments on the Notice of Public Rulemaking (NPRM) regarding Adoption and Foster Care Analysis and Reporting System. This NPRM was published in the *Federal Register* on April 19, 2019, pages 16572-16600.

Within American Indian cultures, families are the center of the community and children are sacred gifts from the creator. The Indian Child Welfare Act of 1978 (ICWA) “protects the best interest of the Indian Child and promotes the stability and security of Indian tribes and families” (25 U.S.C. § 1902). Part of ensuring the safety and security of American Indian and Alaska Native (AI/AN) children is having basic data collected that provides information on their circumstances.

Currently, ICWA data is not mandated for collection by state agencies or courts. Through the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations, much needed information would be collected on child welfare cases to ensure that American Indian and Alaska Native children and their families receive the appropriate level of protections as outlined in the ICWA. Additionally, the AFCARS regulations related to ICWA data elements will ensure courts and agencies working with ICWA-eligible children and their families understand how effectively the ICWA law is being applied and make changes to policies as needed. A few of the expected benefits from implementing the ICWA data elements as finalized in 2016 include:

- **Identification of ICWA-eligible children.** All too often children and families are denied the protections of ICWA because a court or agency did not ask whether the child had American Indian heritage. Not only can this result in Indian children not being identified appropriately, it can create a risk of insufficient service provision, delay or cause repetition in court proceedings, and result in placement instability once a child is properly identified. The requirements regarding early identification included in the new regulations ensure good child welfare practice and promote compliance with the requirements of the law.

- Ak-Chin Indian Community
- Cocopah Tribe
- Colorado River Indian Tribes
- Fort McDowell Yavapai Nation
- Fort Mojave Indian Tribe
- Gila River Indian Community
- Havasupai Tribe
- Hopi Tribe
- Hualapai Tribe
- Kaibab Band of Paiute Indians
- Pascua Yaqui Tribe
- Pueblo of Zuni
- Quechan Tribe
- Salt River-Pima-Maricopa Indian Community
- San Carlos Apache Tribe
- San Juan Southern Paiute Tribe
- Tohono O’odham Nation
- Tonfo Apache Tribe
- White Mountain Apache Tribe
- Yavapai Apache Nation
- Yavapai-PreScott Indian Tribe

- **Consistent execution of *Active Efforts*.** The provision of active efforts is required before an ICWA-eligible child can be removed from her home and before parental rights can be terminated. Without a clear record of active efforts, state agencies are not able to provide the appropriate level of services required. Active efforts also facilitate the provision of culturally appropriate services to children and their families.
- **Timely notice to tribes in voluntary proceedings.** Tribes are *parens patriae* for their member children. In ICWA proceedings this includes the right to intervene in state proceedings or transfer the case to tribal court. When tribes do not receive notice of voluntary proceedings they are effectively denied these rights. Further, because tribes have the exclusive authority to determine which children are members, when tribes are not notified and offered the opportunity to verify that a child is ICWA-eligible, a court cannot ensure compliance with the law. Lastly, tribes are an essential resource for states and agencies seeking placements in line with ICWA's preferences. Without knowledge of a voluntary proceeding, children can be denied possible placements consistent with ICWA's placement preferences. Notice in voluntary ICWA proceedings, provides agencies and courts the clarity necessary to protect these interests.

In Arizona, the state child welfare agency is in the process of implementing a new database to capture AFCARS information. In early 2017, a tribal-state workgroup was created to assist with the facilitation of including the ICWA data elements into the new database. The outcome was beneficial; however, with this new notice of proposed rulemaking, ITAA is concerned that the state will not follow through on efforts to capture the new data elements. The state may now see this as an opportunity to scale back efforts in capturing all the 2016 ICWA data element information to reduce the perceived "burden" of programming, training, and casework costs. The collection of child welfare data should not be viewed as a burden but rather as a tool to assist with the application of appropriate services and the protection of children.

The Inter Tribal Association of Arizona strongly supports the implementation of the AFCARS regulations to include all of the ICWA data elements previously finalized in December 2016. The regulations will provide the clarity of information for all parties involved in child welfare cases to comply with the ICWA law and promote the best interest of American Indian and Alaska Native children and their families.

Thank you in advance for consideration of our comments.

Sincerely,



Shan Lewis,  
President, Inter Tribal Association of Arizona  
Vice-Chairman, Fort Mojave Indian Tribe



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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 13, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah3-41jj  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0270  
Tribal Law & Policy Institute

---

## Submitter Information

**Name:** Jerry Gardner  
**Address:**  
West Hollywood, CA,  
**Organization:** Tribal Law & Policy Institute  
**Government Agency Type:** Tribal  
**Government Agency:** Tribal Law & Policy Institute

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## General Comment

See attached

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## Attachments

Tribal Law & Policy Institute



# TRIBAL LAW AND POLICY INSTITUTE

*Serving Native Communities Since 1996*

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COMPUTER TECH/WEBMASTER  
Lou Sgroi

STAFF ACCOUNTANT  
Jan Langer

BOOKKEEPER  
Uno Lawthong

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

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

**Re: RIN: 0970-AC72 Adoption and Foster Care Analysis and Reporting System; Advanced Notice of Proposed Rulemaking (4/19/2019)**

The Tribal Law and Policy Institute (TLPI) submits these comments on the Advanced Notice of Proposed Rulemaking (NPRM) regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) regulations finalized on December 14, 2016 (Final Rule) which include the collection of Indian Child Welfare Act (ICWA)-related data elements. TLPI opposes the proposed “streamlining” of AFCARS data elements and supports the retention all of the ICWA data points included in the 2016 Final Rule.

I. Streamlining ICWA-related data elements flies in the face of the purpose of ICWA and federal efforts to ensure ICWA compliance.

The Congressionally stated purpose of ICWA is

“to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian Tribes in the operation of child and families programs.”<sup>1</sup>

After the passage of the ICWA in 1978, states were left to interpret its provisions with limited guidance.<sup>2</sup> This led to state non-compliance with

<sup>1</sup> 25 U.S.C. § 1902.

<sup>2</sup> See Bureau of Indian Affairs, *Guidelines for Implementing the Indian Child Welfare Act* (Dec. 2016), at 5, <https://www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf>.

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ICWA, including the development of various judicially created exceptions<sup>3</sup> that were inapposite to the explicit purpose of ICWA. Ultimately, complacency in oversight manifested in a 40-year inability to meaningfully track and improve ICWA compliance.<sup>4</sup>

AFCARS, as **the only Federal national data set** that collects case level information on all children in foster care and children adopted with the involvement of the title IV-E (child welfare) agency,<sup>5</sup> is the most appropriate tool the federal government possesses to collect data on ICWA implementation. The creation of AFCARS data elements related to the ICWA was an overdue and integral step in ensuring compliance. The proposed streamlining of ICWA-related data elements in the NPRM will undercut the rights of Indian children and Tribes. By streamlining ICWA-related data elements, states can continue to vaguely report or fail to report on efforts to implement ICWA's provisions, such as whether active efforts were undertaken prior to termination/modification of parental rights and what those efforts were.<sup>6</sup> Without this comprehensive data, the federal government remains unable to meet its statutory obligation to establish and maintain minimum federal standards to protect the best interest of Indian children.

Further, **the proposed revisions shirk recent federal attempts to ensure state implementation of ICWA**, which have included updated ICWA guidelines 2015, promulgation of ICWA regulations in 2016, updated ICWA guidelines 2016, and the AFCARS Final Rule in 2016. These attempts were made to address a documented and pressing need for comprehensive national data on ICWA implementation.<sup>7</sup> A need that still exists given that states were in the midst of preparing to implement the 2016 Final Rule, when implementation was delayed until 2020.<sup>8</sup> It is critical to note that since 1978, states have been required to implement and comply with the ICWA. The proposed ICWA-related AFCARS data elements are elements states are *required* to implement. Tracking them is a long overdue necessity on both the parts of the federal government and the states.

II. Collecting ICWA-related data elements outlined in the 2016 Final Rule is not overly burdensome on states when compared to the benefits.

The NPRM narrowly focuses on the fiscal burdens on title VI-E agencies as impetus for the proposed streamlining of ICWA-related data elements. However, what is not discussed are the benefits to collecting both qualitative and quantitative data. For example, collecting data on the basis for a good cause determination to deviate from ICWA placement preferences<sup>9</sup> works

<sup>3</sup> See Kelly Gaines-Stoner et al., "The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children," American Bar Association Book Publishing: 3rd ed. (Aug. 2018), at 61-64.

<sup>4</sup> Bureau of Indian Affairs *supra* note 2, at 6, ("The Department has found that, since ICWA's passage in 1978, implementation and interpretation of the Act has been inconsistent across States and sometimes can vary greatly even within a State. This has led to significant variation in applying ICWA's statutory terms and protections.").

<sup>5</sup> Children's Bureau, *Notice of Proposed Rulemaking for The Adoption and Foster Care Analysis and Reporting System (AFCARS) Frequently Asked Questions* (Feb. 11, 2015), <https://www.acf.hhs.gov/cb/resource/faqs-afcars>.

<sup>6</sup> See Kathryn Fort and Smith, Adrian T., "Indian Child Welfare Act Annual Case Law Update And Commentary," American Indian Law Journal: Vol. 7 : Iss. 2 , Article 2. (2019), at 29-30 (noting a high level of litigation of active efforts and termination of parental rights cases) <https://digitalcommons.law.seattleu.edu/ailj/vol7/iss2/2>.

<sup>7</sup> See generally Government Accountability Office, *Indian Child Welfare Act: Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States* (Apr. 4, 2005), GAO-05-290, <http://www.gao.gov/products/GAO-05-290>.

<sup>8</sup> 83 FR 42225.

<sup>9</sup> 25 U.S.C. § 1915; 25 C.F.R. § 23.132.

toward ensuring family preservation, reconnecting the child with their tribal community, and most importantly, **ensuring the ICWA’s statutory mandates are followed**. These benefits contradict state concerns about adverse impact on their ability to provide safety, permanency, and well-being for youth in their care because of the administrative burden. **Comprehensive data collection can enhance states’ abilities to keep children safe** and to work towards family reunification, adoption or other permanency activities. This is especially true as states have frequently shown to apply ICWA inconsistently and erroneously.<sup>10</sup>

Further, **state burden estimates included in the NPRM are devoid of historical context**. In addition to federal involvement in the destruction of Indian family units and displacement of Indian children, states and their agents were responsible for the wholesale removal of Indian children across the country. Association on American Indian Affairs surveys found that a horrific 25 to 35 percent of Indian children in states with large Indian populations were removed from their homes and placed in foster or adoptive homes at one time in their lives.<sup>11</sup> These wrongs were to be stifled by the procedural and substantive provisions in ICWA; the provisions that can now be thoroughly monitored should the AFCARS 2016 Final Rule be implemented without attempts to streamline data. Furthermore, the estimated burdens on states to collect ICWA-related data elements in AFCARS now is minimal compared to the investments countless numbers of families, Tribes, states, and organizations have made to preserve and reunify families, and to prevent active removal since the passage of ICWA over 40 years ago.

Finally, as required by law, the 2016 Final Rule conducted a conscientious analysis of the benefits and burdens of the regulations, including the fiscal and administrative burdens cited in the NPRM. It was determined that the benefits outweighed the burden associated with collecting and reporting the additional data.<sup>12</sup> This necessarily includes not only the benefits to the numerous children and families that will benefit from accountability regarding ICWA compliance, but the costly litigation states will avoid by properly complying with ICWA.

III. Retention of the 2016 Final Rule will provide comprehensive information about ICWA compliance; Particular data sets are especially important.

**TLPI supports the retention of all data elements of the 2016 Final Rule**. However, should the streamlined data points be trained, the NPRM suggested streamlined data points on notice, placement preferences, and transfers to Tribal court can be improved.

a. Notice

The NPRM includes a data element capturing whether notice was sent to a child’s tribe. Key to questions of notice is whether that notice was “timely,”<sup>13</sup> as notice allows Tribes to exercise their rights in a judicious manner. **TLPI recommends collecting the date the child custody petition was filed and the date the Tribe was sent notice**. These dates are easily located (as found on the return receipt) and provide important information regarding whether the notice was timely.

<sup>10</sup> Bureau of Indian Affairs *supra* note 4.

<sup>11</sup> See House Report, H.R. Rep. No. 1386, 95<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (1978).

<sup>12</sup> 81 FR 90528.

<sup>13</sup> 25 U.S.C. § 1912; 25 C.F.R. § 23.111; Bureau of Indian Affairs *supra* note 2 at 34.

b. Placement

Proposed data elements would capture whether a foster or adoptive placement is made with a relative or with a tribal member of the child's Tribe or another Tribe. However, the placement data elements in the NPRM provide no information regarding reasons for deviating from ICWA placement preferences. **TLPI recommends collecting two additional data elements: whether a good cause determination was made to deviate from ICWA's placement preferences and what was the basis for the good cause finding.** The basis for the good cause finding can easily be incorporated as a drop down list from the 2016 ICWA regulations.<sup>14</sup>

c. Transfers

The NPRM data element on transfers to Tribal court only asks about transfer in the context of a change of placement. However, the right to request transfer to the Indian child's Tribal court is available at any stage in each foster care or termination of parental rights proceeding.<sup>15</sup> Further, once a request is made, a request can only be denied in limited circumstances.<sup>16</sup> This very distinction: when a transfer request can be made, has alone been the source for extensive litigation.<sup>17</sup> Thus, **TLPI recommends the incorporation of the following set of questions: 1. Was a transfer to tribal court requested? 2. If so, was it granted? 3. If it was denied, what was the reason?** These questions require simple yes or no answers and an incorporation of a drop down list of answers from the 2016 ICWA regulations.

IV. Conclusion

In conclusion, the collection of comprehensive ICWA-related data elements in AFCARS is crucial given the federal statutory mandates outlined in the ICWA, the dearth of data on ICWA compliance, the position of AFCARS as the only national data collection source for title IV-E agencies with case level detail on all children in foster care and those who were adopted with agency involvement, and the previous decision to promulgate the 2016 Final Rule. Any hindrance to collecting ICWA-related data elements within AFCARS will significantly impact Tribal children and families, as well as states trying to better serve Indian children. In the interest of protecting Indian children and families, TLPI submits these comments.

Respectfully,



Jerry Gardner, Executive Director  
Tribal Law and Policy Institute

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<sup>14</sup> 25 C.F.R. § 23.132(c) 1-5.

<sup>15</sup> 25 C.F.R. § 23.115.

<sup>16</sup> 25 C.F.R. § 23.117.

<sup>17</sup> "Transfer to tribal court," Tag Archives: transfer to tribal court, Turtle Talk, accessed June 13, 2019, <https://turtletalk.blog/tag/transfer-to-tribal-court/>.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 14, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah4-xs9l  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0271  
CenterLink

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## Submitter Information

**Name:** Lora Tucker  
**Address:**  
Los Angeles, CA,  
**Organization:** CenterLink

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## General Comment

See Attached

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## Attachments

CenterLink



June 13, 2019

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street S.W.  
Washington, D.C. 20024  
[cbcomments@acf.hhs.gov](mailto:cbcomments@acf.hhs.gov)

**Re: Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) System to remove questions relating to sexual orientation (Apr. 19, 2019) [RIN 0970-AC72]**

Dear Ms. McHugh:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) at 84 FR 16572 that proposes to eliminate data collection on sexual orientation for LGBTQ youth and prospective parents in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

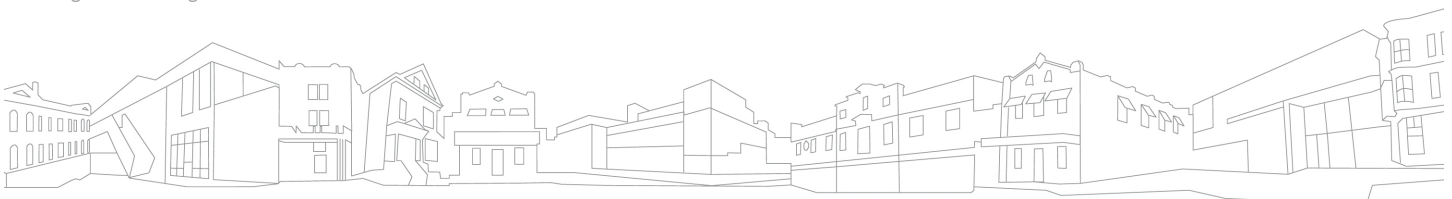
The collection of LGBTQ data from foster youth and adoptive families is critical to help identify trends in types of placements, rate of disruptions and the number of foster placements within LGBTQ families that will translate into permanent adoptive placements, and the data will inform federal law, policy and funding determinations. Eliminating this national dataset will undermine the ability to track demographic trends and identify gaps in services and will place LGBTQ youth and prospective parents at continued risk of harassment and discrimination. We urge you to rescind the NPRM and proceed with the AFCARS 2016 Final Rule as promulgated.

CenterLink was founded in 1994 as a member-based coalition to support the development of strong, sustainable LGBTQ community centers. Serving over 250 LGBTQ community centers across the country in 45 states, Puerto Rico and the District of Columbia, as well as centers in Canada, China, and Australia, our efforts are based on the belief that LGBTQ community centers are primary change agents in the national movement working toward the liberation and empowerment of LGBTQ people.<sup>1</sup>

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<sup>1</sup> CenterLink: The Community of LGBT Centers; <https://www.lgbtcenters.org/AboutUs>

P O Box 24490  
Fort Lauderdale, FL 33307-4490  
954.765.6024; Fax 954.765.6593  
[WWW.lgbtcenters.org](http://WWW.lgbtcenters.org)



Centers serve a vital and multi-faceted role in many communities across the country. They are often the only staffed non-profit LGBTQ presence in the area and the first point of contact for people seeking information, coming out, accessing services or organizing for social change. Over 60% of LGBTQ centers provide some direct health services (including counseling, peer-led programs, and support groups, as well as physical health and other mental health services).<sup>2</sup>

Many LGBTQ youth are forced to leave their families of origin as a result of conflicts with their parents regarding their sexual orientation or gender identity. LGBTQ community centers are there to provide direct health services including counseling, peer-led programs, and support groups, as well as physical health and other mental health services. Among the many community centers, half of their patrons are youth between the ages of 15 and 30, with another quarter of patrons ranging between the ages of 15-18.<sup>3</sup> Accurate data is crucial in order for LGBTQ community centers to receive the support and funding necessary to continue to provide critical services to LGBTQ youth.

Research has shown that LGBTQ youth are over-represented in the foster care system. This means that the percentage of youth in foster care who are LGBTQ-identified is larger than the percentage of LGBTQ youth in the general youth population. LGBTQ youth in foster care also face disparities – differences in experiences in care or treatment by the system.

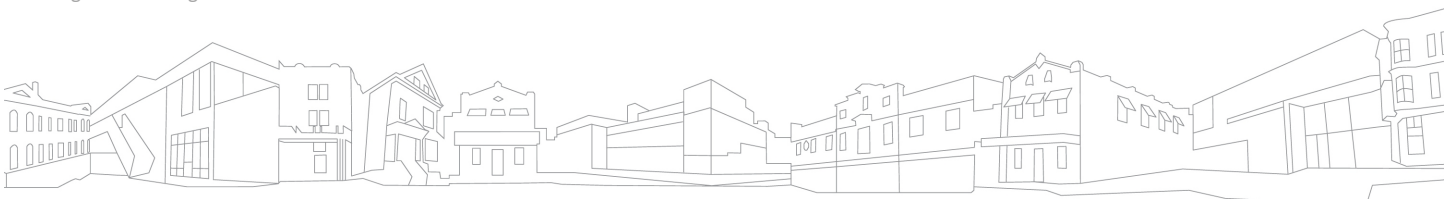
LGBTQ youth enter the foster care system for many of the same reasons as non-LGBTQ youth in care, such as abuse, neglect, and parental substance abuse. Many LGBTQ youth have the added layer of trauma that comes with being rejected or mistreated because of their sexual orientation, gender identity or gender expression.

The lack of federal data related to the number and unique needs of LGBTQ youth in foster care is deeply troubling in light of the fact that LGBTQ youth are disproportionately represented in out-of-home care. This data is critical to understanding how LGBTQ youth experience the child welfare system and how states can best serve them.

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<sup>2</sup> 2018 LGBT Community Center Report, Movement for Advancement Project, *Assessing the Capacity and Programs of Lesbian, Gay, Bisexual, and Transgender Community Centers*; <http://www.lgbtmap.org/file/2016-lgbt-community-center-survey-report.pdf>

<sup>3</sup> 2016 LGBT Community Center Report, Movement for Advancement Project, *Assessing the Capacity and Programs of Lesbian, Gay, Bisexual, and Transgender Community Centers*; <http://www.lgbtmap.org/file/2016-lgbt-community-center-survey-report.pdf>





Guidance from the Health and Human Services Administration on Children, Youth and Families agency (ACYF) in 2011 confirmed and reiterated that “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity or gender expression.”<sup>4</sup> ACYF further stated that LGBTQ youth in foster care are overrepresented and in the population of youth experiencing homelessness.<sup>5</sup> A federally-funded study from 2013 of Los Angeles county’s foster care system similarly found that nearly 20% of youth identified as LGBTQ -- almost twice the percentage of LGBTQ youth estimated to be living outside of foster care.<sup>6</sup>

In order to identify and address these risks, the child welfare system must affirmatively collect information about the sexual orientation and gender identity 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. When agencies know the characteristics and experiences of youth in out-of-home care, they are able to analyze whether there are gaps in care and whether there are certain groups experiencing disparities. Eliminating questions related to sexual orientation and gender identity in AFCARS keeps invisible the experiences of the LGBT community and leaves the Federal government blind to the unique needs of the LGBTQ community. The absence of administrative data on the national level will obscure the experiences of this vulnerable population and will make it impossible to track whether the system is making improvements to address this significant population of youth in out-of-home care. More data about the experiences and needs of LGBTQ youth is needed, not less.

Sincerely,



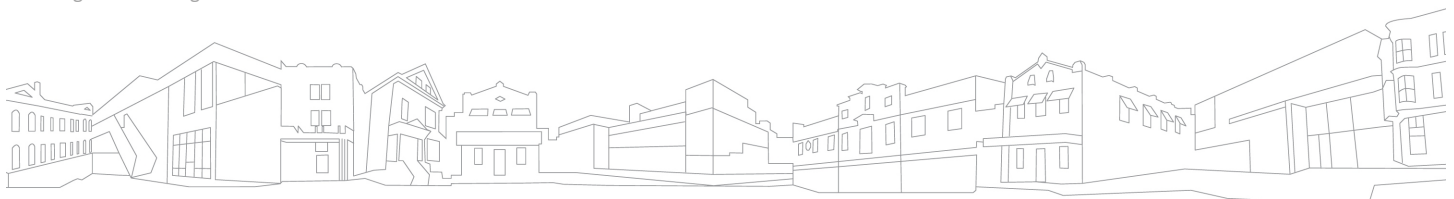
Lora L. Tucker  
CEO  
CenterLink

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<sup>4</sup> Administration for Children and Families, *ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> [hereinafter “*ACYF-CB-IM-11-03*”]. .

<sup>5</sup> *Id.*

<sup>6</sup> Bianca D.M. Wilson et al., *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST., at 6 (Aug. 2014), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf) [hereinafter “*Sexual and Gender Minority Youth*”].



# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 14, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 14, 2019       |
| <b>Tracking No.</b> 1k3-9ah5-g7do  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0272  
Nez Perce Tribe

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## Submitter Information

**Name:** Anjee Toothaker  
**Address:**  
Lapwai, ID,  
**Organization:** Nez Perce Tribe  
**Government Agency Type:** Tribal  
**Government Agency:** Nez Perce Tribe

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## General Comment

See attached file(s)

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## Attachments

Nez Perce Tribe



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

June 13, 2019

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

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

**Re: RIN: 0970-AC72**

***Agency: Children's Bureau; Administration on Children, Youth and Families;  
Administration for Children and Families; Department of Health and Human Services***

**Action: Adoption and Foster Care Analysis and Reporting System; Notice of Proposed Rulemaking (4/19/19)**

Dear Ms. McHugh:

The Nez Perce Tribe (Tribe) submits the following comments on the Notice of Proposed Rulemaking (NPRM) regarding the Adoption and Foster Care Analysis and Reporting System (AFCARS) for Title IV-B and Title IV-E as they relate to the Indian Child Welfare Act of 1978 (ICWA).

The Tribe strongly recommends retaining all of the ICWA-related data elements finalized in the AFCARS final rule published on December 14, 2016. (81 FR 90524). ICWA was initially enacted in response to Indian children being removed from their parents, extended families, and tribal communities for the "best interests" of the child. Crafted to target these egregious state child welfare and private adoption agency policies, ICWA created vitally needed federal requirements that apply to state child custody proceedings in order to protect the best interests of Indian children and "to promote the stability and security of Indian Tribes and families." (25 U.S.C. § 1902).

The ICWA-related data elements in the AFCARS 2016 Final Rule address the same elements that make ICWA the "gold standard" of child welfare policy—providing active efforts to the family; identifying placements that fall under ICWA's preference provisions; providing notification of child custody proceedings to the child's parents and the child's tribe(s); and working actively to

involve the child's tribe(s) and the child's parents in the custody proceedings. Despite other reporting options for this type of data, systemic biases in the child welfare system still yield results that put Indian children in out-of-home placements more frequently than non-Indian children. Requiring a reporting standard through AFCARS places the collection of this information and its publication at the forefront of national policymaking and will force states to evaluate their current policies to ensure they not only align with the requirements of ICWA, but those of the Families First Prevention Services Act. (ACYF-CB-PI-19-4 (2019)). Furthermore, reporting through AFCARS would be mandatory and not simply voluntary—an essential element as even now many states and courts do not track ICWA-related data or do so inconsistently. (84 Fed. Reg. 16578).

As noted in the NPRM, “states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.” (84 Fed Reg. 16574). Further, in the 2016 Final Rule, the Agency determined that “[m]ost states commented positively about improving data on Indian children as defined in ICWA” and that these data elements were needed to evaluate how well state title IV-E agencies implement their ICWA requirements. (81 Fed. Reg. 90528). Despite these previous comments, the current NPRM dismisses the need and support for ICWA-related data elements. (“The suggestion that more data elements in AFCARS is essential for policy making was not sufficiently validated in the ANPRM comments.”) (84 Fed. Reg. 16575).

While the Tribe strongly encourages retaining all of the ICWA-related data elements of the 2016 Final Rule, the Tribe has specific comments related to concerns regarding the suggested data elements.

### **Notice**

The NPRM indicates that it intends to retain and revise the data elements for Notification (paragraph (b)(6)). The NPRM states that it will continue to require the state title IV-E agency to report whether the child's Indian Tribe was sent legal notice, but it will no longer require the state title IV-E agency to report whether it sent the child's parent or custodian notice. (84 Fed. Reg. 16580).

The Tribe recommends that the Agency keep both reporting elements and also include a data field requiring the date notice was sent. First, the requirements in 25 U.S.C. § 1912(a) indicate that both the Indian child's parent or custodian AND the child's Indian Tribe must be notified. Keeping both data elements will ensure that states are affording not only the child's Indian Tribe an opportunity to participate in the proceedings, but that also the child's parent is provided the same meaningful opportunity to participate as the Tribe. Second, there are specific timelines that state title IV-E agencies must comply with in 25 U.S.C. § 1912(a) after notice was sent, and later received, regarding when a child custody proceeding may be held. Adding the date field ensures that state title IV-E agencies not only comply with the reporting requirements under 25 U.S.C. §1912(a), but that they also comply with the timelines established within the statute.

Under the current and proposed revisions, there is no way to determine if notice was timely or whether the state title IV-E afforded the notified parties the appropriate amount of time to respond before commencing with the child custody proceeding. By keeping in the spirit of ICWA's notification requirements, keeping both data requirements and the addition of a date field will provide information identifying the extent notification is being done by state title IV-E agencies on a national level for children in the out-of-home care reporting population. (84 Fed. Reg. 16580).

### **Placement**

The NPRM indicates that while the AFCARS system will collect information relating to the tribal membership of foster and adoptive parents/guardians, it will not require information relating to whether or not that placement meets the requirements of the Indian child's tribe or ICWA. Additionally, the system will not require reporting on whether or not there was good cause to deviate from the child's tribe or ICWA's placement preferences. (84 Fed. Reg. 16577).

The Tribe recommends that the Agency collect data on whether the child is placed with a tribal member or other relative and, if not, whether good cause was found to justify deviation from the Indian child's tribe or ICWA's placement preferences. Additionally, if good cause was found, it should be documented according to the drop down list from the 2016 ICWA regulations.

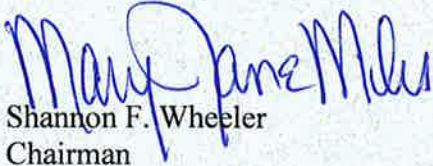
While the NPRM indicates that these are qualitative data elements, which create context for later evaluation of placement decisions, these are elements essential to ICWA's gold standard of child welfare policy. (84 Fed. Reg. 16577). As governments, Tribal Nations are caregivers and stewards of Indian children—protecting them from abuse and neglect, helping families receive support services as needed, and ensuring the child stays connected to their families, culture, and community. Tribal Nations also have the needed resources dedicated to protecting Indian children and can advocate for the best interests of the child from the perspective of what's best for both their personal and cultural identities.

This element of ICWA was borne out of the forced removal policies of many state and private adoption agencies which are aimed at removing Indian children from their homes and their cultures. The Tribe, as well as many other Tribal Nations, were affected by the forced removal of our children to boarding schools under the belief it was in the "best interests" of the child. By providing a mandatory reporting mechanism for placement preferences for foster care, adoption, and guardianship, the Agency can create a national, uniform, and comprehensive data collection system to determine how state title IV-E and private adoption agencies are making placement decisions and how frequently they are deviating from the gold standard of care.

For the foregoing reasons, the Tribe strongly supports each of the ICWA-related data points and believes that the benefits of this data collection far outweigh the cost burdens. Again, the ICWA is widely regarded as the gold standard of child welfare policy, aimed at protecting not only the best interests of Indian children, but in providing Indian children with a secure sense of cultural identity, higher self-esteem, higher educational achievement, and lower rates of mental health problems and substance abuse in adolescents and adults. In the 2016 Final Rule, this Agency recognized that the ICWA-related data elements were intended to identify more effective ways for Tribes, states, and the Federal Government to work together to advance the well-being of Indian children and families. (81 Fed. Reg. 90524). To that end, all of the ICWA-related data points

included in the 2016 Final Rule should be retained. Moreover, the Tribe strongly encourages a review of the data points being revised in order to ensure these revisions do not inadvertently encourage non-compliance with ICWA or other regulations regarding Indian child custody proceedings, where the overall well-being of the Indian child would be harmed.

Sincerely,

FOR:   
Shannon F. Wheeler  
Chairman

**From:** [Anjee Toothaker](#)  
**To:** ["CBComments@acf.hhs.gov"](mailto:CBComments@acf.hhs.gov)  
**Subject:** RIN: 0970-AC72  
**Date:** Friday, June 14, 2019 10:09:00 AM  
**Attachments:** [2019-06-13 US Dept of Health and Human Services - comments - Notice of Proposed Rulemaking - Adoption and Foster Care Analysis and Reporting System.pdf](#)

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Dear Ms. McHugh,

The Nez Perce Tribe's comments on the U.S. Department of Health and Human Services' Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis and Reporting System for Title IV-B and IV-E are attached. Please contact me if you are unable to open the four-page attachment or if you do not receive it in its entirety. Thank you.

Anjee Toothaker  
Legal Assistant  
Nez Perce Tribe  
Office of Legal Counsel  
P. O. Box 305  
Lapwai, ID 83540  
(208) 843-7355

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 14, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9ah6-fhye  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0273  
Philadelphia Family Pride

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## Submitter Information

**Name:** Adam Podowitz-Thomas  
**Address:** 19096  
**Email:** adam@phillyfamilypride.org  
**Organization:** Philadelphia Family Pride

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## General Comment

See attached file(s)

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## Attachments

Philadelphia Family Pride



June 17, 2019

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street S.W.  
Washington, D.C. 20024  
cbcomments@acf.hhs.gov

**Re: Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) System to remove questions relating to sexual orientation (Apr. 19, 2019) [RIN 0970-AC72]**

Dear Ms. McHugh:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) at 84 FR 16572 that proposes to eliminate data collection on sexual orientation for LGBTQ youth and prospective parents in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

The collection of LGBTQ data from foster youth and adoptive families is critical to help identify trends in types of placements, rate of disruptions and the number of foster placements within LGBTQ families that will translate into permanent adoptive placements, and the data will inform federal law, policy and funding determinations. Eliminating this national dataset will undermine the ability to track demographic trends and identify gaps in services and will place LGBTQ youth and prospective parents at continued risk of harassment and discrimination. We urge you to retain the questions on sexual orientation for foster youth, parents, and guardians. We also urge you to add gender identity questions for foster youth, parents and guardians to the Adoption and Foster Care Analysis and Reporting System (AFCARS).

Our organization, Philadelphia Family Pride, supports LGBTQ+ parents, prospective parents, grandparents, and our kids of all ages – including adults, youth, kids, toddlers and infants. We have a vested stake in the adoption and foster care systems in this nation, as many of our families are formed through these systems.

***The Exclusion of Data Elements Related to Foster Youth Sexual Orientation and Gender Identity and Expression Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children***

The lack of federal data related to the number and unique needs of LGBTQ youth in foster care is deeply troubling in light of the fact that LGBTQ youth are disproportionately represented in out-of-home care. This data is critical to understanding how LGBTQ youth experience the child welfare system and how states can best serve them.

Guidance from the Health and Human Services Administration on Children, Youth and Families agency (ACF) in 2011 confirmed and reiterated that “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster

care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."<sup>1</sup> ACF further stated that LGBTQ youth in foster care are overrepresented and in the population of youth experiencing homelessness.<sup>2</sup> A federally-funded study from 2013 of Los Angeles county's foster care system similarly found that nearly 20% of youth identified as LGBTQ -- almost twice the percentage of LGBTQ youth estimated to be living outside of foster care.<sup>3</sup>

In addition to showing that LGBTQ youth are disproportionately represented in the system, the study also found that LGBTQ youth are over twice as likely to report being treated poorly by the foster care system.<sup>4</sup> LGBTQ foster youth also suffer worse outcomes in foster care than non-LGBTQ youth, such as multiple placements, longer stays in residential care, and greater rates of hospitalization for emotional reasons, homelessness, and criminal justice involvement. These findings are consistent with the 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.<sup>5</sup> In fact, family rejection is one of the most commonly cited reason for LGBTQ youth entering out-of-home care.<sup>6</sup>

In order to identify and address these risks, the child welfare system must affirmatively collect information about the sexual orientation and gender identity 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. When agencies know the characteristics and experiences of youth in out-of-home care, they are able to analyze whether there are gaps in care and whether there are certain groups experiencing disparities. Eliminating questions related to sexual orientation and gender identity in AFCARS keeps invisible the experiences of the LGBTQ community and leaves the Federal government blind to the unique needs of the LGBTQ community. The absence of administrative data on the national level will obscure the experiences of this vulnerable population and will make it impossible to track whether the system is making improvements to address this significant population of youth in out-of-home care. More data about the experiences and needs of LGBTQ youth is needed, not less.

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<sup>1</sup> Administration for Children and Families, *ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> [hereinafter "*ACYF-CB-IM-11-03*"]. .

<sup>2</sup> *Id.*

<sup>3</sup> Bianca D.M. Wilson et al., *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST., at 6 (Aug. 2014), [https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_final-aug-2014.pdf](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf) [hereinafter "*Sexual and Gender Minority Youth*"].

<sup>4</sup> *ACYF-CB-IM-11-03*, supra note 1 (12.9% of LGBTQ youth report being treated poorly compared to 5.8% of non-LGBTQ youth).

<sup>5</sup> *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)).

<sup>6</sup> Shannan Wilber et al., *CWLA Best Practice Guidelines for Serving Youth in Out-of-Home Care*, CHILD WELFARE LEAGUE OF AMERICA, 4 (2006), <http://www.nclrights.org/wp-content/uploads/2013/07/bestpracticeslgbtyouth.pdf>.

Having more longitudinal data will allow for a better understanding of LGBTQ youth experiences in care and will inform evidence-based policies and practices. Collecting data from foster youth will help identify trends in types of placements, rates of disruption, and other key findings. Eliminating data collection on LGBTQ youth also eliminated the ability to measure efforts to reduce disparities and improve care and outcomes and places LGBTQ children at great risk.

***The sexual orientation and gender identity and expression data elements of foster youth can be administered effectively, and agencies should provide training and resources to states and tribes to do so.***

The NPRM justifies the erasure of sexual orientation data collection of LGBTQ youth upon an unsubstantiated conclusion—unsupported by empirical evidence—that the collected data would be inaccurate and that the data could lead to breaches of confidentiality because a case worker would be gathering the information.<sup>7</sup>

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity and expression (SOGIE) information about children, along with other critical information about the child's circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGIE information in child welfare systems.<sup>8</sup> The guidelines address the need to collect SOGIE information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGIE information on youth without experiencing the speculative harms cited in the NPRM. Sexual orientation questions have been included on school-based surveys of adolescents for decades through versions of the current Youth Risk Behavior Surveillance Survey distributed by the Center for Disease Control, and sexual orientation and gender identity and expression (SOGIE) information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession's understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.<sup>9</sup> The regulations promulgated under the Prison Rape Elimination Act (PREA) require youth and adult correctional officers to collect SOGIE information as part of their initial screening process to identify inmates who may be vulnerable to sexual assault.<sup>10</sup> More and more state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGIE data.

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<sup>7</sup> 45 C.F.R. § 1355 (2019) 16576

<sup>8</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>.

<sup>9</sup> Angela Irvine, "We've Had Three of Them": *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 COLUM. J. OF GENDER & L. 675 (2012).

<sup>10</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

In addition, child welfare agencies are comfortable and competent in collecting, holding and managing sensitive information. Case workers collect data about information that is highly personal, private and confidential, such as sexual abuse backgrounds, mental health diagnoses and medications. Sexual orientation and gender identity questions should not be handled any differently from the sort of sensitive information case workers have been collecting and managing for decades. Information in state and tribal systems, like all personal information, is protected by confidentiality requirements.

The child welfare profession has acknowledged the importance of collecting SOGIE information about children in order to tailor an individualized case plan. Indeed, the NPRM confirms that states agree that knowing this data about children and families they work with would help in assisting families, but falls back upon the position that there is no statutory requirement that it be reported to an administrative data set.<sup>11</sup> However, the law clearly does not prohibit the collection of this data and, in fact, Congress enacted statutes requiring the Children's Bureau to add data elements to AFCARS and agencies have an obligation that the national data set be comprehensive.<sup>12</sup>

### ***Agencies Should Retain the Sexual Orientation Question for Adoptive and Foster Parents and Guardians***

There is a chronic shortage of foster homes in the United States. Efforts to recruit and retain all qualified families—including LGBTQ families—should be a core part of an agency's recruitment strategy. The LGBTQ community continues to serve as an untapped resource for finding permanent families for children and youth in foster care, and obtaining key data on this population is an essential part of broadening the number of prospective families available for the large number of children seeking stable families.

Increasing numbers of LGBTQ adults are interested in and actively creating their families through foster care and adoption. A 2001 national survey found that almost two million LGBTQ adults expressed interest in adopting children.<sup>13</sup> According to a 2007 study, GLB foster parents are raising six percent of foster children in the United States.<sup>14</sup> A 2018 study from the Williams Institute found that same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.<sup>15</sup> Yet fear of discrimination causes many prospective LGBTQ parents to turn away from foster and adoption agencies. Many LGBTQ parents express uncertainty about their ability to find an agency that would welcome them as parents. And for good reason -- a 2011 national survey of 158 gay and lesbian adoptive parents,

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<sup>11</sup> 16577

<sup>12</sup> See 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); See 42 U.S.C.A. § 679(d) of the Social Security Act.

<sup>13</sup> 45 C.F.R. § 1355 (2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29366.pdf>

<sup>14</sup> <https://www.urban.org/sites/default/files/publication/46401/411437-Adoption-and-Foster-Care-by-Lesbian-and-Gay-Parents-in-the-United-States.PDF>

<sup>15</sup> Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex couples are Raising Children?*, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>.

nearly half of respondents reported experiencing bias or discrimination from a child welfare worker or birth family member during the adoption process.<sup>16</sup>

Requiring sexual orientation data collection of foster and adoptive parents would encourage training that would lead LGBTQ parents to have more confidence that they would not be discriminated against and would lead to broader efforts to recruit and utilize LGBTQ families, ensuring a more thorough matching and placement process that would provide the greatest chance for success and permanency.

Almost 40 years of research has demonstrated that children raised by same-sex couples are as healthy and psychologically sound as children raised by heterosexual parents.<sup>17</sup> Tracking the data of these prospective parents will promote routine discussions between prospective foster parents and title IV-E agencies, normalize conversations about sexual orientation and signal increased acceptance of LGBTQ caregivers. A national data set capturing information about prospective LGBTQ parents would assist agencies in recruiting, training, and retaining an increased pool of foster care providers who can meet the needs of children in foster care.

In contrast, eliminating the collection of this data will eliminate the benefits both for same-sex couples seeking to foster or adopt and for children who are seeking permanent homes.

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

A recent study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”<sup>18</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and

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<sup>16</sup> David M. Brodzinsky & Evan B. Donaldson, *Expanding Resources for Children III: Research-Based Best Practice in Adoption by Gays and Lesbians*, EVAN B. DONALDSON ADOPTION INSTITUTE (2011), [https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011\\_10\\_Expanding\\_Resources\\_BestPractices.pdf](https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011_10_Expanding_Resources_BestPractices.pdf).

<sup>17</sup> See Alicia Crowl et al, *A Meta-Analysis of Developmental Outcomes for Children of Same-Sex and Heterosexual Parents*, JOURNAL OF GLBT FAMILY STUDIES (Jan. 9, 2007), available at <https://www.tandfonline.com/doi/abs/10.1080/15504280802177615> (“extensive data available from more than 30 years of research reveal that children raised by gay and lesbian parents have demonstrated resilience with regard to social, psychological, and sexual health despite economic and legal disparities and social stigma.”); Ellen C. Perrin, Benjamin S. Siegel, *Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, AMERICAN ACADEMY OF PEDIATRICS (Apr. 2013), available at <https://pediatrics.aappublications.org/content/131/4/e1374>. (“Analyses revealed statistically significant effect size differences between groups for one of the six outcomes: parent-child relationship. Results confirm previous studies in this current body of literature, suggesting that children raised by same-sex parents fare equally well to children raised by heterosexual parents.”)

<sup>18</sup> Robinson, Brandon Andrew “*Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.*” CHILD WELFARE 96(2), 47-74 (2018). Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability.

Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding, and Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

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

When the Department of Health and Human Services released the proposed rule in 2016, the rule went through an extensive notice and comment period, during which, the burden of all data elements were discussed and addressed by scores of researchers, advocates, and child welfare and social service experts. The rule considered and dismissed the purported reasons given in the 2019 NRPM for eliminating this data. We recommend that the data elements in the Final Rule be retained and not further streamlined.

The 2016 Final Rule already represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome, and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system. Reducing instability and achieving permanency for LGBTQ children through placement with affirming, supportive families and providing needed supportive services could also provide cost savings. A recent Center for American Progress estimate indicates that a child adopted from foster care costs the state only 25% per year as much as a child who remains in foster care, amounting to a \$29,000 cost savings per year.<sup>19</sup>

Because AFCARS has not been updated since 1993, data elements added in the 2016 Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the Preventing Sex Trafficking and Strengthening Families Act (P.L. 110-351) and changes in foster care services and oversight in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), and the Child and Family Services Improvement and Innovation Act (P.L. 112-34). The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed Family First Prevention Services Act ("Family First," P.L. 115-123).

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<sup>19</sup> Frank J. Bewkes et al, *Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children*, CENTER FOR AMERICAN PROGRESS (Nov. 20, 2018), <https://www.americanprogress.org/issues/lgbt/reports/2018/11/20/461199/welcoming-all-families/>.

***Conclusion***

For these reasons, we strongly oppose the elimination of the collection of sexual orientation information for youth and adults, and we urge ACF and HHS to add gender identity data points for foster youth, parents, and guardians. Without the data in the 2016 AFCARS Final Rule there is no national data on LGBTQ foster youth or prospective parents to measure and improve outcomes for LGBTQ foster youth and families. We welcome the opportunity to work with ACF to assist the implementation of these important reforms.

Sincerely,  
Philadelphia Family Pride

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 14, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9ah8-qbt2  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0274  
Bill Wilson Center

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## Submitter Information

**Name:** Amanda Clifford  
**Address:** 95050  
**Email:** aclifford@bwcmail.org  
**Organization:** Bill Wilson Center

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## General Comment

Bill Wilson Center does not support removing the LGBTQ identifying question during data collection in AFCARS. This information is needed to ensure the most appropriate care is provided. Since LGTBQ youth make up a disproportionate share of the foster care population, and often have unique needs, it is critical that providers have the most comprehensive data available on each youth. By ceasing to track the sexual orientation of foster youth, a youths placement, and the care provided, may be affected. Additionally, without an accurate count of LGBTQ youth in foster care, funding for services to this population will be put in jeopardy.

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## Attachments

Bill Wilson Center



Bill Wilson Center does not support removing the LGBTQ identifying question during data collection in AFCARS. This information is needed to ensure the most appropriate care is provided. Since LGTBQ youth make up a disproportionate share of the foster care population, and often have unique needs, it is critical that providers have the most comprehensive data available on each youth. By ceasing to track the sexual orientation of foster youth, a youth's placement, and the care provided, may be affected. Additionally, without an accurate count of LGBTQ youth in foster care, funding for services to this population will be put in jeopardy.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 16, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aic-obad  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0275  
Maryland DHS Social Services Administration

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## Submitter Information

**Name:** Rebecca Jones Gaston

**Address:**

Baltimore, MD,

**Organization:** Maryland DHS Social Services Administration

**Government Agency Type:** State

**Government Agency:** Maryland DHS Social Services Administration

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## General Comment

See Attached

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## Attachments

Maryland DHS Social Services Administration



Larry Hogan, Governor | Boyd K. Rutherford, Lt. Governor | Lourdes R. Padilla, Secretary

June 12, 2019

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

Dear Ms. McHugh:

Thank you for the opportunity to comment on this AFCARS NPRM published in the Federal Register on April 19, 2019.

Maryland is pleased with the efforts that were made to streamline the AFCARS data elements that were finalized in the AFCARS final rule published on December 14, 2016 (81 FR 90524), in response to E.O. 13777 (issued February 24, 2017) directing federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The proposed AFCARS requirements are streamlined but contain important improvements such as:

- An improved set of factors relating to removal
- Basic information about school enrollment and health status
- Including caseworker visitation, and
- Including Guardianship in addition to Adoption information

In addition, having at least a year to prepare for these changes will be helpful to Maryland.

