



June 18, 2019

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

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

Dear Ms. McHugh,

Child Trends is a highly respected, nonpartisan research organization focused exclusively on improving the lives and prospects of children, youth, and their families. For nearly 40 years, decision makers have relied on our rigorous research, unbiased analyses, and clear communication to improve public policies and interventions that serve children and families. Pursuant to the notice published in the Federal Register on April 19, 2019 (84 FR 16572), Child Trends submits these comments to request that the agency withdraw the proposed rule and fully implement the AFCARS Final Rule issued in 2016.

The data collected in AFCARS are critical in ensuring that title IV-E agencies comply with federal laws, including title IV-B and title IV-E of the Social Security Act ("the Act"), the Fostering Connections to Success and Increasing Adoption Act of 2008 ("Fostering Connections"), and the Every Student Succeeds Act (ESSA). These laws promote the safety and well-being of children in foster care; without proper oversight and compliance monitoring, we put this already vulnerable population at-risk of experiencing further negative outcomes. In addition to improved program monitoring, these data will help stakeholders evaluate the effectiveness and impact of the main provisions of these laws.

These data allow for proper oversight and monitoring of the Act, Fostering Connections, and ESSA by providing HHS the information necessary to determine whether the agency is meeting the requirements of each policy or statute. For example, by knowing which youth have a transition plan and when that plan was created, HHS will know whether the agency is developing transition plans for all applicable youth. Without these data elements, there is not one uniform data repository that holds the information necessary for proper oversight and monitoring of these policies.

Beyond their utility in monitoring compliance with federal law, these data are also critical for research and evaluation purposes. Over the years, Child Trends has conducted numerous studies involving the analysis of AFCARS data. We have seen these data—and the research employing these data—inform policymakers, practitioners, and other stakeholders about the lives and prospects of children in foster care. The publicly available nature of these data also increases research transparency, which is currently a government priority. The ability to monitor trends and analyze longitudinal data is critically important to developing services and supports that keep children safe and set them on a healthy trajectory.

Given this experience, we recommend that the Administration of Children and Families' AFCARS Final Rule ("2016 Final Rule"), as published on December 14, 2016 (81 FR 90524), is necessary not only to provide adequate oversight of title IV-E agencies and their compliance with federal law, but also to enhance stakeholder understanding of how to best provide for and serve children involved in foster care.

Below, we offer more detailed recommendations regarding AFCARS. We recognize and understand HHS' concerns about the burden to states of collecting additional information. However, many states are already collecting this information (for example, under Fostering Connections). Additionally, these data elements reflect federal statutes with which title IV-E agencies are required to comply. Therefore, the information should be available to agency staff and not require much additional effort to report.

Recommendation #1: Retain an educational stability element within AFCARS and, if necessary, utilize a simplified version of the element outlined in the 2016 Final Rule.

An educational stability data element is necessary to ensure that title IV-E agencies comply with Section 475(1)(G) of the Act, Fostering Connections, and ESSA. These laws all require states to prioritize educational stability for children in foster care and collaborate with education agencies. In removing the only measure of educational stability from AFCARS, stakeholders will have no sense of whether agencies are promoting such stability. However, we understand HHS' concerns over the level of burden associated with collecting this information as outlined in the 2016 Final Rule and propose a simplified version, removing the specification for the reason(s) for the change.

Educational stability. Indicate if the child is enrolled or is in the process of enrolling in a new elementary or secondary school prompted by an initial placement after entry into foster care or a placement change during the report period with "yes" or "no" as appropriate.

Frequent school moves negatively impact the educational growth of children in foster care.¹ However, few data—and none in any federal data collection system—are available on school stability among children in foster care. Fostering Connections already requires child welfare agencies to collect educational stability information in their case plans, thus posing little additional burden on states. Including this element in AFCARS will result in more accurate data by encouraging uniformity across states. Additionally, having educational stability data in a publicly available data set will allow stakeholders to continue further study of the influence of educational stability and identify ways to improve educational outcomes within and across states.

Recommendation #2: Retain the private agency arrangement element from the 2016