Maryland has two requests for consideration in finalizing the AFCARS rule:

1. Fiscal Penalty: Please consider suspending the penalty during the first year of implementation.
2. Sex, Gender, and Sexual Orientation: A national discussion on policy and programmatic responses concerning sex, gender, and sexual orientation cannot occur without data. Please consider including the following data elements:
  - Sex field: clarify that this is the gender assigned at birth, and include a third choice after Female and Male.
  - Gender field: clarify that this is gender expression by the individual, and include the same three choices.
  - Sexual Orientation field: provide the following or a more appropriate set of choices-heterosexual, homosexual, bisexual, pansexual, asexual, other.

Out of respect for individual privacy, the gender expression and sexual orientation fields should be optional disclosures by the clients and families with whom the youth are placed.

Thank you for the opportunity to provide comments on this AFCARS NPRM.

Sincerely,

Rebecca Jones Gaston  
Executive Director  
Social Services Administration

- c: Lourdes Padilla, Secretary  
Randi Walters  
Greg James  
Tennille Thomas  
Brandi Stocksdales  
Rena Mohamed  
David Ayer



# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 16, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj0-7uvl  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0276  
PFLAG Los Angeles

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## Submitter Information

**Name:** Steve Krantz  
**Address:**  
Los Angeles, CA,  
**Organization:** PFLAG Los Angeles

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## General Comment

See Attached

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## Attachments

PFLAG Los Angeles

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

June 16, 2019

**Re: Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) System to remove questions relating to sexual orientation (Apr. 19, 2019) [RIN 0970-AC72]**

Dear Ms. McHugh:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) at 84 FR 16572 that proposes to eliminate data collection on sexual orientation for LGBTQ youth and prospective parents in the Adoption and Foster Care Analysis and Reporting System (AFCARS).

I represent PFLAG Los Angeles, a non-profit dedicated to providing support, education and advocacy for the LGBTQ community. Our parent organization is PFLAG National, based in Washington, D.C., with over 400 volunteer-based chapters in the United States.

PFLAG Los Angeles works collaboratively with over 30 LA-based LGBTQ youth-supportive organizations to provide mentoring, education, social events, housing and other critical services to local LGBTQ youth. We know from experience that they have higher rates of depression and suicide. They experience family rejection, discrimination and bullying at rates far exceeding that of non-LGBTQ youth.

The collection of LGBTQ data from foster youth and adoptive families is critical to help identify trends in types of placements, rate of disruptions and the number of foster placements within LGBTQ families that will translate into permanent adoptive placements, and the data will inform federal law, policy and funding determinations. Eliminating this national dataset will undermine the ability to track demographic trends and identify gaps in services and will place LGBTQ youth and prospective parents at continued risk of harassment and discrimination.

We strongly oppose the elimination of the collection of sexual orientation information for youth and adults, and we urge ACF and HHS to add gender identity data points for foster youth, parents, and guardians. Without the data in the 2016 AFCARS Final Rule there is no national data on LGBTQ foster youth or prospective parents to measure and improve outcomes for LGBTQ foster youth and families. We welcome the opportunity to work with ACF to assist the implementation of these important reforms.

Sincerely,



Steve Krantz, Ph.D.,  
Board Member  
PFLAG Los Angeles  
[www.pflagla.org](http://www.pflagla.org)

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj2-xcdp  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0277  
Child Welfare League of America

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## Submitter Information

**Name:** John Sciamanna  
**Address:**  
Washington, DC,  
**Organization:** Child Welfare League of America

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## General Comment

See attached file(s)

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## Attachments

Child Welfare League of America



June 18, 2019

Kathleen McHugh  
U.S. Department of Health and Human Services  
Administration for Children and Families  
Director, Policy Division  
330 C Street S.W.  
Washington, D.C. 20024  
cbcomments@acf.hhs.gov

**Re: Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) System to remove questions relating to sexual orientation (Apr. 19, 2019) [RIN 0970-AC72]**

Dear Ms. McHugh:

On April 19, 2019, the US Department of Health and Human Services (HHS), Administration for Children Youth and Families (ACYF), issued a Notice of Proposed Rule (NPRM) to amend the NPRM of the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) Final Rule (Final Rule). This is the Child Welfare League of America's (CWLA) response.

CWLA is pleased with the inclusion of certain data elements that will provide long overdue improvements in data elements and information. Among these are the critically needed first time data on the Indian Child Welfare Act (ICWA), additional information on foster care placements, additional information on adoptions and guardianships, and new data elements on education and health care. In many of these areas however data elements were reduced or eliminated.

While the revised AFCARS regulations places a heavy emphasis on the need to reevaluate the 2016 final regulations due to Executive Order (E.O.) 13777 and 13771 such reviews need to consider the fact that this is the only revision in data collection since its inception in 1993. Due to the fact that it has taken a quarter century to revise and hopefully implement these important AFCARS regulations this revision must be looked at as both a critical and rare opportunity to implement changes that will inform child welfare practices for the next several decades.

One of the prime arguments used to justify the reduction in data collection and reporting is cost. We appreciate ACYF's concern about the need for states to have the financial resources to implement the Family First Prevention Services Act and how ACYF does not want to divert funds unnecessarily. CWLA agrees and we are working with policy makers along these lines to make

sure there is adequate funding for implementation, and it is why we oppose past proposals such as the elimination of the Social Services Block Grant (SSBG) because of its significant funding role in child welfare.

Clearly there will be a cost associated with this revision, as was the case in 1993. As a result, we suggest that the HHS include in its coming budget request to Congress similar funding support as existed in the 1990s when implementation was offset with a 75 percent match in Title IV-E federal funding. That would mean that the projected total cost submitted in the April 19, NPRM of \$87 million, (with the states absorbing half the cost at \$43 million) would be reduced to \$21 million in state costs. We stand ready to support your request since there is precedent and a need for this rare opportunity to update AFCARS in a way that will better inform policy and legislation over the next twenty years.

This new AFCARS data offers an opportunity to inform how policies enacted in recent years regarding foster care placements, human trafficking, health care status, ICWA and most importantly implementation of the Family First Prevention Services Act are changing the outcomes of families and children.

*Sexual orientation for youth who identify as LGTBQ and prospective parents*

The April 19, NPRM removes questions and resulting data around sexual orientation both for youth in care and adults who foster or adopt. Let us discuss this as two separate issues. Much of the argument for removing the data and questions of youth in care do not apply to adults who are foster or adoptive parents.

An adult or couple seeking to become an adoptive or foster parent who have taken the great and consequential step to become a foster parent or to adopt a child has the skills to decide whether or not to respond to questions regarding sexual orientation.

AFCARS represents the best national data base of child welfare information carried out by all the states. It has become abundantly clear over the past several years that the issue of discrimination based on sexual orientation will continue to be an area of focus by federal and state policymakers. Without this AFCARS information, there will not be national information beyond studies that will be limited in scope.

It is clear that we have a shortage of foster family homes across the United States. Some of this shortage is driven by the most recent drug epidemic. It is likely that the changing nature of families in structure and income is also making it harder to find foster families. In recent years policymakers are recognizing the different needs of children in care. In 2008 Congress mandated keeping sibling together but foster families willing and able to keep these children together are a challenge to recruit. We are expanding our scientific knowledge of adolescent brain development which, in the coming decades will result in a demand for foster families with different training, skills and capacity. Additionally, the enactment of the Family First Prevention Services Act was predicated on the goal and belief that reduced institutional care placements would be replaced by family foster care placements. Much of the need for new family foster care will be families that are willing and able to care for adolescents and teens.



In addition to the changing face of foster care, we have over 118,000 children waiting to be adopted according to 2017 AFCARS data. This national data suggests a shortage of adoptive parents despite increases in adoptions to 59,000 in 2017, based on current national AFCARS information. This first update of AFCARS since 1993 is a rare opportunity to build the profile of adoptive and foster parents across the county and to learn what shortfalls need to be addressed and where those gaps can be found.

Perhaps most significantly this new AFCARS data is needed because there are ongoing debates at the state and federal level about restricting foster and adoptive parents based on sexual orientation. These debates are unlikely to subside and as a result this new data is critical to these legislative and administrative actions that will doubtless take place in the coming years. New AFCARS data will have an impact on these policy decisions.

The second data issue regarding sexual orientation deals with youth in care. We are not unsympathetic to the concern raised regarding how this information is collected, especially in those states that have enacted discriminatory policies regarding placement of children and recruitment of parents. We understand that the ultimate data may not be one hundred percent accurate, but it begins to provide a critical measure over time. For example, recent AFCARS data suggest that only 14,684 children (5 percent) were removed from their parents care due to alcohol abuse in 2017. Many would conclude that that number should be much higher but not all contributing factors are parsed out from the more global category of “neglect.” Despite this, the inclusion of this data into the AFCARS report sets a measure of how this problem grows or decreases each year.

Data that indicates sexual orientation will begin to build a profile of the youth in care who will be disproportionately impacted by reform efforts to reduce and eliminate certain forms of institutional care (group homes). Again, the growing science around adolescent brain development and the need to have a diverse census of family foster care appropriate to the needs of youth requires greater information on these youth in care.

We urge ACF to examine ways to align this data collection with requirements under Section 475 of Title IV-E “Definitions” which requires that a child age 14 or older receives a written description of programs and services available to them with the purpose of preparing them for transition from foster care to adulthood. We also urge ACF to examine ways to align this data collection along with requirements to collect data and information for the National Youth Transition Database.

The trend of the past five years has pushed up the foster care population to over 440,000 children and youth. This is a significant increase from the low point less than 400,000 in 2012. At the same time the number of youth aging out of care has decreased from a high of just under 30,000 to 19,000 over a ten-year period. We can’t be sure how the current increases in foster care now will change the number of youth aging out of care in five or ten years but building a better profile with national data on who these young people are will no doubt inform national and state policy. We urge you to keep this data collection in some format to build this profile.

*Indian Child Welfare Act (ICWA)*

CWLA appreciates the fact that the AFCARS regulation will for the first time since ICWA was enacted begin to collect Indian Child Welfare Act (ICWA) data. It is long overdue. As a result, we urge great caution in overemphasizing the cost in implementing these new data elements as a rationale to restrict this new ICWA data.

Ultimately the use of AFCARS is most appropriate in collecting important ICWA data since HHS and ACF have oversight of federal funding and policy regarding child welfare policy. Other federal cabinets and agencies do not have this understanding or authority.

As pointed out by Tribal and Native American representatives, only three data elements result in the need to be asked regarding every child in state custody: 1) inquiry into whether the child is a member or eligible for membership in a federally-recognized tribe conducted; 2) if so which tribe(s); and 3) does the Indian Child Welfare Act apply?

In a 2005 GAO Report (GAO-05-290) requested by the Congress, the authors were limited in their ability to assess ICWA's impact. They surveyed four states and suggested that tools such as the Child and Family Services Reviews (CFSRs) were limited.

*“While ACF’s Child and Family Services Reviews have identified some ICWA concerns in states, the structure of this oversight tool was designed to review the overall performance of a state’s child welfare system, rather than any particular law or program. As a result, it does not ensure that ICWA concerns will be addressed or that identified problems will be included and monitored...”*

New AFCARS data will help fill some of these monitoring shortfalls. Policymakers at all levels need better data on Native American children and families to understand the impact of the law and the outcomes for families and children.

CWLA highlights some important needs and data elements including:

Foster care and adoption preferences; these two elements will provide information on whether placement preferences in the case of an adoption or out of home care placement were met. If they were not, then what was the basis?

ACF has also curtailed important court action and jurisdiction information. This includes the elimination of the date of court determination of ICWA application and information on the transfer of jurisdiction. The transfer of jurisdiction will provide important information on a whether a request for transfer of jurisdiction was made, if it was approved or denied, and what was the reason for the denial.

CWLA also feels that the original data elements around notice on foster care placement and termination of parental rights to tribes and parents was more appropriate in the 2016 final regulation. The revamped data element only tracks whether notice was sent by the state child

welfare agency. As a result, it will not provide information as to whether the notice was being sent within ICWA's statutory timelines and if it was sent to both parents and the child's tribe.

One of the challenges for some tribal consortia and governments seeking to implement their own child welfare policy using federal funds is a lack of information systems and the data provided. If this new data regarding ICWA becomes available, tribal governments or consortia may be able to use it to identify challenges and issues that need improvement or need to be addressed. This also will have an impact on national policymaking. The 2016 AFCARS data elements would provide a consistent set of data that tribes and states could use to address ICWA challenges and other child welfare issues.

### *Health Care Status*

The April 19, NPRM revises the health assessment data to a simple yes or no in response to the question of whether a child has had a health assessment during the *current-out-of-home care episode*. The criticism is that listing the date of the child's *most recent health assessment* would be too detailed for national statistics. If that is true, then a simple yes or no on whether an assessment has been conducted in the current spell of out-of-home care will also result in a statistic that most children had an assessment. There is a need for more accurate information beyond whether a child received an assessment. There has been great congressional interest in the health care and health care outcomes for children and youth in foster care as demonstrated by the past decade of action.

Accurate health care data on access to health care is important for measuring a state's compliance with its Title IV-B Health Oversight and Coordination Plan. We prefer the inclusion of health assessment based on some limited timeframe if a specific date is not workable. If this data element seems to be too difficult to collect or collate than we suggest a more fixed timeframe such as most recent six month or at least yearly timeframe.

The need or even demand for tracking health care status has been documented in several legislative actions including the 2008 Fostering Connections to Success Act and the 2011 reauthorization of the Title IV-B programs. As a result of those two legislative actions the state plan requirements were expanded to provide "*ongoing oversight and coordination of health care services for any child in a foster care placement*" This includes, according to statute, a schedule for initial and follow-up health screenings that meet reasonable standards of medical practice and steps to ensure continuity of health care services, which may include the establishment of a medical home for every child in care. States must also include a description of the activities that the state has undertaken to reduce the length of time children under age of five and who are without a permanent family. This includes "*the activities the State undertakes to address the developmental needs of such children who receive benefits or services under this part or part E.*" Certainly regular health assessments are critical to addressing these developmental needs.

### *Educational Stability*

It was a Congressional imperative inserted into the 2008 Fostering Connection to Success Act that states pay close attention to the educational needs of children and youth in care. States were

directed to assure that either a child remained in his/her same school if appropriate or be enrolled in a new school without delay. When it was clear that the education community was not taking this mandate seriously enough and without enough urgency, Congress then amended the Elementary and Secondary Education Act (ESEA) to create a similar directive.

That reauthorization of the ESEA or the Every Student Succeeds Act (ESSA) for the first time directs state departments of education to report on the educational performance of students in foster care in the State Report Card.

These data collection sources through both child welfare and education will allow for longitudinal information about the educational needs of students in foster care to be tracked and reported over time. This is and will continue to be a focus of future congresses and any resulting legislative mandates can be made with or without that data. We believe it would be better to have that greater detail to better inform such future mandates on states —if any are necessary.

To this point we know general studies and reports about the limited education outcome of children in foster care. AFCARS is the most effective way to collect educational stability data because it allows reporting of how often children change schools and the reason. Child welfare agencies are already required to keep school stability information as part of their case plans as a result of the 2008 law.

We also point out that the 2016 regulation was written after extensive public comment and debate. The Final Rule was the end result of identifying a finite number of basic education data elements that will yield critical national level data. Education data was a missing critical element not included in the original 1993 implementation of AFCARS. As we pointed out earlier this is a rare opportunity to adjust that 1993 regulation in a way that can better inform the certain legislative actions of the future.

#### *The Exclusion of Juvenile Justice Data Elements Related to Permanency Planning*

The NPRM justifies the deletion of the juvenile justice element in section 1355.44(f)(5) that would require title IV–E agencies to report yes/no whether or not a court found the child to be a status offender or adjudicated delinquent during the report period. The Child Welfare League of America supports the final 2016 regulation because it will advance the education of public and private youth-serving organizations regarding the connections between maltreatment and delinquency and the need for an integrated approach to program development and service delivery.

The 2016 Final Rule modified the data element to require title IV-E agencies to report yes/no whether or not a court found the child to be a status offender or adjudicated delinquent. To delete it would not be in aligned with best practices or national, state, or local juvenile justice reform that is happening in multiple jurisdictions.

Research has found that many youth who are caught between the child welfare and juvenile justice systems have a history of trauma, mental health conditions or substance abuse issues that require specialized treatment, and often experience poor educational performance, higher

recidivism rates, higher detention rates, disruptive living arrangements and substantial behavioral health needs. Accessible national data is needed in identifying and understanding this vulnerable population of youth to keep them safe, off the streets, and deter them from a life of crime.

Collaboration between CWLA and the Robert F. Kennedy Children's Action Corps production of the Guidebook for Juvenile Justice and Child Welfare System Coordination and Integration: A Framework for Improved Outcomes has been used in multiple jurisdictions to implement enhanced multi-system practices that improve the outcomes for their youth and families.

Identifying key data elements are essential in integration and coordination of the child welfare and the juvenile justice systems. The overlap of the child welfare and the juvenile justice systems is evident by victims of child abuse and neglect who become juvenile delinquents and federal legislation is acknowledging this overlap by including cross system collaboration and funding incentives in both the child protection and juvenile justice systems.

There is clear congressional interest in this data. Senator Charles Grassley (R-IA) and Senator Gary Peters (D-MI) and have reintroduced legislation known as the Child Outcomes Need New Efficient Community Teams (CONNECT) Act. The legislation seeks to help states identify and respond to the needs of children who come into contact with both the juvenile justice and child welfare systems. This legislation is an attempt to collect data on youth with dual status to foster a better understanding of their unique circumstances and improve coordination in the delivery of services to children who are at risk.

Senators Peters released the following statement on introduction of the CONNECT Act:

*"We cannot allow bureaucratic red tape to prevent the juvenile justice and child welfare systems from providing at-risk youth the services they need...By gaining a better understanding of the hardships dual status children have had to endure, we can do more to ensure that they have the opportunity to lead happy, productive lives."*

Senator Grassley said,

*"Youth involved in both the foster care and juvenile systems shouldn't face additional challenges because of lack of coordination. Too often, these state agencies don't interact enough. Child welfare and juvenile justice experts need to work together to keep vulnerable youth safe, off the streets, and away from crime. Our bill encourages state and local agencies to work as a team to develop best practices and better policies to help at-risk youth and help them succeed in life."*

In addition, the Administration for Children and Families (ACF) development of the National Youth in Transition Database (NYTD) to collect outcome information on certain youth in foster care already included the adjudicated delinquent element that child welfare workers are already trained to collect. NYTD provides a sampling of the population and outcomes for youth primarily who will transition from the foster care system. AFCARS data can be used for identification and prevention of negative outcomes for children and youth by indicating a more exact number of youth involved in both the child welfare and juvenile justice systems. This

population of youth presents a unique challenge for both systems and having adequate data that assist states in work towards prevention is critical.

### *Transition Plans*

The Children's Bureau bulletin for professionals, *Working with Youth to Develop a Transition Plan*, outlines the importance of ensuring that transition plans for youth who "age out" of the child welfare system is important. The elimination of section 1355.4(f)(8) that requires the title IV-E agency to report whether the child has a transition plan that meets the requirements of section 475(5)(H) of the Act and the transition plan date in paragraph (f)(9) should be reconsidered.

As a requirement of the Fostering Connections to Success and Increasing Adoptions Act of 2008, transition plans must take place ninety days prior to a youth's 18th birthday. Over the years many alumni of foster care and current youth in care have shared their stories of not being engaged by child welfare professionals before exiting from the foster care system. They are unfamiliar with transition plans and the mandate for title IV-E agencies.

The amendment of the regulation in 45 CFR Part 1355 justification was "to make it clear that agencies should report all plans developed in response to the statute, even if it is before the 90 day period," and should be upheld. The right of youth ages 14 and older to have a transition plan that is documented is critical to successful outcomes for young people transitioning to adulthood.

Within Administration on Children and Families there is a focus on older youth engagement and across many states and local jurisdictions there is a willingness and practice to engage with youth and young adults in many facets that underscores the misconception that this data element is not relevant or would not be of quality.

### *Conclusion*

The Child Welfare League of America appreciates the opportunity to submit these comments on the revisions of the 2016 AFCARS final rule. As we stated in the beginning we feel this is a critical opportunity to amend the AFCARS data elements for the first time in 26 years. We want to make sure we take every opportunity to adjust this data in a way that will provide critical information that can better inform both policy and practice.

Sincerely,



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

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj2-k9up  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0278  
County Welfare Directors Association of California

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## Submitter Information

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Sacramento, CA, 20002  
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**Organization:** County Welfare Directors Association of California

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## General Comment

Please find attached comments from the County Welfare Directors Association of California opposing the proposed changes to the AFCARS data elements.

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## Attachments

County Welfare Directors Association of California



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

June 14, 2019

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

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

Dear Ms. McHugh:

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

CWDA opposes the proposed removal from the final 2016 AFCARS regulations the collection of critical data regarding children protected under the Indian Child Welfare Act (ICWA) of 1978 and regarding the sexual orientation of foster children, foster parents, and adoptive parents.

On June 14, 2016, the U.S. Department of the Interior (DOI) Bureau of Indian Affairs published amendments to the federal ICWA regulations that corresponds with the ICWA-related 2016 AFCARS data set, in furtherance of the goal to provide consistent ICWA implementation statewide and ultimately ensure the well-being of Indian children. Collecting this data through AFCARS is one of the only ways to get the important information required by federal ICWA regulations.

It is also absolutely vital that the federal Administration for Children and Families collect the multitude of data elements of the most vulnerable children as described in the rule, including those children in the child welfare system that identify as lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth. This is a growing issue in California, with more youth identifying as LGBTQ, and one that deserves to receive further attention at the national level.

While CWDA appreciates the intent of the proposal to streamline data collection, we strongly believe that the collection of the data elements related to ICWA and LGBTQ youth aids California counties and other states to



better meet federally required outcomes for child welfare services and help to focus funding and policy decisions. Ultimately the collection of these data elements enhances federal oversight, improves child welfare practice and supports evidence-based prevention and early intervention services to enhance the safety, permanency, and well-being of all youth in our care. The benefits of collecting these data elements far outweigh any initial costs.

CWDA also wishes to align itself with the comments submitted by California’s Department of Social Services (CDSS). In sum, we oppose the removal of these data elements from the 2016 AFCARS regulations.

Thank you for the opportunity to provide comment. Please contact Cathy Senderling-McDonald, Deputy Executive Director of CWDA at 916.443.1749 or [csend@cwda.org](mailto:csend@cwda.org) or Tom Joseph, Director of CWDA’s Washington Office at 202.898.1446 or [tj@paragonlobbying.com](mailto:tj@paragonlobbying.com) should you have any questions.

Sincerely,

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

Frank J. Mecca | Executive Director

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj4-py1k  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0279  
Virginia Department of Social Services

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## Submitter Information

**Name:** Anonymous Anonymous  
**Address:**  
VA,  
**Organization:** Virginia Department of Social Services  
**Government Agency Type:** State  
**Government Agency:** Virginia Department of Social Services

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## General Comment

See attached file(s)

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## Attachments

Virginia Department of Social Services

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

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

VDSS DFS supports the proposed changes to the 2016 final rule. We support the inclusion of data elements that would support statutory requirements. We also agree that there is benefit in collecting longitudinal data.

**Overarching Comments and Recommendations**

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

As noted in previous comments, the 2016 final rule appears to be turning the AFCARS into a research tool rather than an instrument to provide federal monitoring and guidance for continuous quality improvement. But, even if that is a legitimate end, adding measures to AFCARS that don't or can't capture the realities of child welfare practice at the state or tribal level will not promote useful research.

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

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

**Focus on practice.** Child welfare agencies and staff are first and foremost accountable to the children and families that come to their attention. Having too many elements risks shifting focus away from improving practice, to regulatory compliance. As a result, caseworkers will have to spend more time on completing checklists than building relationships with clients and providing services. We risk losing focus on what is really critical to ensuring safety, permanency, and well-being. While the proposed changes reduce the number of elements required with the 2016 final rule, they do not account for caseworker time to collect data; training regarding the new, changed or modified elements and the ability to collect

data reliably without impeding the relationship/service component of case practice; and technical assistance. The number of elements eliminated will not diminish the significant impact on caseworker time with children and families that is required as a result of the 2016 final rule. At some point we are looking at diminishing returns. In addition, supervisors and quality assurance staff will be engaged to monitor compliance.

**Consider time needed for implementation.** No changes, including requirements from the 2016 final rule, should take place until states have been given enough time to implement CCWIS.

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

#### **Data System**

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

We respectfully request consideration be given to states that are in the process of updating their case management system be given additional time beyond the original delay of 2020.

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

##### **ICWA Related Information**

As of 5/1/2019, Virginia has three American Indian/Native Alaskan children in foster care which is less than .05%. Even with the elimination of several of the ICWA related elements, Virginia will be incurring a substantial cost for a very small amount of data collection and reporting. Virginia supports collecting all the data related to ICWA elements once we are CCWIS compliant and is in agreement with the other proposed methods of collecting the data.

##### **Child Information**

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

**Educational Stability:** The responses to the education elements will differ across states and within states. There is a risk that the element will not be reported consistently resulting in unreliable data. For these reasons, we are in support of eliminating the elements related to educational stability.

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

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

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

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

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj4-wud2  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0280  
Washington State - Department of Children, Youth, and Families

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## Submitter Information

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**Organization:** State of Washington - Department of Children, Youth, and Families

**Government Agency Type:** State

**Government Agency:** State of Washington - Department of Children, Youth, and Families

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## General Comment

See attached file(s)

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## Attachments

State of Washington - Department of Children, Youth, and Families



**STATE OF WASHINGTON**  
**DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES**

1500 Jefferson Street, SE • P.O. Box 40975 • Olympia WA 98504-0975

June 12, 2019

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

RE: Washington State's Comments on Notice of Proposed Rulemaking (NPRM) on revised Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements  
Docket number: ACF-2018-0003; RIN number 0970-AC72

Dear Ms. McHugh:

The State of Washington's Department of Children, Youth, and Families has submitted responses to the Notice of Proposed Rulemaking (NPRM) and Supplemental Notice of Proposed Rulemaking (SNPRM) in 2015 and a response to RIN 0970-AC47 in support of the two-year implementation extension. The Department has also submitted responses to the Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register issued by the Administration for Children, Youth, and Families (ACYF) in 2018. We request the Administration for Children and Families (ACF) review those earlier responses. Washington also now respectfully submits the following comments in response to the NPRM on revised AFCARS data elements issued by ACF on April 19, 2019.

We appreciate that ACF streamlined certain data elements to require that title IV-E agencies report only essential information on children. We support the removal of data elements that address sexual orientation of child, foster/adoptive parents, and legal guardians. While Washington absolutely supports LBGTQ children/youth and families, we are not convinced that the collection and reporting of this data through a government database would have any data integrity, nor are we convinced that collection of this data would result in support services. Washington does support retaining the circumstance at removal data element that reflects whether there was family conflict related to the child's sexual orientation, as that directly relates to service needs and case planning.

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

Administration for Children and Families

June 12, 2019

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

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

As we commented in 2018, Washington concurs with the need to ensure ICWA is consistently applied and that data is necessary to measure compliance as clearly outlined in the Department of the Interior, Bureau of Indian Affairs NPRM issued in April 2015. We proposed that AFCARS penalties should be waived for elements that rely on the action(s) and data of another entity. Data elements that fall in this category and which have been removed in this NPRM are:

- **Court determination that ICWA applies**
- **Request to transfer to tribal court – ICWA**
- **Denial of transfer – ICWA**
- **Good cause under ICWA**
- **Basis for good cause**
- **Good cause under ICWA**
- **Basis for good cause**

Washington acknowledges the effort to reduce redundancy in collection of data when other elements can be used in determination of ICWA compliance. We also recognize that the next program instruction for the Court Improvement Program will encourage grantees (including WA) to work with the dependency courts across jurisdictions to enhance efforts to collect and track key ICWA data indicators for court regulations. Nevertheless, Washington continues to support the collection of ICWA elements while also waiving penalties for any failures to collect information that relies on other entities (e.g., courts).

This request to waive penalties applies in other areas, as well. As indicated in previous comments from 2015 and 2018, Washington continues to have concerns with our ability to comply with reporting educational and medical data and information collected and maintained by other entities such as the WA office of Superintendent of Public Instruction (OSPI) and WA Health Care Authority (HCA).

Washington's Department of Children, Youth, and Families and OSPI continue to work on a cooperative data share agreement, which has faced significant legal barriers related to federal law (e.g. Family Educational Rights and Privacy Act). In 2018, we were able to reach agreement on a foundational data share agreement for bidirectional interface to authorize an exchange of data for individual child case management. However, we have yet to work through challenges/concerns regarding use of the data. In particular, OSPI and their legal counsel cite FERPA as restricting the use of these data by the public child welfare agency for summary reporting or to comply with federal reporting requirements (e.g. AFCARS). Washington recommends that the following data elements be removed from the AFCARS reporting requirements or that AFCARS penalties not be applied to these data elements until the



Administration for Children and Families

June 12, 2019

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Department for Children, Youth, and Families and the federal Department of Education issue clear joint policy that grants child welfare agencies access to use data about foster children, which is currently interpreted by the education agency to be restricted from such use by FERPA. Educational elements include the following:

- **School enrollment**
- **Educational level**
- **Educational stability**
- **Special Education**

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

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

While the Department appreciates ACF's efforts to streamline and reduce the number of items to report, there are still additional opportunities to streamline reporting. Unless there are specific business needs for higher specificity, elements like health, behavioral or mental health conditions should be reviewed to determine if they could be streamlined:

**Health, behavioral or mental health conditions.** The following elements:

- **Intellectual disability**
- **Mental/emotional disorders**
- **Serious mental disorders**
- **Developmental delay**
- **Developmental disability**

Could be streamlined to:

- **Intellectual delay or disability**
- **Mental/Emotional disorder**

**Child and family circumstances at removal.** Child and family circumstances at removal currently has 17 identified circumstances associated with removal, and the 2016 Final Rules expands this under the child and family circumstances at removal to 34 separate circumstances. Each circumstance must be accounted for in the extraction code and mapped to "applies" or "does not apply."

Administration for Children and Families

June 12, 2019

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**Parental Immigration detainment or deportation.** This element asks whether the parent is or was detained or deported by immigration officials. Incarceration of caretaker covers this sufficiently, and is already an existing option under Circumstances Associated with Removal, and continues to be an option under the new 2016 Final Rules within the Child and Family Circumstances at Removal. There is no need to identify parental deportation separately from incarceration. Washington strongly disagrees with the collection and reporting of this information. In the 1026 proposed rules, Parental Immigration Detainment or Deportation was identified as a separate data element, which was opposed by many states. Unfortunately, in the 2016 rules, while it is moved as a selection under an overall data element of circumstances at removal, it still represents an attempt to collect this data.

The Final Rule is admirable in its intent to use administrative data to improve outcomes for children and families; however, the new AFCARS requirements still pose a significant impact to states and creates a burden at a time when limited resources are needed to support casework practice.

In summary, Washington concludes with the following overall recommendations:

- Concur with incorporating other reporting requirements under IV-E into AFCARS (e.g. social worker visits) and ICWA elements that fall under the child welfare responsibilities for compliance. Also concur with adding the reporting elements related to newer federal legislation (e.g. commercially sexually exploited children). However, the extensive changes and additions that fall outside of these reporting responsibilities needs to be carefully reviewed and should be supported by an identified business justification.
- Recommend further work between ACF, states and tribes to thoroughly review all data elements, develop clear definitions and standards to ensure consistency in reporting comparisons, and determine relevance of collecting each data element.
  - Recommend the convening of a special workgroup comprised of all states/tribes with direct AFCARS reporting responsibilities to work together with the ACF to review and streamline AFCARS data collection/reporting with a focus on federal requirements and outcomes. We believe there are a number of opportunities to streamline the data collection requirements under AFCARS to meet federal, tribal, and state business needs in measuring compliance and outcomes.
- Penalties. Washington is nearing completion of our AFCARS improvement plan to address deficiencies identified during our AFCARS review with our final system modification planned for a July release. Implementing the penalties section outlined in the proposed rule would negatively impact our ability to complete work required under the new rules by further reducing our resources. WA cannot meet the proposed timelines outlined in the NPRM for such extensive changes.
  - Any data collection/reporting on elements that do not specifically fall into ensuring compliance around rules and outcomes, at the very least, should not be subject to penalties.

Administration for Children and Families

June 12, 2019

Page 5

- ACF should consider availability of the data, particularly when the data is based on the action or under the authority of a third party. This includes removing penalties around educational data until all federal entities and laws are consistent in collection and use, sharing, and reporting of data.
- Recommend that penalties be waived as long as the state is in compliance with an approved AFCARS improvement plan.
  
- Timeline. The new AFCARS requirements pose a significant impact to states and create an undue burden at a time when limited resources are needed to support casework practice. The majority of the data elements in the final rule will require new fields and/or system modifications just to be available for reporting. We are proposing that the Department be allowed five years post rule finalization to make the necessary technical system changes to align with the new reporting requirements. Due to competing priorities with new work critical to support services to our children and families, modifications to our existing AFCARS has taken Washington several years to complete.
  
- Washington would also like to know if implementation of the new AFCARS rules will be funded under new development for transitional or grandfathered systems under the new CCWIS rules. Washington is working on funding to begin CCWIS planning, but did not get funding for a new CCWIS at this time, so the many modifications that will be required will need to be done in the existing grandfathered system that does not meet the modularity requirements for new development.

Thank you for your consideration of these comments.

Sincerely,



Jody Becker, MSW, Ph.D.

Deputy Secretary, Programs for Children and Families

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj5-2rw6  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0281  
National Crittenton

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## Submitter Information

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Portland, OR, 97205  
**Email:** jeannette@nationalcrittenton.org  
**Organization:** National Crittenton

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## General Comment

Dear Ms. McHugh:

On behalf of National Crittenton, I am pleased to submit the attached comments in response to the most recent NPRM regarding changes to the Adoption and Foster Care Reporting System (AFCARS). Please do not hesitate to contact me with any questions.

Sincerely,

Jeannette Pai-Espinosa, President  
National Crittenton

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## Attachments

National Crittenton



SOCIAL & SYSTEMS CHANGE FOR GIRLS

June 14, 2019

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

RE: Proposed Rulemaking Amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) [RIN 0970-AC72]

Dear Ms. McHugh:

National Crittenton appreciates the opportunity to provide comment on the Notice of Proposed Rulemaking to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. As you know, AFCARS is the primary source of data regarding children in out of home care, and it provides critical information to improve child welfare programs and policy.

We are the convening organization for a family of twenty-six agencies that provide direct services to some of the most marginalized young people across the United States, including those who touch the child welfare system, and with a particular emphasis on girls and young women. Working in partnership with public systems, our agencies provide a range of trauma-informed, gender- and culturally-responsive, and developmentally-appropriate services to meet the needs of young people who have experienced high levels of adversity and multiple systems including the juvenile justice system, runaway and homeless, and commercial sexual exploitation. We also have special expertise in serving pregnant and parenting youth and their children, and we appreciate that the Children's Bureau has proposed to maintain the data elements regarding pregnant and parenting youth in foster care.

**We urge the Children's Bureau to maintain the other data elements outlined in the December 14, 2016 AFCARS Final Rule, including, in particular, those related to:**

- **Juvenile justice involvement,**
- **Sexual orientation, gender identity, and gender expression,**
- **Native children and applicable requirements of the Indian Child Welfare Act (ICWA),**
- **Transition planning,**
- **Educational stability, and**
- **Health assessments.**



SOCIAL &amp; SYSTEMS CHANGE FOR GIRLS

National Crittenton has submitted comments in response to numerous NPRMs regarding updates to the AFCARS emphasizing the importance of many of the data elements, as we believe the AFCARS 2016 Final Rule made significant progress that would improve the field's understanding of the unique needs and challenges facing young people in foster care. AFCARS has not been updated since 1993, and the data elements in the 2016 Final Rule reflect significant advances in child welfare and practice as well as updates to reflect statutory requirements to collect additional data to improve our understanding of the experience of young people in foster care. Several pieces of legislation since 1993 have recognized the importance of improved data, including, most recently: the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351), the *Fostering Connections to Success and Increasing Adoptions Act* (P.L. 110-351), the *Child and Family Services and Improvement and Innovation Act* (P.L. 112-34). Additional data is also needed to ensure the effective implementation and oversight of the *Indian Child Welfare Act* (P.L. 95-608), to improve outcomes for tribal youth.

The data elements in the AFCARS 2016 Final Rule were open for extensive public comment and debate. The Final Rule was the result of identifying a finite number of data elements that will yield critical national level data. The new data collection requirements were thoughtfully considered and seek to ensure child welfare agencies are gathering data on key child- and family-related outcomes to ensure safety, permanency and well-being. These changes were long overdue and will support agencies to provide accurate and consistent data across states on key outcomes.

We support the inclusion of key elements of the AFCARS 2016 Final Rule as follows.

**Juvenile justice involvement:** The data elements regarding juvenile justice involvement are critically necessary for improving our understanding of the experience of dual-system involvement and the number of young people in foster care who cross over into the juvenile justice system. Many Crittenton clients experience both systems, and our experience is that once they enter one system, it becomes easier to cross into the other. In addition, research suggests that girls represent a higher percentage of dually-involved youth. Unfortunately, we know very little about the number of youth who “cross over” or their experiences. More information is absolutely necessary to improve our understanding of, and response to, their clinical needs to improve services and policies to ensure their safety, permanency, and well-being

**Sexual orientation, gender identity, and gender expression:** Lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers. Data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities. We urge HHS to maintain the data elements in the AFCARS Final Rule related to sexual orientation, gender identity, and gender expression so that states and tribes can improve outcomes, identify and fund needed resources, and reduce disparities experienced by LGBTQ

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SOCIAL &amp; SYSTEMS CHANGE FOR GIRLS

foster children. These youth will continue to be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs. Furthermore, this proposal to eliminate data elements related to gender identity means will continue to be difficult to identify and meet the unique needs of girls and boys using gender-specific programs and services in the child welfare system. In addition to capturing the experiences of LGBTQ youth, it is equally important that these data elements be preserved to inform policy reforms to make the child welfare system more gender-responsive.

**Native children and applicable requirements of the Indian Child Welfare Act (ICWA):**

Although the AFCARS 2016 Final Rule contained approximately 60 data elements related to the Indian Child Welfare Act, HHS is proposing to retain only five of these data elements in this NPRM. We strongly oppose this proposal. States, tribes, federal agencies, and policymakers need better data for Native children and families to understand how to effectively address persistent, long-term, and troubling poor outcomes for Native children and their families in the child welfare system. When local ICWA data is available, tribes use it to identify discrepancies in state ICWA caseloads or to identify practice issues that need improvement. Unfortunately, many states do not collect this data. The 2016 AFCARS data elements would provide a consistent set of data that tribes and states could use to address ICWA challenges and other child welfare issues.

**Transition planning:** We oppose eliminating the data elements related to transition planning and believe omitting them will further harm transition age youth in foster care. The transition planning requirement has been in federal law since 2008 when *Fostering Connections* was adopted. This key component of child welfare law ensures that youth are supported in their transition to adulthood, beginning with planning at age 14 and continuing, alongside permanency planning, until the youth leaves the system. Including the transition planning data elements in AFCARS is essential to ensuring that our systems appropriately track and respond to the needs of transition age youth.

**Educational stability:** A number of our agencies provide educational services for young people in, formerly in, or at risk of entering the foster care system. Little national data about the education of children in foster care currently exists, particularly regarding school stability, which is correlated to educational outcomes for young people in foster care. Research on the educational performance of students in foster care overwhelmingly shows increased attention to educational issues is critical – and that students with high mobility face many educational challenges. We continue to support the inclusion the education stability data in AFCARS as set out in the 2016 Final Rule.

**Health assessments:** Finally, we urge the Children’s Bureau to maintain the data elements related to the date and timeliness of a child’s health assessment. This information is important for improving access to care for a significant portion of the foster care population at the state and



SOCIAL & SYSTEMS CHANGE FOR GIRLS

national levels, particularly girls and young women who have experienced high levels of adversity, which often manifest as physical health needs. Timeliness of health assessment is also critical to ensuring that child welfare agencies can appropriately identify health needs such as trauma-related behavioral challenges and developmental delays and provide access to appropriate services as indicated by the assessment. By having a greater understanding how trauma is affecting children, they can receive needed services sooner and better heal from the trauma they have experienced.

Thank you again for the opportunity to submit comments. Should you have any questions, I hope you will not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'J' and 'P' followed by a long horizontal line extending to the right.

Jeannette Pai-Espinosa  
President  
National Crittenton



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| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj7-qhcb  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0285  
Arkansas Department of Human Services

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## Submitter Information

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**Address:**  
AR, 72201  
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**Organization:** Arkansas Department of Human Services  
**Government Agency Type:** State  
**Government Agency:** Arkansas Department of Human Services

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## General Comment

Below are the comments/questions for Arkansas:

1355.44(c) Parent or Legal Guardian Information

Proposal: Report characteristics of child's parents or legal guardians including year of birth, tribal membership, and termination/modification of parental rights.

Data elements modified: none

Data elements removed-CURIOUS AS TO WHY THESE ARE BEING REMOVED:

Involuntary termination/modification of parental rights under ICWA

Voluntary termination/modification of parental rights under ICWA

1355.44(h) Exit to Adoption and Guardianship Information

Proposal: Report information only if child exited to adoption or legal guardianship including demographics on adoptive parents or legal guardians (e.g., marital status and tribal membership), siblings, and whether the child was placed within or outside of the state or tribal service area or into another country for adoption or guardianship.

Data elements modified:

Child's relationship to the adoptive parents or guardians-WHEN DOCUMENTING A SAME SEX HOUSEHOLD, IN ORDER TO AVOID AFCARS ADOPTION ERRORS, ONE HAS TO BE DOCUMENTED AS MOTHER (ADOPTIVE) AND ONE AS FATHER (ADOPTIVE). WE THINK IT WOULD BE BETTER NOT TO HAVE TO DOCUMENT THIS WAY AND IDENTIFY BOTH AS FATHER (ADOPTIVE) OR MOTHER (ADOPTIVE) WITHOUT GETTING ERRORS.

Sex of adoptive parents or guardians

Adding the new data elements would be a slightly substantial financial burden, not only adding any new fields/values to the screens but to have the logic programmed to pull the data. This should be a little less than what was originally proposed since some were removed from the 2016 final rule with approximately 272 items and then reduced to 183.

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| <b>Tracking No.</b> 1k3-9aj7-zomu  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0286  
Soboba Bank of Luiseno Indians

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## Submitter Information

**Name:** Scott Cozart

**Address:**

San Jacinto, CA,

**Organization:** Soboba Bank of Luiseno Indians

**Government Agency Type:** Tribal

**Government Agency:** Soboba Bank of Luiseno Indians

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## General Comment

See Attached

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## Attachments

Soboba Bank of Luiseno Indians



# SOBOBA BAND OF LUISEÑO INDIANS

*EXECUTIVE OFFICES OF THE TRIBAL COUNCIL*

June 11, 2019

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

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

Re: RIN: 0970-AC72

Agency: Children's Bureau; Administration on Children, Youth and Families; Administration for Children and Families; Department of Health and Human Services

Action: **Adoption and Foster Care Analysis and Reporting System;**  
Notice of Proposed Rulemaking (4/19/19)

Dear Sir or Madam,

The Soboba Band of Luiseño 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.

By way of background, tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS because there is no other national method to track ICWA compliance, and there are few if any state systems. The initial rules were changed due to comments made 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.

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# SOBOBA BAND OF LUISEÑO INDIANS

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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, and included the ICWA data elements. The current NPRM seeks to modify or eliminate a significant number of the ICWA data points found in the 2016 Final Rule.

### General Comments:

*The Goals of the Families First Prevention Services Act and ICWA are Parallel and Support One Another.*

As the current NPRM reminds us, there is a new Title IV-E prevention services program, the Families First Prevention Services Act. The 2019 Title IV-B Program Instructions state, “[c]reating a system that sees the prevention of child abuse and neglect as the goal of child welfare changes the current system toward working with families sooner through upfront prevention efforts.” (ACYF-CB-PI-19-4 (2019).) Those same Program Instructions “recognize that tribes have long embraced a vision for child welfare that focuses on strengthening families and native communities and that seeks to avoid the unnecessary removal of children from home.” (ACYF-CB-PI-19-4 (2019).) Indeed, for over 40 years, the Indian Child Welfare Act has required active efforts be made to prevent the breakup of the Indian family, making it the “gold standard” of child welfare practice. (81 Fed Reg. 90527.) Additionally, placement under Families First aligns with the placement preferences of ICWA. The placement goal of Families First is to place children in family foster care, only utilizing congregate care as a last resort. ICWA’s placement preferences have long taken this approach, again making it the “gold standard” of child welfare practice.

The ICWA data points in AFCARS were to be a significant step in the direction of improving child welfare practices for not only AI/AN children, but for all children. As noted in the NPRM, “states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.” (84 Fed Reg. 16574.) In its comments to the April 2018 Advanced Notice of Proposed

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Rulemaking, the California Department of Social Services (the state with the largest Native American population) “unequivocally supported 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 in facilitating child welfare practice and in informing policy decisions and program management.”

Having data on ICWA would provide States with a valuable tool that would help to shift the system in the direction Families First intends, toward prevention, toward placement in a family setting and toward collaboration between all parties in the system.

Importantly, the 2016 Final Rule was intended to identify more effective ways for tribes, States and the federal government to work together to advance the well-being of Indian children and families. This again is directly in line with Families First, where it includes as a goal, “a strong, healthy child welfare workforce to achieve better outcomes.”

To that end, all of ICWA data points included in the 2016 Final Rule should be retained. Moreover, we strongly encourage a review of the data points being revised, in order to ensure they do not inadvertently encourage non-compliance with ICWA, whereby the well-being of Indian children would be harmed.

### *The NPRM’s One-Sided Focus on Compliance Costs is Arbitrary and Capricious*

This NPRM relies on information obtained through the April 2019 ANPRM which sought information only on burdens, making a reasoned cost-benefit analysis impossible.

As required by law, the 2016 Final Rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule streamline compliance costs. The Agency “determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data.” 81 Fed. Reg. at 90528. The Agency explained how its weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the Final Rule at 81 Fed Reg. 90528:

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

There have been no material changes in circumstances justifying the Agency’s new approach. Executive Order 13,777 is not a sufficient basis for the Agency to reverse course. Further, Families First legislation does not amend ICWA, and so does not operate as a sufficient rationale to modify ICWA data points.

*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) to 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 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."

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)

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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.

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

Since these regulations have been effective for over two years, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes and the largest population of American Indian/Alaska Native residents, is already well under way with its implementation efforts, having relied on the Final Rule. At this stage, the proposed modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

The primary challenge faced by States in their implementation of ICWA data elements is the failure of ACF to provide the required data map. Through this failure, the current administration effectively blocked their implementation, seemingly pending the current streamlining action.

The NPRM "commend[s] the willingness of states to collect a more comprehensive array of information." (84 Fed Reg. 16575.) However, in the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements, frustrating Section 479's mandate to create a "national," "comprehensive," and "uniform" data collection system. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.

Further, modification to the existing data points requires states to start over on collaborations with their tribal partners and further delays implementation. This comes at the expense of the health, safety, and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the Final Rule would cost resources that are system-wide.

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*These regulations are important to us, to our families, and also to 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,

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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 that data collection is necessary to protect Indian children, families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions. And there have been no changes in circumstances that would alter the burdens or benefits of the Final Rule's data collection requirements.

### *Tribes have relied on the Final Rule.*

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the Final Rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the expected data elements. Tribes which have worked to develop and update agreements to reflect the data elements in

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## EXECUTIVE OFFICES OF THE TRIBAL COUNCIL

the Final Rule and the 2016 BIA ICWA Regulations (since a goal of both is to increase uniformity) will see more of their limited resources wasted.

### Specific Comments Regarding Data Elements.

While we strongly encourage retaining **all** of ICWA-related data elements of the 2016 Final Rule, we provide these specific comments to identify concerns regarding the suggested data elements and to offer methods of increasing the utility of streamlined data points.

Notice: We suggest adding the following additional data elements:

The NRPM includes a data element that would capture whether notice has been sent to a child's tribe. We recommend also including a data element that would capture the date of the notice (as found on the return receipt), as well as the date the petition was filed. These dates are easily located and are not qualitative or too detailed in nature, but do provide important additional information regarding whether notice was timely.

Placement: We suggest adding the following additional data elements:

Data points exist regarding whether a child is placed with a relative. The NPRM proposes to also collect data on whether a child is placed with a tribal member. We suggest adding these two additional data elements:

1. If the child is not placed with either a relative or a tribal member, was a good cause finding made to deviate from ICWA's placement preferences? (yes or no)
2. If yes, what was the basis of the good cause finding? (drop down list from the 2016 ICWA regulations)

This information will provide a more complete picture of what is occurring regarding placement and is consistent with the goal of Families First to place children in a family-like setting.

Transfer to Tribal Court: We suggest modifying this data element as proposed.

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As written, this data element is confusing. We suggest the following set of questions:

1. Was a transfer to tribal court requested? (yes or no)
2. If so, was it granted? (yes or no)
3. If it was denied, what was the reason? (drop down menu based on 2016 ICWA regulations).

This data will enhance understanding regarding transfers to tribal court. There is no other mandatory mechanism for this data to be collected. The Court Improvement Program data would be voluntary, not mandatory.

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

In closing, the ICWA is widely considered the “gold standard” of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection will significantly impact tribal children and families, as well as county agencies trying to better follow the law. In the interest of increasing compliance with the ICWA, and ultimately in protecting our children and families, we respectfully submit these comments.

Sincerely,

Scott Cozart, Chairman  
Soboba Band of Luiseño Indians

Chairman  
*Scott Cozart*

Vice-Chair  
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| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 17, 2019       |
| <b>Tracking No.</b> 1k3-9aj8-hozl  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0287  
Standing Rock Sioux Tribe

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## Submitter Information

**Name:** Mike Faith  
**Address:**  
Fort Yates, ND,  
**Organization:** Standing Rock Sioux Tribe  
**Government Agency Type:** Tribal  
**Government Agency:** Standing Rock Sioux Tribe

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## General Comment

See Attached

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## Attachments

Standing Rock Sioux Tribe

Mike Faith  
Chairman



Ira Taken Alive  
Vice Chairman

Susan Agard  
Secretary

TRIBAL COUNCIL  
(AT LARGE)

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Long Soldier District

Wayne Looking Back  
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Verdell Bobtail Bear  
Running Antelope District

Samuel B. Harrison  
Porcupine District

June 17, 2019

VIA E-MAIL SUBMISSION  
CBCComments@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: Children's Bureau; Administration on Children, Youth and Families;  
Administration for Children and Families; Notice of Proposed Rulemaking;  
Adoption and Foster Care Automated Reporting System 2016 Final Rule;  
RIN 0970-AC72.

Dear Ms. McHugh:

The Standing Rock Sioux Tribe ("SRST") appreciates this opportunity to comment on the proposed rule changes regarding the final Adoption and Foster Care Automated Reporting System ("AFCARS") rule promulgated on December 14, 2016. 81 Fed. Reg. 90,524 (Dec. 14, 2016) ("Final Rule"). Most of the Final Rule became effective on January 17, 2017, but agencies were given two fiscal years to comply. *Id.* at 90,524 & 90,529. However, since April 2016 the Administration for Children and Families ("ACF") has sought not only to delay implementation of the Final Rule, but twice engaged (2017 and 2018) in the collection of public comments with the apparent goal of limiting the Final Rule's collection of certain data. Indeed, ACF now proposes to limit the collection of data that agencies must collect relating to compliance with the Indian Child Welfare Act ("ICWA"), 25 U.S.C. §§ 1901-1963. 84 Fed. Reg. 16572 (Apr. 19, 2019). As

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discussed below, SRST opposes the proposed changes to the ICWA-related data that were originally included in the Final Rule.

SRST is pleased that ACF is proposing to retain the 2016 AFCARS Final Rule data elements that ask whether the state inquired as to whether the child is Indian, the child and parent's tribal affiliation, and whether the state notified the tribe of court proceedings. However, ACF is proposing to eliminate most of the other data elements for Indian children from the 2016 Final Rule. Elimination of many of the ICWA data elements goes beyond streamlining and undermines tribes, states, and federal policymakers' ability to understand whether and how ICWA is being implemented nationwide and in individual states. This is because the only data elements being retained primarily go to whether ICWA applied in a case and if the tribe was notified. All the data elements that allow policymakers to determine whether ICWA was followed throughout a case when it did apply are being proposed for deletion. This will not aid in any quantitative understanding of how states are serving Indian children and families in a manner consistent with ICWA. As such, ACF will continue to be guessing at whether states are implementing ICWA properly.

It appears that ACF determined that the estimated increase in time and costs that it would take to report on ICWA outweighed retaining most of the ICWA related data elements. *See id.* (200-25,000 hours to accomplish ICWA tasks due to an asserted need to modify policy, rules, case management systems and search, obtain and enter the information into records systems). ACF itself acknowledged that while states desired streamlining the AFCARS data, "they also expressed that the 2016 final rule was a considerable improvement to the current AFCARS, will improve data reporting, and provide national information on a number of new topics, including ICWA, health needs, and permanency. States recognized that more comprehensive data allows them to better understand the children and families they serve." 84 Fed. Reg. at 16573. The wholesale removal of most of the ICWA data elements contained in the Final Rule is not streamlining (or as ACF suggests even removing duplications), nor can it be reasonably justified as such.

Removing ICWA data elements merely because they may require additional time, training and reporting is not only arbitrary and capricious, but particularly concerning given that ICWA is a federal statute that all states must follow and implement. Thus, irrespective of whether states currently have rules, policies or systems to record ICWA related information, ICWA must be followed and adhered to in all cases involving an Indian child. It is also important to keep in mind that compliance with ICWA, which provides for minimum standards that are different than state law standards, will likely require additional time to investigate and/or meet. This is not a product of having AFCARS ICWA data elements, but meeting the statutory requirements of federal law. It is therefore difficult to understand how reporting on the substantive requirements of ICWA that apply throughout a case with an Indian child significantly adds to the burden posed on states. To the extent that states will have to modify or expand their electronic reporting systems, it also seems to be cost-effective to have states make these adjustments now when those systems must be adjusted or expanded anyway to account for the new data elements that the proposed rule seeks to retain.

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Retaining more of the ICWA data elements in AFCARS can aid states in ensuring that steps are taken consistent with federal law where there may not otherwise be existing guidance. This includes the requirement under Title IV-B that requires states to consult with tribes on the implementation of ICWA, which ACF is responsible for providing oversight on. 42 U.S.C. § 622(b)(9). Moreover, at least 15 states have enacted their own statutes, regulations and rules governing state court proceedings incorporating the requirements of ICWA. *See* Brief of *Amici* States, *Brackeen v. Zinke*, Case No. 18-11479, at 3-4 (5<sup>th</sup> Cir. filed Jan. 14, 2019).<sup>1</sup> So reporting in these states should be relatively easily. The proposed rule also fails to recognize that in other states, the increase in time and resources necessary to report on additional ICWA data elements will subside over time for at least two reasons. First, once systems are updated to reflect the new data elements and states become more familiar with the requirements, reporting time will be reduced. Second, in states where there is a low population of Indian children, those states will not have to spend much time answering the ICWA data elements beyond initially determining whether a child is an Indian child. For example, ACF mentioned that “four states reported that their out-of-home care populations were well under one percent (1%).” 84 Fed. Reg. at 16574. In those states the more detailed ICWA data elements will not be applicable. At the same time, however, it is important that ICWA is being applied in the limited instances where an Indian child is in out-of-home care in those states. To that end, more detailed AFCARS data regarding ICWA implementation will allow for a better understanding of when and how ICWA is being applied in states with low Indian children populations in out-of-home care (as well as states with high Indian children populations).

Indeed, 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.” 25 U.S.C. § 1901(4). Since ICWA’s enactment over 40 years ago, our children have continued to be represented disproportionately in state foster and adoptive proceedings across the country. And our families still experience biased treatment in state child welfare systems. Without consistent and reliable data relating to ICWA’s implementation it will be nearly impossible to address these serious problems.

In addition to the data elements proposed to be retained, we strongly suggest that, at a minimum, you add back the following streamlined ICWA data elements (rather than eliminating them in their entirety):

- Require reporting of the date the court determined ICWA applied.
- If the case involves an Indian child, ask whether a request for transfer the case to the tribal court made (yes or no); and if so, was the request granted (yes or no). If the request was not granted, include a drop-down box with the following choices: (1) either

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<sup>1</sup> Found at: <https://turtletalk.files.wordpress.com/2019/01/stateamicusbrief.pdf>.



Ms. Kathleen McHugh, Director

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parent objected (2) tribal court declined transfer (3) state court found good cause not to transfer; or (4) other choices not applicable.

- Add to the new foster care questions already being proposed, a question that applies to Indian children in foster care and whether ICWA's placement preferences were met (yes or no). If no, provide a follow-up question that provides the following choices (1) the court found good cause to deviate from the placement preferences; (2) followed tribe's placement preferences;<sup>2</sup> or (3) placement consistent with parent or Indian child preference.<sup>3</sup> If yes, provide a drop-down box that specifies which placement preference was applied.<sup>4</sup>
- Add to the new elements already being proposed that require reporting of whether termination of parental rights was voluntary or involuntary, a question that applies to Indian children, which asks whether there was a court finding that active efforts were made prior to the involuntary termination of parental rights (yes or no).
- Add to the new adoptive placement questions already bring proposed, a question that applies to Indian children, which asks whether ICWA's adoptive placement preferences were met (yes and no). If no, provide a follow-up question that provides the following choices (1) the court found good cause to deviate from the placement preferences; (2) followed tribe's placement preferences;<sup>5</sup> or (3) placement consistent with parent or Indian child preference.<sup>6</sup> If yes, provide a drop-down box that specifies which preference was applied.<sup>7</sup>
- Ask whether, in involuntary proceedings, the required ICWA notices to the Indian tribe(s), parent(s) and/or Indian custodian was sent within statutory timeline (yes or no).

The above-mentioned data elements are core minimum standards mandated by Congress to be applied in cases where ICWA applies. These are all quantitative data elements and should

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<sup>2</sup> See 25 U.S.C. § 1915(c).

<sup>3</sup> *Id.*

<sup>4</sup> ICWA's foster care placement preferences are as follows: (1) member of the Indian child's extended family; (2) a foster home licensed, approved or specified by the Indian child's tribe; (3) an Indian foster home licensed or approved by an authorized non-Indian authority; or (4) an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. 25 U.S.C. § 1915(b).

<sup>5</sup> See 25 U.S.C. § 1915(c).

<sup>6</sup> *Id.*

<sup>7</sup> ICWA's adoptive care placement preferences are as follows: (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families.

Ms. Kathleen McHugh, Director

RIN 0970-AC72

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appear in any well-maintained case file. In fact, when ICWA applies, states regularly report on each of these issues to the court and court determinations are readily available and easy to include in a case file. These additional data elements shouldn't overly burden state child welfare systems. This is particularly true in the vast majority of states where Indian children do not make up a large percentage of children in out-of-home care. Because, as noted above, once it is established that a child is not an Indian child under ICWA, which is only one data element, no other data elements have to be completed.

In sum, the proposed rule should include additional ICWA data elements in order to close the gap on much needed data relating to national implementation and compliance with ICWA. Stronger information will lead to better practice, and ultimately greater compliance with this critical law. With this data federal, state and tribal governments can better understand not only the number of Indian children in out-of-home care, but whether these children are receiving ICWA's protections. By understanding how and when ICWA is utilized, appropriate steps can be taken to reduce disproportionality and to achieve greater permanence for Indian children, their families and tribes.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Faith", with a stylized flourish at the end.

Mike Faith  
Chairman

# PUBLIC SUBMISSION

|                                    |
|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9aj9-4hj8  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0288  
Equality North Carolina

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## Submitter Information

**Name:** Ames Simmons  
**Address:**  
Raleigh, NC,  
**Organization:** Equality North Carolina

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## General Comment

Please see attached comment from Equality North Carolina.

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## Attachments

Equality North Carolina



June 17, 2019

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

Submitted via regulations.gov

**RE: Comments on Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, to remove sexual orientation questions (April 19, 2019)  
RIN 0970-AC72**

Dear Ms. McHugh,

We write today to comment in response to the Notice of Proposed Rulemaking (“NPRM”) at 84 FR 16542 (“Proposed Rule”) proposing to eliminate data collection related to sexual orientation for lesbian, gay, bisexual, transgender and queer (“LGBTQ”) youth and prospective parents in the Adoption and Foster Care Analysis and Reporting System (“AFCARS”). Equality North Carolina works to secure equality and justice for LGBTQ North Carolinians. We view advocacy for affirming placements for LGBTQ youth in out of home settings as a critical part of our mission, as well as advocacy and support for LGBTQ people who wish to become foster or adoptive parents and guardians.

We request that the U.S. Department of Health and Human Services (“HHS”), Administration for Children and Families (“ACF”), Administration on Children Youth and Families (“ACYF”) and the Children’s Bureau (“Children’s Bureau”) maintain the current data elements in the December 14, 2016 AFCARS Final Rule (“Final Rule”), including those related to sexual orientation for foster youth, parents, and guardians. We also urge you to add gender identity questions for foster youth, parents, and guardians to AFCARS.

**1. Exclusion of data elements related to sexual orientation and gender identity and expression for foster youth will negatively impact safety, permanency, and well-being for LGBTQ youth.**

As acknowledged by ACF, LGBTQ youth are overrepresented in the population served by the child welfare system.<sup>1</sup> The lack of federal data about the number and unique needs of these vulnerable young

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<sup>1</sup> Administration for Children and Families, *ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> [hereinafter “ACYF-CB-IM-11-03”].

**Securing equal rights and justice for lesbian, gay, bisexual, transgender, and queer North Carolinians**

**P.O. Box 28768 • Raleigh, N.C. 27611-8768 • tel (919) 829-0343 • fax (919) 827-4573 • [enc@equalitync.org](mailto:enc@equalitync.org) • [www.equalitync.org](http://www.equalitync.org)**

people is critical to understanding how LGBTQ youth experience the child welfare system and how states can best serve them.

2011 guidance from ACF affirmed “the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving, and affirming foster care placement, irrespective of the young person’s sexual orientation, gender identity, or gender expression.<sup>2</sup> Disproportionate representation of LGBTQ youth in care and the poor outcomes they experience were confirmed in a 2013 study conducted in connection with the R.I.S.E. Project, a five-year, \$13.3 million demonstration grant funded by ACYF to create a model program to support LGBTQ youth in the foster care system.<sup>3</sup> The study found that 19% of youth age 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.

In addition to being disproportionately represented in the system, LGBTQ youth experience worse conditions and outcomes in foster care. The federally-funded study confirmed that LGBTQ youth have a higher number of foster care placements and longer stays in residential care.<sup>4</sup> Over twice as many LGBTQ youth reported being treated poorly by the foster care system compared to non-LGBTQ youth, and LGBTQ youth are more likely to be hospitalized for emotional reasons, experience homelessness, and have higher incidences of juvenile justice involvement.<sup>5</sup> Research has demonstrated that LGBTQ youth deal with health and mental health disparities associated with family rejection, school bullying, and societal stigma and discrimination.<sup>6</sup> In fact, family rejection is one of the most commonly cited reasons for LGBTQ youth entering out-of-home care.<sup>7</sup>

Removing questions related to sexual orientation and gender identity in AFCARS means the experiences of the LGBTQ community remain invisible, and unique needs will not be identified and addressed in the child welfare system. Blindness to these risks increases the chances of poor decisions that significantly undermine LGBTQ young people’s permanency, safety, and well-being. It is only when agencies are aware of the characteristics and experiences of youth in out-of-home care that they are able to analyze whether there are gaps in care and whether certain groups experience disparities. Lack of national data will obscure the experiences of this vulnerable population and make it impossible to track whether child welfare systems are making improvements to address their needs. We need more data, not less, about the experiences and needs of LGBTQ youth.

Having greater amounts of longitudinal data will also help inform evidence-based practices that will help address those needs and experiences. The development of individualized case plans for youth requires

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<sup>2</sup> Id.

<sup>3</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf)

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id. 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)).

<sup>7</sup> Shannan Wilber et al., *CWLA Best Practice Guidelines for Serving Youth in Out-of-Home Care*, CHILD WELFARE LEAGUE OF AMERICA, 4 (2006), <http://www.nclrights.org/wp-content/uploads/2013/07/bestpracticeslgbyouth.pdf>.

the collection of sexual orientation, gender identity, and gender expression information along with other critical information about the youth's circumstances, and the child welfare profession has acknowledged the importance of these data. The Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued professional guidelines in 2013 addressing how to manage this information in child welfare systems.<sup>8</sup> The guidelines explain that SOGIE data is needed to engage in agency planning and assessment as well as to develop case plans and track outcomes in individual cases.

**2. The data elements related to foster youth sexual orientation and gender identity and expression can be administered effectively, and states and tribes should receive training and resources.**

LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs. The proposed rule's conclusion that these data would be inaccurate, or could lead to breaches of confidentiality by caseworkers, is unsupported by empirical evidence.<sup>9</sup> Case workers collect data about personal, private, and confidential data such as sexual abuse backgrounds, mental health diagnoses, and medication, and are comfortable and competent in collecting, holding, and managing this sensitive information. Information in state and tribal systems is protected by confidentiality requirements. There is nothing about SOGIE data that justifies handling it differently.

In fact, many public agencies already collect information about youth SOGIE without experiencing these harms. For example, the Youth Risk Behavior Survey distributed by the Centers for Disease Control and Prevention has included sexual orientation questions on this school-based survey of adolescents for decades. SOGIE data is collected by many health care providers subject to medical privacy laws. Youth correctional officers in the juvenile legal system collect SOGIE information as part of their initial screening process under the Prison Rape Elimination Act to identify youth who may be vulnerable to sexual violence.<sup>10</sup> Surveys of LGBTQ youth in the juvenile legal system by researchers have increased our understanding of LGBTQ youth in detention, and differences in offense and detention patterns.<sup>11</sup>

ACF even acknowledges in the NPRM that states agree that having these data about children and families would help them in assisting families, but falls back on the position that there is no statutory requirement that these data be reported to an administrative data set.<sup>12</sup> However, there is no statutory prohibition on collecting these data, and Congress has passed laws requiring that data elements be added to AFCARS and that the national data set be comprehensive.<sup>13</sup>

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<sup>8</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>.

<sup>9</sup> 45 C.F.R. § 1355 (2019) 16576.

<sup>10</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

<sup>11</sup> Angela Irvine, "We've Had Three of Them": Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

<sup>12</sup> 45 C.F.R. § 1355 (2019) 16577.

<sup>13</sup> See 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); See 42 U.S.C.A. § 679(d) of the Social Security Act.

### **3. Agencies should retain the sexual orientation question for adoptive and foster parents and guardians.**

There are not enough foster homes in the US, and recruiting and retaining all qualified families, including LGBTQ families, should be a core part of agency recruitment. Obtaining data about this population is an essential part of broadening the number of prospective families available. The LGBTQ community is a significant untapped resource in the effort to find permanent families for all children and youth in foster care. Gay and lesbian foster parents are raising six percent of foster children in the United States, and same-sex couples are six times more likely to be serving as foster parents than their different-sex counterparts.<sup>14</sup>

National surveys tell us that nearly 2 million lesbian, gay and bisexual adults are interested in adopting children.<sup>15</sup> But fear of discrimination causes many prospective LGBTQ parents to turn away from foster and adoption agencies, expressing uncertainty about their ability to find an agency that would welcome them as parents. In a 2011 national survey, nearly half of respondents reported experiencing<sup>16</sup> bias or discrimination from a child welfare worker or birth family member during the adoption process.

Almost forty years of research has overwhelmingly concluded that children raised by same-sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents.<sup>17</sup> At Equality NC, we have a staff member who is an LGBQ adoptive parent as well as a board member who is an LGBQ foster parent, and we believe there are many more qualified potential parents who could provide homes. Collecting data of these prospective parents will mean conversation about sexual orientation will be normalized and routine between prospective parents and Title IV-E agencies. Requiring sexual orientation data collection for foster and adoptive parents would encourage training that would lead LGBTQ parents to have more confidence that they would not be discriminated against. Data collection would lead to broader efforts to recruit LGBTQ families, ensuring a more thorough matching and placement process that would provide the greatest chance for success and permanency.

### **4. The Children's Bureau should add gender identity questions for foster youth and foster and adoptive parents and guardians because this information is important, and because it is efficient to collect this information along with current data elements.**

A 2018 study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are ‘out’ as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender

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

<sup>15</sup> The Williams Institute & The Urban Institute, *Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States*, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

<sup>16</sup> David M. Brodzinsky & Evan B. Donaldson, *Expanding Resources for Children III: Research-Based Best Practice in Adoption by Gays and Lesbians*, EVAN B. DONALDSON ADOPTION INSTITUTE (2011), [https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011\\_10\\_Expanding\\_Resources\\_BestPractices.pdf](https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011_10_Expanding_Resources_BestPractices.pdf).

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

behaviors.”<sup>18</sup> Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth and foster and adoptive parents and guardians will help states and tribes save costs by identifying affirming placements and reducing placement instability. Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with funding from Family First. Finally, Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (CCWIS).

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

We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule<sup>19</sup> represents a "streamlining" of the original proposed rule (2015 NPRM<sup>20</sup> and 2016 SNPRM<sup>21</sup>), and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. Researchers, advocates, and child welfare and social service experts have already discussed and addressed the burden of all data elements.

The Final Rule data elements reflect those numerous public comments, which considered and dismissed the reasons given in the 2019 NPRM for elimination of this data. In fact, rather than creating burdens, reducing instability and achieving permanency for LGBTQ youth through placement with affirming, supportive families and providing needed support services could actually provide cost savings. A recent Center for American Progress estimate indicates that a child adopted from foster care costs the state only 25% per year as much as a child who remains in foster care, amounting to a \$29,000 cost savings per year.<sup>22</sup> Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in reduced costs and improved outcomes for some of the most marginalized children in the child welfare system.

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<sup>18</sup> Robinson, Brandon Andrew *“Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality.”* CHILD WELFARE 96(2), 47-74 (2018). Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).”

<sup>19</sup> Found at:

<https://www.federalregister.gov/documents/2016/12/14/2016-29366/adoption-and-foster-care-analysis-and-reporting-system>

<sup>20</sup> Found at:

<https://www.federalregister.gov/documents/2015/02/09/2015-02354/adoption-and-foster-care-analysis-and-reporting-system>

<sup>21</sup> Found at:

<https://www.federalregister.gov/documents/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>

<sup>22</sup> Frank J. Bewkes et al, *Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children*, CENTER FOR AMERICAN PROGRESS (Nov. 20, 2018),

<https://www.americanprogress.org/issues/lgbt/reports/2018/11/20/461199/welcoming-all-families/>.



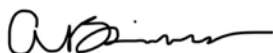
Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) and changes in foster care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

## Conclusion

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

If you have any questions about our comments and recommendations, please contact Ames Simmons at [ames@equalitync.org](mailto:ames@equalitync.org).

Sincerely,



Ames Simmons, JD  
Policy Director  
Equality North Carolina

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9aj9-pw4f  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0289  
State of Connecticut, Dept. of Children and Families, CT-KIND Federal Reporting Team

## Submitter Information

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CT,

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**Government Agency Type:** State

**Government Agency:** State of Connecticut, Dept. of Children and Families, CT-KIND Federal Reporting Team

## General Comment

SUBJECT -

ID: ACF-2018-0003-0224

Date Posted: Apr 19, 2019

RIN: 0970-AC72

CFR: 45 CFR Part 1355

Federal Register Number: 2019-07827

Per <https://www.federalregister.gov/documents/2019/04/19/2019-07827/adoption-and-foster-care-analysis-and-reporting-system> on Section 1355.46 - Compliance. As stated,

"The compliance requirements in this section are unchanged from 2016 final rule and state..."

- "the type of assessments ACF will conduct to determine the accuracy of a title IV-E agency's data,

- "the data that is subject to these assessments,"

- "the compliance standards and the manner in which the title IV-E agency initially determined to be out of compliance can correct its data."

"We propose to amend paragraph (c)(2) to update the cross references in this section to mirror the proposed revisions to sections 1355.44 and 1355.45."

To whom it concerns:

Our response comes more in the form of both question and commentary and goes to the means by which

HHS002433

compliance is evaluated and measured.

One means of assessing a state agency's AFCARS data, assessments both by ACF and the states, has been the use of ACF's automated data evaluation utilities: FRU, DQU and DCU. Obviously with the approval of this NPRM and the changes such introduces will be the need to make these utilities compatible with those changes, either by modifying the existing utilities or by creating new ones perhaps more along the lines of those used in NCANDS and NYTD.

Question: Assuming ACF will be creating new utilities, will states have opportunity to provide questions, suggestions or commentary at some level?

Comment: "Compliance" in the truer sense goes well beyond meeting or exceeding technical requirements and "checking off boxes in check lists". As was once said, "Compliance should not be equated with conformity." So in a more than simply idealistic sense, "compliance" is to go to the heart of what the AFCARS information which a state reports has to say and how well it says it. With this NPRM comes the opportunity to provide states with a more robust, user friendly utilities toolbox that they can use in addition to their own in-house Q-A programs to do that.

Thank you for this opportunity to offer both a question and a comment.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajb-bk8w  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0290  
Senator Ron Wyden, Sen Finance Committee

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## Submitter Information

**Name:** Senator Ron Wyden

**Address:**

Washington, DC,

**Organization:** U.S. Senate Committee on Finance Democratic Staff

**Government Agency Type:** U.S. Senate

**Government Agency:** Senate Finance Committee

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## General Comment

See attached file(s)

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## Attachments

Senator Ron Wyden, Sen Finance Committee

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

June 17, 2019

The Honorable Kathleen McHugh  
ACYF/Children's Bureau  
Department of Health and Human Services  
Administration for Children and Families  
Washington, D.C. 20013

Dear Director McHugh:

This letter responds to the request for comment on the Notice for Proposed Rulemaking (NPRM) (2019-07827) intended to revise Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements present in the 2016 AFCARS Final Rule. As a proponent of continued advancements to our child welfare system, I cannot support this proposed rule. The changes would further delay implementing a modernized AFCARS and would perpetuate the continued marginalization of LGBTQ and American Indian/ Alaska Native communities across this country. Additionally, the changes undermine the statutory mandate for regulations established by Section 479(d) of the Social Security Act: “to promote improved knowledge on how best to ensure strong, permanent families for children . . .”

I understand the proposed rule is intended to follow Executive Order 13777 and to relieve—in theory—some of the burden that states, tribes and agencies might feel from federal regulations. I do not understand, however, why now, after three distinct public comment periods (2008<sup>1</sup>, 2010<sup>2</sup>, 2015<sup>3</sup>) that culminated with the 2016 Final Rule, your proposal suddenly finds an excessive burden where none had existed before. States, tribes, and child welfare agencies had ample opportunity to comment on what became the Final Rule in 2016, and this burden issue did not arise in any of those comment periods. Issues that did come up were addressed, and the rule was streamlined before being finalized. Now, those volumes of input are being unceremoniously discarded in favor of new comments that you say require the proposed changes, taking us back to the beginning of a process that began over a decade ago.

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<sup>1</sup> *Federal Register*, Adoption and Foster Care Analysis Reporting System, January 11, 2008, p. 2082-2142 (NPRM).

<sup>2</sup> *Federal Register*, Request for Public Comment and Consultation Meetings on the Adoption and Foster Care Analysis and Reporting System, July 23, 2010, p. 43187.

<sup>3</sup> *Federal Register*, Adoption and Foster Care Analysis and Reporting System, February 9, 2015, p. 7132-7221 (NPRM).

As stated on page 5 of this NPRM, the HHS Regulatory Reform Task Force identified the AFCARS regulation as one that could “lower regulatory burdens on the American people.” To be clear: how does eliminating AFCARS data elements decrease the burden felt by American foster youth on a daily basis? How would their lives improve? For example, would these newfound cost savings lead to higher permanency outcomes? Please bear this central question in mind as you read the rest of my comment letter.

Last year, in my letter opposing the Children’s Bureau’s previous NPRM (2018-05038), I laid out why it was completely unnecessary to have a rule change. I will reiterate: the original AFCARS standards were published in 1993. It has now been twenty-six years since that time. It has been eleven years since the original request for comment that led to the 2016 Final Rule. Reporting on the data points established by that rule was set to begin later this year (before being delayed last year), but now you state that if your new proposed rule is finalized it would not be implemented until two fiscal years after finalization at the earliest. This means that AFCARS data collection standards will continue to be outdated and not comprehensive. Data elements published in 1993 do not represent changes in our evolving child welfare system, and continued implementation of the status quo will disadvantage future legislative efforts that would benefit from a modernized data system. Further delay is simply unacceptable.

Our understanding of the child welfare system and the children it serves has increased exponentially over the past twenty-six years. In 1993, upon the first AFCARS publishing, our knowledge surrounding issues affecting the LGBTQ community within the child welfare system was rudimentary at best. However, today we know that LGBTQ youth are *over-represented* in the foster care system. In fact, nearly twenty percent of all children in foster care identify as LGBTQ. We also know that LGBTQ youth are disproportionately present in placements that are disrupted and that permanency for those children is less likely. Removing data elements on sexual orientation means missing a vital opportunity to better support our LGBTQ youth who deserve to be prioritized in a system in which they are over-represented.

Additionally, your proposed rule would eliminate data elements related to LGBTQ foster and adoptive families in the child welfare system. Such data is essential to gauge recruitment and retention of diverse foster and adoptive families and is of particular interest in light of the decision by the Department of Health and Human Services to grant South Carolina a religious exemption from federal nondiscrimination laws allowing state-contracted child welfare agencies to legally turn away otherwise qualified parents. Sexual orientation is an important demographic in our country and it should not be treated any differently from the other demographic data elements in AFCARS.

Your proposed rule would also take us several steps backward when it comes to measuring success under the Indian Child Welfare Act (ICWA). To ensure that ICWA guidelines are being followed, AFCARS must retain the specific data points that show ICWA compliance. Indeed, in the 2016 Final Rule, the Administration for Children and Families stated that ICWA data elements that show whether or not ICWA applies are “essential” to AFCARS.<sup>4</sup> By only requiring a general data point, the proposed rule over-simplifies ICWA requirements and ignores several important considerations including whether specific family members were questioned about the child’s tribal eligibility and the court’s findings on ICWA compliance. The legislative intent of ICWA was to prioritize keeping tribal families together and to respect the unique needs of tribal communities. Your proposed rule brushes the goals of ICWA aside in favor of “streamlining” the rule.

Moreover, with respect to tribal interests, the Children’s Bureau directly acknowledges that all “38 Indian tribes/consortiums and all organizations representing tribal interests opposed streamlining the AFCARS data elements...” Every one of them. The Bureau rationalizes ignoring these tribal objections by countering on page 11 of the NPRM: “they did not provide specific comments on or estimates for cost or burden related to the 2016 Final Rule.” On page 14, the Children’s Bureau further details how it “must strongly weigh the desire for more information with the burden on those who are required to report it.” Yet, did the Bureau also weigh (and calculate) the possible benefits that would come to American Indian/ Alaska Native foster youth—through improved permanency outcomes, a more stable family environment, better health outcomes, better educational opportunities, and a more productive career path—against the cost burden faced by agencies inputting tribal foster youth data? I have yet to see these benefits directly compared in an objective cost-benefit analysis you claim to have conducted, and without such analysis the reasoning cited remains flawed.

Your other proposed changes to the 2016 rule might seem minor to you on paper, but they will further shield our view of who in the foster care system is in need of Congressional attention and which resources and programs would ensure the best interests of these vulnerable children. For example, your NPRM removes data elements relating to the educational stability of foster and adoptive youth and therefore jeopardizes the ability to understand the intersection between being part of the child welfare system and one’s educational trajectory. Foster and adoptive children deserve for Congress to be able to consider their educational stability and develop legislation accordingly. Describing a child’s educational stability as “difficult to portray in a meaningful way” and saying that “it does not have a specific purpose for title IV-B/IV-E” purposes<sup>5</sup> diminishes the importance education has on a child’s future. Actively dropping

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<sup>4</sup> *Federal Register*, Adoption and Foster Care Reporting System, December 14, 2016, p. 90536.

<sup>5</sup> *Federal Register*, Adoption and Foster Care Reporting System, April 19, 2019, p. 16576.

important data elements for the sake of easing data collection runs counter to the overarching goal of Title IV-B/IV-E funding: to fund a foster care system serving the best interests of children.

Furthermore, the NPRM noted, “Congress has passed approximately 24 laws that significantly amended federal child welfare programs since 1995.”<sup>6</sup> Incremental change has been promoted through legislation like the *Fostering Connections to Success and Increasing Adoptions Act of 2008*, the *Child and Family Services Improvement and Innovation Act (2011)*, the *Strengthening and Finding Families for Children Act (2013)*, the *Preventing Sex Trafficking and Strengthening Families Act (2014)*, and, most recently, the *Family First Prevention Services Act (2018)*. While these pieces of legislation did serve to improve our child welfare system, none of them addressed the specific concerns I have highlighted in terms of LGBTQ youth, youth who fall under ICWA, and those who suffer from educational instability. The 2016 AFCARS Final Rule provided a means to generate the data necessary to understand these concerns and allow Congress to legislate appropriately. By dropping these essential data elements from the 2016 Final Rule, your proposed rule keeps us from making progress.

Another point to underscore: the proposed elimination of a “yes or no” question related to whether a child is in a living arrangement that is licensed, managed or run by a private agency under contract with the Title IV-E agency (NPRM, page 19). Over the past several decades, the privatization of foster care services, whereby a private non-profit or for-profit entity contracts with the State agency, has been a growing trend. Unfortunately, abuse and neglect by the staff at these private agencies continues to harm the vulnerable foster youth being cared for in these residences and facilities. When the Children’s Bureau notes how this reporting requirement could be “too detailed,” “inaccurately reported,” or may not have a “specific purpose” (NPRM, page 19), this flies in the face of future oversight efforts by Congress—including the Senate Committee on Finance—to monitor private child placement agencies and the quality of care exhibited. If ACF eliminates a key data element which helps quantify the size of the foster youth population living under the roof of a private provider, policymakers will not be able to accurately diagnose the size and scope of current and future trends, both positive and negative.

The Children’s Bureau also noted (NPRM, page 10) how states supported streamlining the Final Rule, as they “did not see the benefit at the national level for providing new information that was not explicitly used for monitoring.” I take strong exception to that statement, as state child welfare agencies are not charged with overseeing or developing policy at the *national level* to improve outcomes for the U.S. foster care population. Though states are committed to

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<sup>6</sup> *Federal Register*, Adoption and Foster Care Reporting System, April 19, 2019, p. 16575.



improving outcomes among their respective foster youth populations, their purview is limited to local change and should not be misconstrued. National-level change is the role of Congress.

As mentioned earlier, I am equally suspect about your calculations in the cost-benefit analysis. Page 4 of the NPRM notes an estimated annual cost savings of \$39.2 million. These figures are largely fueled by comments from states. On page 71 of the NPRM, ACF reviewed BLS data to calculate the average wage rate of the positions that would enter data elements from the 2016 Final Rule. Upon averaging the wage rate, ACF then doubled it to account for “overhead costs associated with these labor costs.” In one sentence, the average wage rate *doubles*. It’s hard for me to accept this at face value.

States wanting to streamline the 2016 Final Rule also voiced that “the additional work needed to comply would pull valuable resources away from the field and decrease the amount of time caseworkers have to work with families and children” (NPRM, page 7). As page 71 of the rulemaking notes, the average wage rate is calculated from the wages of Computer Information and Systems Managers; Computer and Mathematical Occupations; Office and Administrative Support Occupations; Social and Community Service Managers; Community and Social Service Operations; and Paralegals and Legal Assistants. Though caseworkers would presumably fall under the category of “Community and Social Service Operations,” the vast majority of these positions would *not* have to be pulled away from the field. Additionally, as the Finance Committee’s 2017 bipartisan foster care investigation showed, caseworker retention is a huge problem in many states.<sup>7</sup> A GAO study from 2003 pegged this attrition in the 30–40% range on an annual basis; the Committee’s most recent dive into foster care oversight confirmed this problem persists. If resources were in fact directed away from the computer programmers and data entry occupations and instead directed to increase the number of caseworkers charged with on-the-ground fieldwork, could the Children’s Bureau confidently say states would have no problems recruiting, training, on-boarding and retaining these new caseworkers and specialists? The evidence compiled after the Finance Committee’s two and a half year investigation suggests otherwise.

To close, I would like to direct you back to the original Congressional intent that gave rise to AFCARS: to help develop national trends in child welfare such that Congress may legislate as necessary to improve the system. How can we plan if we do not have the relevant information in front of us? I ask you to remember that we are not discussing some abstract numerical data

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<sup>7</sup> “An Examination of Foster Care in the United States and the Use of Privatization,” U.S. Senate Committee on Finance, Report, p. 14. Link: <https://www.finance.senate.gov/imo/media/doc/An%20Examination%20Of%20Foster%20Care%20In%20The%20United%20States%20And%20The%20Use%20Of%20Privatization.pdf>.

collection here. We are talking about the safety and well-being of the next generation of Americans. I urge you to reconsider your proposal.

Sincerely,



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

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajb-wq2m  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0291  
Children's Defense Fund

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## Submitter Information

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Washington, DC,  
**Organization:** Children's Defense Fund

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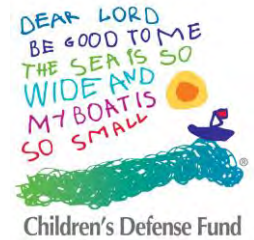
## General Comment

See attached file(s)

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## Attachments

Children's Defense Fund



June 17, 2019

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: Response to Request for Public Comments on amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) 2016 Final Rule (RIN 0970-AC72)

Dear Ms. McHugh:

The Children's Defense Fund (CDF) is pleased to have the opportunity to comment on the notice of Proposed Rulemaking (NPRM) for amending the Adoption and Foster Care Analysis Reporting System (AFCARS) 2016 Final Rule published in the Federal Register on April 19, 2019 (Federal Register Vol. 84, No. 76, page 16572). CDF is very concerned about possible modifications to the AFCARS 2016 Final Rule (Final Rule) and strongly urges that you continue moving forward with implementation of the Final Rule without changes.

CDF has worked for more than four decades to improve outcomes for children who are at risk of placement in foster care or already in the care of public child welfare systems. CDF worked with others to establish the original federal mandate for a national data collection system that was included in federal law in the Omnibus Budget Reconciliation Act of 1986 and then kept the pressure on to get it finally operational in 1994. We believed then and continue to believe that the federal government has an important role in ensuring children are benefitting from federal child welfare laws. Over the years CDF, like many others, has responded to the numerous requests for public input on ways to update and improve AFCARS, including the 2008 NPRM for AFCARS, the 2010 Request for Public Comment on AFCARS, the 2015 NPRM for AFCARS and 2015 Supplemental Notice of Proposed Rulemaking (SNPRM) on the new data elements related to the Indian Child Welfare Act (ICWA), the 2018 NPRM on delaying the effective date of the AFCARS 2016 Final Rule, and the 2018 ANPRM about streamlining the AFCARS 2016 Final Rule. After advocating for nearly 25 years – spanning four Administrations – for updates to the original regulations published in 1993, we are very supportive of the AFCARS Final Rule released in 2016. Given numerous past notices, and the robust consultation and public comment that resulted from past requests for comment, we strongly recommend that implementation of the AFCARS 2016 Final Rule proceed as published without further delay and without further changes. The Final Rule reflects the improvements and changes in data requirements agreed upon and advocated for by the broad child welfare community to better reflect and inform us about experiences of children involved in the child welfare system and ways to strengthen child outcomes and the system.

The benefits of the AFCARS 2016 Final Rule outweigh any burden from the new data. These updates were long overdue. The rule from 1993 is outdated and does not reflect current child welfare practices or protections added to federal child welfare law over the past 25 years or new reporting required of states, which is why we strongly oppose any further amendments to the Final Rule as this continues to delay the critical updates in data included in the Final Rule that we so desperately need. The Administration for Children and Families (ACF) needs to know how children are faring. Prior to the

Final Rule, the reporting 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 Final Rule made a number of significant changes and improvements that will provide a more comprehensive picture of a child's time in care as required in Section 479 of Title IV-E of the Social Security Act. It is because of this that we strongly believe any consideration of burden with the Final Rule needs to be balanced with a corresponding examination and acknowledgement of the benefits of the Final Rule.

In assessing burden, it is also essential to take into account the enormous advances that have been seen in technology over these many years that have made the task of data collection much easier. The recent improvements and updates to state data systems through the new Comprehensive Child Welfare Information System (CCWIS) removes some of the challenging requirements around a single comprehensive state system and allows for the use of cost-effective and innovative technologies to automate and stay up to date on the collection of high-quality case management data. Rather than focusing now on burden, ACF instead over this next year should assist states to use their CCWIS to meet the requirements in the Final Rule without any further changes or delays.

There will be a cost associated with this revision, as was the case in 1993. As a result, we suggest that HHS include in its FY2021 budget request to Congress similar funding support as existed in the 1990s when implementation was offset with a 75 percent match in federal funding. The April 19 NPRM projected the cost of the Final Rule to be \$87 million, with the states absorbing half of that cost at \$43 million, so readjusting the federal matching rate to 75 percent would reduce that cost to less than \$22 million on the states. CDF would be eager to support your request, and ready to organize our partners around such a proposal, since there is precedent and a need for this rare opportunity to update AFCARS in a way that will better inform policy and legislation over the next twenty years.

As written, the 2016 Final Rule provides ACF the opportunity to learn more about outcomes for children in the child welfare system, how different practices impact performance and the relationship of gains to policies that are in place. ACF and all of us can learn where work is needed to improve outcomes for children and ACF can monitor compliance with federal protections for children. We still know far too little about 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 and their health and educational outcomes, particularly for those youth in demographics at high risk of adverse outcomes. The Department has an extremely important opportunity to get the 2016 Final Rule in place so states can use it as a guide as they continue to work to improve outcomes for the safety, permanence and well-being of children.

As CDF is not a Title IV-E agency, we cannot offer specific estimates regarding the burden or cost placed on Title IV-E agencies for reporting AFCARS. In the comments below, we focus on the specific reasons as to why certain elements that have been proposed to be removed are necessary to maintain in AFCARS. We address why AFCARS is the most effective vehicle for collection of this data and why no other current method is feasible to collect the information.

### **Transition Plan Data Elements (1355.44(f)(8) – 1355.44(f)(8) in 2016 Final Rule)**

For twenty years, since the passage of the Foster Care Independence Act of 1999, child welfare systems have acknowledged the need to prepare youth to transition out of care. Still, for the more than 20,000 youth who age out of the child welfare system each year, outcomes are very poor. As a result,

the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections), the Preventing Sex Trafficking and Strengthening Families Act of 2014, and the Patient Protection and Affordable Care Act of 2010 have all required that jurisdictions complete personalized transition plans for youth at risk of aging out of foster care into adulthood.

CDF strongly endorses retaining the transition plan questions in the Final Rule (1355.44(f)(8) and 1355.44(f)(8)), so that the Department can monitor compliance with these laws and improve outcomes for youth in care. Given that states are already required to track transition planning in case files, the cost burden of the two quantitative questions in AFCARS, simply verifying the existence of a transition plan and the date of its creation, is negligible. While there have been arguments that reporting this information in AFCARS is not necessary because this data is covered in the National Youth in Transition Database (NYTD), such reporting is insufficient. Because of the voluntary nature of NYTD, the data set is incomplete and not representative of the experiences of the broader population. AFCARS is the only place that can sufficiently track transition planning for youth at risk of aging out of care.

**Educational Stability and related Data Elements (1355.44(b)(16)-1355.44(b)(16)(vii) in 2016 Final Rule)**

The data elements relating to educational stability should be retained as it is critical to measure effective implementation of federal child welfare and education law – specifically requirements under Fostering Connections and the Every Student Succeeds Act (ESSA) of 2015. Under Fostering Connections, child welfare agencies must coordinate with local education agencies to ensure children remain in their school of origin, unless it is not in the best interest of the child. This educational stability requirement was put in place due to evidence that children entering care – and their subsequent moves to different placements while in foster care – resulted in school moves, which often lead to the loss of educational progress. Acknowledging the importance of education to child outcomes, CDF urges the Department to retain these elements that will allow ACF to track compliance with education standards in foster care.

ESSA further reinforced the need to ensure educational stability for students in foster care by amending federal education law to mirror the educational stability requirements included in Fostering Connections, including interagency data sharing related to students in foster care. For the first time, state departments of education are required to report on the educational performance of students in foster care in the State Education Agency (SEA) Report Card. Together, these two data collection sources – AFCARS and SEA Report Cards – will allow for longitudinal information about the educational needs of students in foster care to be tracked and reported over time.

AFCARS is the most effective tool to collect educational stability data because it allows for straightforward quantitative reporting of how often children change schools and the reason. No other vehicle is better suited to tracking this type of data on a national scale. Child welfare agencies are already required to keep school stability information as part of their case plans pursuant to Fostering Connections; capturing this data element via AFCARS will encourage uniformity across states, which will result in more accurate data. Further, as states are already required to document this information, reporting on educational stability will not create an unnecessary burden.

If the administration insists on altering this school stability data point, we would suggest, at a bare minimum, keeping the response options to “yes” or “no” related to whether there has been school stability since the last reporting period, as captured in data element 1355.44(b)(16) from the Final Rule. Although this compromise would not provide detail about the reasons for school changes, it would allow for accurate and straightforward reporting that would enable analysis of progress and trends across the country.

### **Indian Child Welfare Act (ICWA) Data Elements**

ICWA is critical in supporting well-being, safety and permanence for Native children involved in the child welfare system. Although progress has been made as a result of ICWA, Native children are still at great risk of being removed from their families and tribes and placed in non-Native homes. 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. Improving what is known about ICWA implementation can only help address this long-standing concern and support the full implementation of the law that has been limited by uncertainty and inconsistent practice.

The proposed removal of ICWA-related data elements from AFCARS would mean that the unique legal status of Native children and the requirements of ICWA are not addressed in federal reporting requirements for state child welfare systems that serve Native children and families. The ICWA data elements in the Final Rule address this gap in data, provide data that states can use in understanding the experiences of Native children in foster care and assess implementation of the special protections afforded them in ICWA. The Children's Defense Fund strongly urges ACF to maintain the existing ICWA elements without any changes.

Retaining these data elements will allow tribes, states and federal agencies the ability to develop a more detailed understanding of the trends in out-of-home placement and barriers to permanence for Native children. These data will improve policy development, technical assistance, training and resource allocation to better meet the needs of Native children. Including these data elements in AFCARS will allow ACF and the states the opportunity to disaggregate data on ICWA-eligible children, in order to better inform responses that address their unique issues in both policy and practice. ACF is in the best position to capture necessary data on Native children and families in state child welfare systems and AFCARS is the only federal data system that has the ability to capture placement-related data. The Department of the Interior does not have a relationship with states in child welfare and does not have an operational database, or resources, to collect data on Native children in state foster care systems. Without accurate reporting, it will not be possible for ACF to monitor whether states are consulting with tribal governments on measures taken by the state to comply with ICWA (Section 422(b)(9) of the Social Security Act).

Concerns about the time burden of the ICWA data elements are greatly exaggerated. Only three questions related to ICWA will be required for every child, while the remaining data elements are only applicable in the cases where ICWA applies. For all but nine states, this encompasses less than 3 percent of the total state foster care population, most under 1 percent. Further, the 2016 SNPRM and the 2016 Final Rule addressed issues related to burdens on states. They concluded that the burdens for states were warranted given the lack of basic data for Native children and the benefits for policy development, technical assistance and training and programming.

While some of ICWA's requirements involve court determinations, most of the actions required are based on state Title IV-E agencies' efforts. Good case management practice requires child welfare agencies to document court findings in case files, including those related to ICWA findings. As a result, the added burden of reporting this information in AFCARS would be minimal. A number of states have begun integrating the ICWA data elements from the 2016 Final Rule and are finding the data to be very helpful in addressing ICWA implementation challenges, policy development, and program management effectively.

**Juvenile Justice Data Elements (1355.44(f)(5) in 2016 Final Rule)**

We know that dual-status youth, those who are concurrently involved in both the child welfare system and the juvenile justice system, face specific challenges that do not impact their peers who are involved only in one system. Despite this, there is no national-level tracking of these youth and no longitudinal data tracking to ensure their specific needs are met. As more states move to respond to these needs with juvenile justice reform and specific programs for dual-status youth, ACF must require national, longitudinal tracking of data in AFCARS, to provide baseline and comparison data. Without national tracking of dual-status youth in AFCARS, accurate measures of progress will be impossible.

This data closely aligns with current Congressional priorities. This May, Senators Grassley (R-IA) and Peters (D-MI) introduced the Childhood Outcomes Need New Efficient Community Teams (CONNECT) Act (S. 1465) to encourage data collection and collaboration around dual-status youth. In his comments on the bill, Senator Grassley stated, “Youth involved in both the foster care and juvenile justice systems shouldn’t face additional challenges because of a lack of coordination.” Failure to track this data in AFCARS would stymie such coordination.

**LGBTQ data elements (1355.44(b)(2)(ii), 1355.44(e)(19), 1355.44(e)(25), 1355.44(h)(8) & 1355.44(h)(15) in 2016 Final Rule)**

Under the direction of the Family First Prevention Services Act (Family First), states are turning a focus towards providing a greater array of targeted prevention services and programs to keep children from entering foster care. As they do so, proper allocation of resources and provision of appropriate, evidence-based services will require a deeper understanding of the needs of youth at risk of entering care. Failing to capture sexual orientation and gender identity and expression (SOGIE) data ignores the specific needs of LGBTQ youth, who are disproportionately represented in the child welfare system and, thus, an important target population. CDF strongly supports capturing SOGIE data within AFCARS to allow states to better understand the needs of LGBTQ youth and provide targeted prevention services to keep them out of foster care.

With the limited research we have on LGBTQ youth in the child welfare system, we know they are overrepresented in out-of-home care and studies show they are disproportionately mistreated in foster care, including longer stays in care – particularly residential care – and poor outcomes, including high rates of aging out of care, homelessness and criminal justice involvement. Further, studies indicate that LGBTQ youth who run away or age out of care are at increased risk for commercial sexual exploitation. Knowing that the Preventing Sex Trafficking and Strengthening Families Act mandates the identification and documentation of children and youth at risk of sex trafficking, failure to collect SOGIE data falls short of the child welfare system’s responsibilities and hinders the ability to better understand who is at risk and how to prevent young people in care from being trafficked.

Data on these youth at the state level are urgently needed to improve outcomes, reduce costs and reduce disparities; data at the national level are necessary to inform federal law, policy and funding determinations, to identify best practices for replication and to enhance ACF’s efforts to prevent removal and allow children to remain safely at home with their families. Identifying LGBTQ youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability, minimize costly stays in group homes, hospitals and juvenile justice facilities and improve permanency in family home settings would provide tremendous cost savings. CDF believes such benefits resulting from information related to these new data elements outweigh any burden and cost associated with implementation.



While studies have shown that LGBTQ youth experience worse outcomes in the child welfare system, our understanding of the scale of the problem is based on rough estimates. Currently, the most accurate understanding of the count of LGBTQ youth in care is based off of a small number of studies, mostly conducted in large urban centers. Given that studies indicate that LGBTQ youth who have faced maltreatment on account of their sexual orientation or gender identity and expression are more transient, particularly as they seek more affirming locales, we know their population distribution will not be uniform. In order to provide targeted services and improve outcomes for LGBTQ youth, we need to be able to accurately account for their numbers and needs on a national level. Further, national requirements for tracking SOGIE data are extremely important because the jurisdictions that are not tracking SOGIE data in their own systems are the ones where LGBTQ youth are most vulnerable and services are least available.

Beyond simply tracking SOGIE data for youth in care, it is important that this information be tracked for foster parents as well. LGBTQ youth are at a higher risk for placement changes, unnecessary congregate care, and adoption disruption as a result of their sexual orientation or gender identity and expression. While LGBTQ foster parents are suitable placements for any child, the likelihood of an LGBTQ youth facing a placement disruption is lower if they are placed in the care of LGBTQ parents. As Family First encourages states to move more children out of congregate care and into family-like settings, the current shortage of foster and adoptive parents will grow. LGBTQ foster parents can present an ideal placement for hard to place kids. Tracking this information in AFCARS will help caseworkers effectively match youth with foster families where their identity can be affirmed and they are unlikely to face placement disruption.

Tracking of information on LGBTQ youth in AFCARS is crucial. As states implement practices to serve LGBTQ youth, it is vitally important that they be able to compare their outcomes with other jurisdictions to assess progress and evaluate practices. For this to be effective, there must be a single tool tracking SOGIE data so that reporting is consistent and comparable across states. AFCARS is the ideal place for this tracking because no other database exists to track the needs of LGBTQ foster youth on a national level. Further, as Congress seeks to respond to the needs of these youth, AFCARS is the tool that they will use. While there has been movement to respond to the needs of youth in care, Congress has not had accurate information to track their numbers.

While ACF has expressed concerns regarding the accuracy and confidentiality of SOGIE data, questions regarding sexual orientation have been included in the Youth Risk Behavior Surveillance Survey from the Centers for Disease Control and Prevention for decades, and the Prison Rape Elimination Act requires youth correction officers to collect SOGIE data as part of their screening processes. Child welfare agencies have shown that they are capable of managing confidential information about sensitive topics such as sexual abuse, mental health diagnoses, mental health, and medication. Like all data kept by the state, SOGIE data would be protected by confidentiality and should not be treated differently than other confidential data. The SOGIE data elements in the Final Rule can be administered safely, and ACF should provide training and resources to states and tribes to do so.

#### **Health assessment data elements (1355.44(b)(11)(ii) and 1355.44(b)(12) in 2016 Final Rule)**

ACF should maintain the data elements in the Final Rule related to timely health assessments, particularly the element related to date of assessment. In order to measure states' compliance with Title IV-B Health Oversight and Coordination Plans, it is important that the Department be able to assess access to care for the foster care population at both the state and national level. Health assessment dates provide a baseline

understanding of the health of children entering the child welfare system, which ACF needs in order to assess whether states are complying with important federal requirements under the Title IV-B program.

The inclusion of the date of a child's health assessment is particularly important given the nationwide increase in parental substance use disorders, which has resulted in more children entering the foster care system with significant trauma. Children can manifest this trauma by developing various physical, developmental, educational and mental health conditions. Timeliness of health assessment is critical to ensuring that child welfare agencies can appropriately identify health needs such as trauma-related behavioral challenges and developmental delay and provide access to appropriate services as indicated by the assessment. By having a greater understanding of how this trauma is affecting children, they can receive needed services sooner and better heal from the trauma that they have experienced. AFCARS is the ideal space for this data, as it allows health assessment data to be directly compared with known impacts of trauma so ACF and the states can evaluate, nationally and longitudinally, how the evidence-based, trauma-informed practices mandated in Family First are impacting the health and well-being of youth in care.

### **Conclusion**

The Children's Defense Fund strongly urges ACF to maintain the existing AFCARS 2016 Final Rule without any additional changes or further delays in the effective date. We appreciate the opportunity to respond to your request for input and urge you to abandon changes to the Final Rule given that the benefits – after multiple opportunities to comment on the rule – far outweigh burdens already reported on during consideration of the AFCARS Final Rule.

The Final Rule is the only revision made to AFCARS since its inception in 1993. Due to the fact that it has taken a quarter century to revise and hopefully implement these important changes to AFCARS, this revision must be seen as both a critical and rare opportunity to implement changes that will inform child welfare practices for the next decades. While we recognize that ACF must weigh the burden that reporting requirements can place on states, we hope that you also recognize the monumental importance of the improvements made to AFCARS in the Final Rule. Failure to include these elements in AFCARS will hinder the ability of child welfare systems to meet the needs of vulnerable children and youth for potentially decades to come.

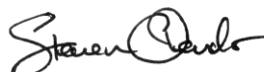
The Children's Defense Fund thanks you for the opportunity to submit comments on AFCARS and related child welfare data concerns. Your ability to make improvements in AFCARS offers the opportunity for us all to better understand the experiences of children in foster care and the impact of those experiences on child outcomes. Robust data collection in AFCARS will help inform policy and practice to make 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,



Stefanie Sprow  
Deputy Director,  
Child Welfare and Mental Health  
Children's Defense Fund



Steven Olender  
Senior Policy Associate,  
Child Welfare and Mental Health  
Children's Defense Fund

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajf-i7jn  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0292  
Matthew Peiffer

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## Submitter Information

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## General Comment

How many children adopted end up back in foster care is some numbers I would like to see.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 18, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajh-5ql6  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> Web        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0293  
Allison Berkson

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## Submitter Information

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## General Comment

There are many data points that I have been interested in over my years of fostering. I have yet to find the following reported anywhere:

Foster parent turn over rate (Either by years licensed or by number of placements)

How many reports of suspected maltreatment are made on a child and how many investigations of maltreatment before entry into foster care

Reentry into care that includes incidences in other states

How many incidences a child will have in care

How many times a child has a failed extended home stay

The number of disrupted foster care adoptions and guardianships (kinship vs non-related)

Thank you.

# PUBLIC SUBMISSION

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 18, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajo-731w  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0294  
Jamestown S'Klallam Tribe

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## Submitter Information

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**Address:** United States,  
**Organization:** Jamestown S'Klallam Tribe  
**Government Agency Type:** Tribal  
**Government Agency:** Jamestown S'Klallam Tribe

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## General Comment

See attached

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## Attachments

Jamestown S'Klallam Tribe



# JAMESTOWN S'KLALLAM TRIBE

June 18, 2019

Attn: Jerry Milner  
Acting Director, Administration on Children, Youth and Families  
330 C Street, S.W.  
Washington, D.C. 20201

**RE: AFCARS 2019 NPRM; Docket Number: ACF-2018-0003; Docket RIN: 0970-AC72**

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

ʔáy'sk'wáči "Good Day" Director Milner,

The sovereign Tribal Governments across the United States have immense concerns about the proposed changes to the Adoption and Foster Care Analysis Reporting System (AFCARS) data elements. Ninety percent of the AFCARS data relating to American Indian/Alaska Native (AI/AN) children will be eliminated (reducing to five data elements) should these changes be approved. These data elements are essential and required for following the Indian Child Welfare Act (ICWA), and thus assist in holding the federal and state governments and their agencies accountable to upholding ICWA.

In Washington State, the Tribes and State have developed many trainings, policies, and programs with the child welfare agency, now named the Department for Children, Youth, and Families (DCYF). The agency has worked with the tribes for decades to improve Indian Child Welfare (ICW) processes; these efforts have led to monthly statewide meetings, the development of an ICW Manual for social workers, an ICW case review every two years to help determine ICWA compliance, a two day module in the University of Washington Masters in Social Work program, ongoing trainings for new staff facilitated by tribal leaders and their staff, and regularly scheduled tribal consultations. Our State has been very supportive of maintaining ICWA compliance and AFCARS data collection. Our partnership sets the example of progress.

In addition to the above, there are other aspects that add distress. First, an appropriate tribal consultation was not held to discuss these changes. Tribal governments must have ample time to investigate the effects that such policy changes would have on their government, their people, and in all of Indian Country. It must be noted that the ACF has incorrectly labeled previous meetings as consultation in the NPRM.

Second, there is a major focus on the perceived burden to the States. We must not lose sight of the major benefits when it comes to collecting the required ICWA data. Many states declare the desire to decrease negative outcomes for AI/AN children; for this we are grateful. Having ample data is a necessary foundation for good policies and procedures. The current data elements help States to understand the unique issues that AI/AN children experience in State child welfare

systems. We need a consistent set of data to address ICWA challenges and other child welfare issues. The current AFCARS data elements also have the potential to help ACF support effective implementation of the Family First Prevention Services Act requirements, i.e. active efforts and timely notice of proceedings. ACF is in the best position to capture necessary data on AI/AN children and families in State child welfare systems, and AFCARS is the only federal data system that has the ability to capture placement-related data.

A recent discussion between the Washington State tribes and the State DCYF revealed that the major burden on DCYF is the penalties for lack of timely AFCARS data collection. While DCYF is very supportive of collecting AFCARS data, they stated that third parties do not submit their data to DCYF in a timely manner, resulting in a tardy submission on the part of DCYF. These penalties have made it difficult for DCYF to come into compliance quickly. It is easy, then, to see why eliminating the data would help resolve this issue. However, taking away essential data will create larger issues of non-compliance.

As stated above, the data elements are essential to ICWA compliance. They provide important information that inform case planning and systems efforts to improve outcomes. A few examples of the data elements below show how crucial the information is to collect. **Date of court determination of ICWA application:** this provides information on whether there were significant differences between when the state court and state IV-E agency confirmed application of ICWA and how this affected implementation; **Transfer of jurisdiction:** this provides information on whether a transfer of jurisdiction was requested, whether it was approved or denied, and the basis for denial; **Foster care placement and adoptive placement preference:** this data shows whether foster care placement and/or adoptive placement preferences were met, which placement preferences were used, and the basis if placement preferences were not met; **ICWA notice on foster care placement and termination of parental rights to tribes and parents:** This data informs whether the parents and child's tribe had the ability to participate in case planning, placement decisions, and court proceedings.

The sovereign Tribal Governments across the United States not only share a government-to-government relationship with their States, but also with the Federal Government. We ask that official tribal consultation be held, and that the input from Tribal Governments and tribal organizations be seriously considered. We ask that it be noted that Washington State is in support of continuing to collect AFCARS data. Tribal Governments do not want to lose their children to the State child welfare systems. This happens too frequently already, and will only increase should AFCARS data be reduced. We cannot lose ground on ICWA compliance.

há?nəŋ cn “thank you”, and with respect,



Loni Greninger, MPA and *Jamestown S'Klallam Tribal Citizen*  
Deputy Director of Social and Community Services

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| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 17, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajo-9nj1  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0295  
Morongo Band of Mission Indians

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## Submitter Information

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Banning, CA,  
**Organization:** Morongo Band of Mission Indians  
**Government Agency Type:** Tribal  
**Government Agency:** Morongo Band of Mission Indians

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## General Comment

See attached

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## Attachments

Morongo Band of Mission Indians



June 12, 2019

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

MORONGO  
BAND OF  
MISSION  
INDIANS



A SOVEREIGN NATION

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

Re: RIN: 0970-AC72

Agency: Children's Bureau; Administration on Children, Youth and Families;  
Administration for Children and Families; Department of Health and Human Services

Action: **Adoption and Foster Care Analysis and Reporting System**; Notice of Proposed Rulemaking (4/19/19)

Dear Ms. McHugh,

The Morongo Band of Mission 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.

By way of background, tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS because there is no other national method to track ICWA compliance, and there are few if any state systems. The initial rules were changed due to comments made 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. 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, and included the ICWA data elements. The current NPRM seeks to modify or eliminate a significant number of the ICWA data points found in the 2016 Final Rule. However, it must be acknowledged that the 2016 Final Rule has not been implemented (largely due to unlawful rulemaking, including a blatant failure to provide the required data map to states, and that the ICWA data points proposed in the NPRM are much better than the current number of ICWA data points, which is none.

**General Comments:**

***The Goals of the Families First Prevention Services Act and ICWA are Parallel and Support One Another.***

As the current NPRM reminds us, there is a new Title IV-E prevention services program, the Families First Prevention Services Act. The 2019 Title IV-B Program Instructions state, “[c]reating a system that sees the prevention of child abuse and neglect as the goal of child welfare changes the current system toward working with families sooner through upfront prevention efforts.” (<https://www.acf.hhs.gov/sites/default/files/cb/pi1904.pdf>, page 3.) Those same Program Instructions “recognize that tribes have long embraced a vision for child welfare that focuses on strengthening families and native communities and that seeks to avoid the unnecessary removal of children from home.” (page 4) Indeed, for over 40 years, the Indian Child Welfare Act has required active efforts be made to prevent the breakup of the Indian family, making it the “gold standard” of child welfare practice. Additionally, placement under Families First aligns with the placement preferences of ICWA. The placement goal of Families First is to place children in family foster care, only utilizing congregate care as a last resort. ICWA’s placement preferences have long taken this approach, again making it the “gold standard” of child welfare practice.

The ICWA data points in AFCARS were to be a significant step in the direction of improving child welfare practices for not only AI/AN children, but for all children. As noted in the NPRM, “states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.” (16574) In its comments to the April 2018 Advanced Notice of Proposed Rulemaking, the California Department of Social Services (the state with the largest Native American population) “unequivocally supported 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, stating [they] wholeheartedly believe that this information will have practical utility in facilitating child welfare practice and in informing policy decisions and program management.”

Having data on the ICWA would provide States with a valuable tool that would help to shift the system in the direction Families First intends, toward prevention, toward placement in a family setting and toward collaboration between all parties in the system.

Importantly, the 2016 Final Rule was intended to identify more effective ways for tribes, States and the federal government to work together to advance the well-being of Indian children and families. This again is directly in line with Families First, where it includes as a goal, “a strong, healthy child welfare workforce to achieve better outcomes.”

To that end, all of the ICWA data points included in the 2016 Final Rule should be retained. However, if they are not, we strongly encourage a review of the data points being kept, to ensure they do not inadvertently encourage non-compliance with the ICWA, whereby the well-being of Indian children would be harmed.

### ***The NPRM’s One-Sided Focus on Compliance Costs is Arbitrary and Capricious***

This NPRM relies on information obtained through the April 2019 ANPRM which inappropriately sought information only on burdens, making a reasoned decision balancing the benefits and burdens impossible.

As required by law, the 2016 Final Rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule to achieve a balanced Final Rule. The

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

In response to state and tribal comments suggesting congruence

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

There have been no material changes in circumstances justifying the Agency’s new approach. The Executive Order is not a sufficient basis for the Agency to act, as the Executive Order itself is arbitrary and unlawful where it provides an insufficient basis for reasonable decision-making, relying solely on an examination of the burden of the regulations without the required balancing of benefits. Additionally, the Executive Order fails to provide justification to deviate from the statutory requirement for regulations. Further, Families First legislation does not amend the ICWA, and so does not operate as a reasoned rationale to modify the ICWA data points.

***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) to collect national, uniform, and reliable information on children in state care. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom the 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.

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

Since these regulations have been effective for over two years, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes and the largest population of American Indian/Alaska Native residents, is already well under way with its implementation efforts, having relied on the Final Rule. At this stage, the proposed modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

The primary challenge faced by States in their implementation of the ICWA data elements is the failure of ACF to provide the required data map. Through this failure, the current

administration effectively blocked their implementation, seemingly pending the current streamlining action, which is an impermissible rulemaking action.

The NPRM “commend[s] the willingness of states to collect a more comprehensive array of information.” (16575) However, in the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements, frustrating a stated purpose of the 2016 BIA ICWA Regulations – to establish uniformity of the ICWA’s application throughout the nation. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing the ICWA by having targeted, data-driven identification areas where states need support the most.

Further, modification to the existing data points would require states to begin again collaborating with their tribal partners and ultimately further delay implementation. This comes at the expense of the health, safety and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the Final Rule would cost resources that are system-wide.

***These regulations are important to us, to our families, and also to 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 that data collection is necessary to protect Indian children and families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions. And there have been no changes in circumstances that would alter the burdens or benefits of the Final Rule's data collection requirements.

***Tribes have relied on the Final Rule.***

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the Final Rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the expected data elements. Tribes which have worked to develop and update agreements to reflect the data elements in the Final Rule and the 2016 BIA ICWA Regulations (since a goal of both is to increase uniformity) will see more of their limited resources wasted.

**Specific Comments Regarding Data Elements.**

While we strongly encourage retaining all of the ICWA-related data elements of the 2016 Final Rule, we provide these specific comments to identify concerns regarding the suggested data elements and to offer methods of increasing the utility of streamlined data points.

Notice: We suggest adding the following additional data elements:

The NRPM includes a data element that would capture whether notice has been sent to a child's tribe. We recommend also including a data element that would capture the date of the notice (as found on the return receipt), as well as the date the petition was filed. These dates are easily located and are not qualitative or too detailed in nature, but do provide important additional information regarding whether notice was timely.

Placement: We suggest adding the following additional data elements:

Data points exist regarding whether a child is placed with a relative. The NPRM proposes to also collect data on whether a child is placed with a tribal member. We suggest one additional data element be included, that where the data indicates an Indian child is not placed with a relative and is not placed with a tribal member, that a Yes or No question be asked regarding whether a good cause finding was made to deviate from ICWA's placement preferences. As this is a Yes or No question, data collected should be quantitative in nature. We further suggest

adding a drop-down menu that would capture the basis for the good cause determination, based on the criteria found in the 2016 ICWA regulations. This again would be quantitative in nature and not too detailed.

This information will provide a more complete picture of what is occurring regarding placement and is consistent with the goal of Families First to place children in a family-like setting.

Transfer to Tribal Court: We suggest modifying this data element as proposed.

As written, this data element is intended to capture changes of placement due to a transfer to tribal court, which is an inappropriate measure that is too detailed to capture as it relies on a series of assumptions: (1) that the state agency will be able to track a change of placement as the case transfers to tribal court (once a transfer order is made, the state agency ceases to have jurisdiction); (2) that a tribal court will necessarily order a change of placement. Importantly, this data element will only complicate transfers to tribal court by introducing a change of placement as an issue, which is completely contrary to the 2016 ICWA regulations (25 C.F.R. 23.118(c)(3)).

Instead, we recommend asking a less detailed and more quantitative set of questions:

1. Was a transfer to tribal court requested? (yes or no)
2. If so, was it granted? (yes or no)
3. If it was denied, what was the reason? (drop down menu based on 2016 ICWA regulations).

This data will enhance understanding regarding transfers to tribal court. There is no other mandatory mechanism for this data to be collected. The Court Improvement Program data would be voluntary, not mandatory.

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

In closing, the ICWA is widely considered the "gold standard" of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection will significantly impact tribal children and families, as well as county agencies trying to better follow the law. In the interest of increasing compliance with the ICWA, and ultimately in protecting our children and families, we respectfully submit these comments.

Sincerely,



Robert Martin  
Chairman

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 18, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajo-infk  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0296  
Shoshone-Bannock Tribes

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## Submitter Information

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Fort Hall, ID,  
**Organization:** Shoshone-Bannock Tribes  
**Government Agency Type:** Tribal  
**Government Agency:** Shoshone-Bannock Tribes

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## General Comment

See attached

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## Attachments

Shoshone-Bannock Tribes

# The SHOSHONE-BANNOCK TRIBES

FORT HALL INDIAN RESERVATION  
PHONE (208) 478-3700  
FAX # (208) 237-0797



FORT HALL BUSINESS COUNCIL  
P.O. BOX 306  
FORT HALL, IDAHO 83203

June 17, 2019

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

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

Re: RIN: 0970-AC72

Agency: Children's Bureau; Administration on Children, Youth and Families;  
Administration for Children and Families; Department of Health and Human Services

Action: **Adoption and Foster Care Analysis and Reporting System**; Notice of Proposed Rulemaking (4/19/19)

Dear Madam,

The Shoshone-Bannock Tribes ("Tribe") submits these comments on the Notice of Proposed Rulemaking ("NPRM") 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.

First and foremost, the Tribe wants to thank the Administration of Children and Families (ACF) for its efforts to incorporate ICWA data points in the AFCARS.

## **Background:**

For several years, Indian tribes, tribal organizations, and tribal advocates have advocated for a nationwide mechanism to track ICWA data and compliance throughout the United States,



including the inclusion of ICWA-related data points in the AFCARS because there is no other national method to track ICWA compliance. The initial AFCARS rules were changed due to comments made by these entities and others after reviewing the ACF's February 9, 2015 proposed rule. Then on April 2, 2015, a Supplemental Notice of Proposed Rulemaking ("SNPRM") changing certain data elements was issued. Another SNPRM was issued on April 7, 2016. Specifically, ACF sought comments on the inclusion of the ICWA data points in both the April 2015 Intent to Publish a SNPRM, as well as the April 2016 SNPRM. Ultimately, the Final Rule was published on December 14, 2016, and included the ICWA data elements. The current NPRM seeks to modify or eliminate approximately 90% of the ICWA-related data points found in the 2016 Final Rule.

### **General Comments:**

#### ***1. The Proposed "Alternative Methods" To Inform On Aspects of ICWA Are Not Mandated.***

Proposed "alternative methods" to inform on aspects of ICWA compliance/ICWA-related data elements are merely recommendations and are encouraged or supported instead of mandated. ICWA-related data collection will still not be mandated, allowing states the option to continue to ignore ICWA's applicability and its requirements, *over 40 years after its passage.*

As noted in the Federal Register, Vol 84, No 76, Friday, April 19, 2019 ("Register"), page 16574, "ICWA has been law for 40 years but there has been little in-depth data and limited federal oversight regarding this law." In addition, "Without any uniform, national data regarding ICWA's requirements, policymakers do not understand the scope of issues to inform policy changes." ICWA data collection needs to be mandated in order to allow measurement of compliance and identify areas of needed improvement.

#### ***2. The NPRM's One-Sided Focus on Compliance Costs is Arbitrary and Capricious***

This NPRM relies on information obtained through the April 2019 ANPRM that sought information only on burdens, making a reasoned cost-benefit analysis impossible.

As required by law, the 2016 Final Rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule streamline compliance costs. The Agency "determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data." 81 Fed. Reg. at 90528. The Agency explained how its weighing of the benefits and burdens led it to make certain changes to its proposal. For example, as stated in the Final Rule at 81 Fed Reg. 90528:

In response to state and tribal comments suggesting congruence with the BIA's final rule, we revised data elements in this final rule as appropriate to reflect the BIA's regulations including removing requirements that state title IV-E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV-E agency more flexibility, alleviate some of the burden and other concerns identified by

states, help target technical assistance to increase state title IV-E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

There have been no material changes in circumstances justifying the Agency's new approach. Executive Order 13,777 is not a sufficient basis for the Agency to reverse course. Further, Families First legislation does not amend ICWA, and so does not operate as a sufficient rationale to modify ICWA data points.

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

Section 479 of the Social Security Act ("Act") mandates Health and Human Services ("HHS") to 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 422(b)(9) of the 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."

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.

**4. *The Goals of the Families First Prevention Services Act and ICWA are Parallel and Support One Another.***

As the current NPRM reminds us, there is a new Title IV-E prevention services program, the Families First Prevention Services Act ("Families First"). The 2019 Title IV-B Program Instructions state, "[c]reating a system that sees the prevention of child abuse and neglect as the goal of child welfare changes the current system toward working with families sooner through upfront prevention efforts." (ACYF-CB-PI-19-4 (2019).) Those same Program Instructions "recognize that tribes have long embraced a vision for child welfare that focuses on strengthening families and native communities and that seeks to avoid the unnecessary removal of children from home." (ACYF-CB-PI-19-4 (2019).) Indeed, for over 40 years, the ICWA has required active efforts be made to prevent the breakup of the Indian family, making it the "gold standard" of child welfare practice. (81 Fed Reg. 90527.) Additionally, placement under Families First aligns with the placement preferences of ICWA. The placement goal of Families First is to place children in family foster care, only utilizing congregate care as a last resort. ICWA's placement preferences have long taken this approach, again making it the "gold standard" of child welfare practice.

The ICWA data points in AFCARS were to be a significant step in the direction of improving child welfare practices for not only AI/AN children, but for all children. As noted in

the NPRM, “states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.” (84 Fed Reg. 16574.) In its comments to the April 2018 Advanced Notice of Proposed Rulemaking, the California Department of Social Services (the state with the largest Native American population) “unequivocally supported 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 in facilitating child welfare practice and in informing policy decisions and program management.”

Having data on ICWA would provide States with a valuable tool that would help to shift the system in the direction Families First intends, toward prevention, toward placement in a family setting and toward collaboration between all parties in the system.

Importantly, the 2016 Final Rule was intended to identify more effective ways for tribes, States and the federal government to work together to advance the well-being of Indian children and families. This again is directly in line with Families First, where it includes as a goal, “a strong, healthy child welfare workforce to achieve better outcomes.”

To that end, all of ICWA data points included in the 2016 Final Rule should be retained. Moreover, the Tribe strongly encourages a review of the data points being revised, in order to ensure they do not inadvertently encourage non-compliance with ICWA, whereby the well-being of Indian children would be harmed.

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

Since these regulations have been effective for over two years, all states should be in the process of implementing them. The Tribe is aware, for example, that California, a state with 109 federally-recognized tribes and the largest population of AI/AN residents, is already well under way with its implementation efforts, having relied on the Final Rule. At this stage, the proposed modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

The primary challenge faced by States in their implementation of ICWA data elements is the failure of ACF to provide the required data map. Through this failure, the current administration effectively blocked their implementation, seemingly pending the current streamlining action.

The NPRM “commend[s] the willingness of states to collect a more comprehensive array of information.” (84 Fed Reg. 16575.) However, in the absence of a national data-reporting requirement, it is guaranteed there will be variability with data elements, frustrating Section 479’s mandate to create a “national,” “comprehensive,” and “uniform” data collection system. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.

Further, modification to the existing data points requires states to start over on collaborations with their tribal partners and further delays implementation. This comes at the expense of the health, safety, and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the Final Rule would cost resources that are system-wide.

**6. *These regulations are important to Indian tribes, our children, our families, and to 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 that data collection is necessary to protect Indian children, 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. Further, there have been no changes that would alter the burdens or benefits of the Final Rule's data collection requirements.

#### ***7. Tribes have relied on the Final Rule.***

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the Final Rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the expected data elements. Tribes that have worked to develop and update agreements to reflect the data elements in the Final Rule and the 2016 BIA ICWA Regulations (since a goal of both is to increase uniformity) will see more of their limited resources wasted.

#### **Specific Comments Relating to Data Elements:**

While the Tribe strongly encourages retaining *all* of ICWA-related data elements approved in the 2016 Final Rule, it provides these specific comments to identify concerns regarding the suggested elimination or modification of data elements in the NPRM.

##### ***1. Indian Custodian (removal from).***

The Tribe points out, while the April 19, 2019 Federal Register indicates on page 16577 (middle column, last bullet), "tribal membership of mother, father, foster parents, adoptive parents, and legal guardians" will be kept and revised, such collection fails to capture information imperative to determining if the person the Indian child is removed from is the child's Indian custodian, as identified in the Indian Child Welfare Act. In ICWA, an Indian custodian is more than just an Indian child's legal custodian and is defined as "any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child." 25 U.S.C. 1903 (6). Under ICWA, the Indian custodian is afforded at least the right to:

- a. notification and additional time to prepare (25 USC Sec. 1912 a),
- b. appointed counsel (25 USC Sec. 1912 b),

- c. demand the child's return when improperly removed without a special showing (25 USC Sec. 1920),
- d. reunification efforts (25 USC Sec. 1912 e and f),
- e. intervention in the proceedings (25 USC Sec. 1911 c),
- f. request a transfer of jurisdiction to tribal court (25 USC Sec. 1911 b),
- g. invalidate proceedings in violation of certain provisions of the ICWA (25 USC Sec. 1914),
- h. withdraw their consent to a voluntary placement (25 USC Sec. 1913 b), and
- i. petition the court for the return of an Indian child upon the vacated/set aside/voluntary termination of an adoption or subsequent removal/placement of an Indian child (25 USC Sec. 1916 a and b).

Without collecting data on whether the person the Indian child has been removed from is an Indian custodian, as defined in ICWA, the rights specifically outlined above may not be afforded that Indian custodian.

The Tribe suggests adding data elements that would capture whether an Indian child was removed from an Indian custodian, such as:

1. Was the child removed from someone other than a parent? (yes/no)
2. If so, was that person the child was removed from an Indian? (yes/no)
3. If so, did that Indian person have legal custody of the Indian child under tribal law/custom or State law, or did a parent of the Indian child temporarily transfer physical care, custody, and control to the Indian person? (yes/no)

## 2. *Notice.*

The Tribe suggests adding the following additional data elements:

The NRPM includes a data element that would capture whether notice has been sent to a child's tribe. The Tribe recommends also including a data element that would capture the date of the notice (as found on the return receipt), as well as the date the petition was filed. These dates are easily located and are not qualitative or too detailed in nature, but do provide important additional information regarding whether notice was timely.

## 3. *Placement.*

The Tribe suggests adding the following additional data elements:

Data points exist regarding whether a child is placed with a relative. The NPRM proposes to also collect data on whether a child is placed with a tribal member. The Tribe suggests adding these two additional data elements:

1. If the child is not placed with either a relative or a tribal member, was a good cause finding made to deviate from ICWA's placement preferences? (yes/no)
2. If yes, what was the basis of the good cause finding? (drop-down list from the 2016 ICWA regulations)

This information will provide a more complete picture of what is occurring regarding placement and is consistent with the goal of Families First to place children in a family-like setting.

**4. *Transfer to Tribal Court.***

The Tribe suggests modifying this data element as proposed.

As written, this data element is confusing. The Tribe suggests the following set of questions:

1. Was a transfer to tribal court requested? (yes/no)
2. If so, was it granted? (yes/no)
3. If it was denied, what was the reason cited? (drop-down menu based on 2016 ICWA regulations).

This data will enhance understanding regarding transfers to tribal court. There is no other mandatory mechanism for this data to be collected. As mentioned, the Court Improvement Program data would be voluntary, not mandatory.

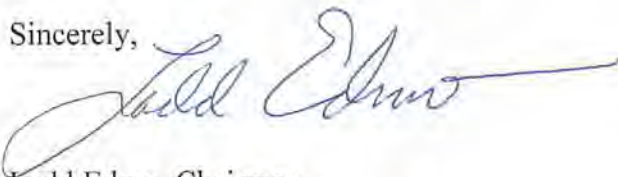
**Conclusion:**

For the foregoing reasons, the Tribe strongly supports retention of each of the ICWA-related data points and believe, as your Agency did in the Final Rule, the benefits of this data collection far outweigh any burdens.

ICWA is widely considered the “gold standard” of child welfare. Any administrative hurdle decreasing ICWA data point collection will significantly impact tribes, tribal children, and their families, as well as state and county agencies trying to follow the law.

In the interest of increasing compliance with the ICWA, and ultimately, in protecting our children and families, the Tribe respectfully submits these comments.

Sincerely,



Ladd Edmo, Chairman  
Fort Hall Business Council  
Shoshone-Bannock Tribes

# PUBLIC SUBMISSION

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|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 18, 2019     |
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| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> E-mail     |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0297  
California Tribal Families Coalition

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## Submitter Information

**Name:** Delia Sharpe  
**Address:**  
CA,  
**Organization:** California Tribal Families Coalition

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## General Comment

See attached

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## Attachments

California Tribal Families Coalition



# CALIFORNIA TRIBAL FAMILIES COALITION

June 17, 2019

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

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

Re: RIN: 0970-AC72

Agency: Children's Bureau; Administration on Children, Youth and Families;  
Administration for Children and Families; Department of Health and Human Services

Action: **Adoption and Foster Care Analysis and Reporting System**; Notice of Proposed Rulemaking (4/19/19)

Dear Sir or Madam,

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

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

By way of background, tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS because there is no other national method to track ICWA compliance, and there are few if any state systems. The initial rules were changed due to comments made 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.

RIN: 0970-AC72  
June 17, 2019

Page 2 of 7

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, and included the ICWA data elements. The current NPRM seeks to modify or eliminate a significant number of the ICWA data points found in the 2016 Final Rule.

**General Comments:**

***The Goals of the Families First Prevention Services Act and ICWA are Parallel and Support One Another.***

As the current NPRM reminds us, there is a new Title IV-E prevention services program, the Families First Prevention Services Act. The 2019 Title IV-B Program Instructions state, “[c]reating a system that sees the prevention of child abuse and neglect as the goal of child welfare changes the current system toward working with families sooner through upfront prevention efforts.” (ACYF-CB-PI-19-4 (2019).) Those same Program Instructions “recognize that tribes have long embraced a vision for child welfare that focuses on strengthening families and native communities and that seeks to avoid the unnecessary removal of children from home.” (ACYF-CB-PI-19-4 (2019).) Indeed, for over 40 years, the Indian Child Welfare Act has required active efforts be made to prevent the breakup of the Indian family, making it the “gold standard” of child welfare practice. (81 Fed Reg. 90527.) Additionally, placement under Families First aligns with the placement preferences of ICWA. The placement goal of Families First is to place children in family foster care, only utilizing congregate care as a last resort. ICWA’s placement preferences have long taken this approach, again making it the “gold standard” of child welfare practice.

The ICWA data points in AFCARS were to be a significant step in the direction of improving child welfare practices for not only AI/AN children, but for all children. As noted in the NPRM, “states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.” (84 Fed Reg. 16574.) In its comments to the April 2018 Advanced Notice of Proposed Rulemaking, the California Department of Social Services (the state with the largest Native American population) “unequivocally supported 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 in facilitating child welfare practice and in informing policy decisions and program management.”

Having data on ICWA would provide States with a valuable tool that would help to shift the system in the direction Families First intends, toward prevention, toward placement in a family setting and toward collaboration between all parties in the system.

Importantly, the 2016 Final Rule was intended to identify more effective ways for tribes, States and the federal government to work together to advance the well-being of Indian children and families. This again is directly in line with Families First, where it includes as a goal, “a strong, healthy child welfare workforce to achieve better outcomes.”

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June 17, 2019

Page 3 of 7

To that end, all of ICWA data points included in the 2016 Final Rule should be retained. Moreover, we strongly encourage a review of the data points being revised, in order to ensure they do not inadvertently encourage non-compliance with ICWA, whereby the well-being of Indian children would be harmed.

***The NPRM's One-Sided Focus on Compliance Costs is Arbitrary and Capricious.***

This NPRM relies on information obtained through the April 2019 ANPRM which sought information only on burdens, making a reasoned cost-benefit analysis impossible.

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

There have been no material changes in circumstances justifying the Agency’s new approach. Executive Order 13,777 is not a sufficient basis for the Agency to reverse course. Further, Families First legislation does not amend ICWA, and so does not operate as a sufficient rationale to modify ICWA data points.

***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) to 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 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."

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June 17, 2019

Page 4 of 7

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.

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

Since these regulations have been effective for over two years, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes and the largest population of American Indian/Alaska Native residents, is already well under way with its implementation efforts, having relied on the Final Rule. At this stage, the proposed modification of the data collection requirements would be a waste of finite state child welfare resources, which itself is an additional burden.

The primary challenge faced by States in their implementation of ICWA data elements is the failure of ACF to provide the required data map. Through this failure, the current administration effectively blocked their implementation, seemingly pending the current streamlining action.

The NPRM “commend[s] the willingness of states to collect a more comprehensive array of information.” (84 Fed Reg. 16575.) However, in the absence of a national data reporting requirement, it is guaranteed there will be variability with data elements, frustrating Section 479's mandate to create a “national,” “comprehensive,” and “uniform” data collection system. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.

Further, modification to the existing data points requires states to start over on collaborations with their tribal partners and further delays implementation. This comes at the expense of the health, safety, and welfare of not only Indian children, their families, and their tribes, but the child welfare system at large where a modification of the Final Rule would cost resources that are system-wide.

***These regulations are important to us, to our families, and also to 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

RIN: 0970-AC72  
June 17, 2019

Page 5 of 7

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 that data collection is necessary to protect Indian children, 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.

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***Tribes have relied on the Final Rule.***

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the Final Rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the expected data elements. Tribes which have worked to develop and update agreements to reflect the data elements in the Final Rule and the 2016 BIA ICWA Regulations (since a goal of both is to increase uniformity) will see more of their limited resources wasted.

**Specific Comments Regarding Data Elements.**

While we strongly encourage retaining **all** of ICWA-related data elements of the 2016 Final Rule, we provide these specific comments to identify concerns regarding the suggested data elements and to offer methods of increasing the utility of streamlined data points.

Notice: We suggest adding the following additional data elements:

The NRPM includes a data element that would capture whether notice has been sent to a child's tribe. We recommend also including a data element that would capture the date of the notice (as found on the return receipt), as well as the date the petition was filed. These dates are easily located and are not qualitative or too detailed in nature, but do provide important additional information regarding whether notice was timely.

Placement: We suggest adding the following additional data elements:

Data points exist regarding whether a child is placed with a relative. The NPRM proposes to also collect data on whether a child is placed with a tribal member. We suggest adding these two additional data elements:

1. If the child is not placed with either a relative or a tribal member, was a good cause finding made to deviate from ICWA's placement preferences? (yes or no)
2. If yes, what was the basis of the good cause finding? (drop down list from the 2016 ICWA regulations)

This information will provide a more complete picture of what is occurring regarding placement and is consistent with the goal of Families First to place children in a family-like setting.

Transfer to Tribal Court: We suggest modifying this data element as proposed.

As written, this data element is confusing. We suggest the following set of questions:

1. Was a transfer to tribal court requested? (yes or no)
2. If so, was it granted? (yes or no)

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3. If it was denied, what was the reason? (drop down menu based on 2016 ICWA regulations).

This data will enhance understanding regarding transfers to tribal court. There is no other mandatory mechanism for this data to be collected. The Court Improvement Program data would be voluntary, not mandatory.

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

In closing, the ICWA is widely considered the “gold standard” of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection will significantly impact tribal children and families, as well as county agencies trying to better follow the law. In the interest of increasing compliance with the ICWA, and ultimately in protecting our children and families, we respectfully submit these comments.

Sincerely,



Delia M. Sharpe  
Executive Director

# PUBLIC SUBMISSION

|                                    |
|------------------------------------|
| <b>As of:</b> September 14, 2020   |
| <b>Received:</b> June 18, 2019     |
| <b>Status:</b> Posted              |
| <b>Posted:</b> June 18, 2019       |
| <b>Tracking No.</b> 1k3-9ajp-jqwr  |
| <b>Comments Due:</b> June 18, 2019 |
| <b>Submission Type:</b> API        |

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

**Comment On:** ACF-2018-0003-0224  
Adoption and Foster Care Analysis and Reporting System

**Document:** ACF-2018-0003-0298  
Ohio Dept of Job and Family Services

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## Submitter Information

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**Organization:** Ohio Department of Job and Family Services, Office of Families and Children

**Government Agency Type:** State

**Government Agency:** Ohio Department of Job and Family Services, Office of Families and Children

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## General Comment

Please see attached for Ohio's Comments.

Thank You

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## Attachments

Ohio Dept of Job and Family Services





**Mike DeWine**, Governor  
**Kimberly Hall**, Director

June 18, 2019

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

Re: RIN 0970-AC72 Comments for the 2016 AFCARS Proposed Rules Released  
04/19/2019

Dear Ms. McHugh:

Thank you once again for the opportunity to provide additional comments on the implementation of the December 2016 Final Rule for AFCARS. The State of Ohio recognizes the value of robust data collection and reporting and has made continuous enhancements to its SACWIS to support improved data quality. Ohio remains committed to maintaining a balance between caseworker focus on family safety and engagement and collecting data to support the enhancement of child welfare practice.

Ohio appreciates that the current proposal will require fewer changes than the initial AFCARS proposal. The changes better align with Ohio's case management activities and there is added value in documenting the revised additional elements. Ohio is in favor of reporting to AFCARS select data that is currently entered into SACWIS by caseworkers. Ohio also supports the addition of data entry that would not require Ohio caseworkers to become overburdened and data enhancements that would not require substantial development resources and costs. Ohio is county administered and state supervised; therefore, a collaborative approach with Ohio's stakeholders will be required to fully define the enhancements that would fall under this proposal.

Ohio has identified certain proposed AFCARS elements that will require functional and/or code changes that are anticipated to have a higher impact on resources. Specifically, school enrollment data, as proposed in the new rule, is challenging due to the lack of a unified system that tracks enrollment/transcript data in Ohio. Creating an interface that would communicate with nearly 600 individual school districts would require a significant financial and human resource commitment from ODJFS as well as

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our state and county partners. Therefore, Ohio is currently working to assess alternative solutions to report this element accurately.

Other proposed elements are identified as challenging as there are fields available to the caseworker, however, data entry is not currently required. Elements such as pregnancy tend to change over time, and solutions will need to prompt the worker to maintain accurate data. For Ohio SACWIS, elements including prior guardianship, environment at removal, victim of sex trafficking prior to entering foster care, court related information, and parenting youth information are not entered in a way that satisfies the proposed elements and additional development will be required to enable capture.

Ohio previously reported a very low number of youth (.03%) who enter Ohio foster care with a tribal affiliation. This statistic remains true to date. In January 2015, Ohio deployed extensive changes to Ohio SACWIS to allow users to record ICWA related data. The current ICWA functionality in Ohio SACWIS satisfies the additional data elements suggested in the proposal, however, the functionality does not currently require the user to record the data at a specific point in time during the life of the case. Through the implementation of additional functionality, technical assistance and enhancements to reporting, Ohio will be able to properly report on ICWA elements as proposed.

The newly proposed changes, while pared down from the original proposal, will have a significant impact on resources. The estimated impact to Ohio, including all technical enhancements, reporting changes, code changes, statewide implementation and statewide technical assistance, is estimated to consume more than 3,000 hours.

Thank you once again for the opportunity for Ohio to be a voice in the December 2016 Final Rule for AFCARS. Please feel free to contact our office with any questions regarding our state's comments.

Sincerely,



Carla K. Carpenter  
Deputy Director  
Office of Families and Children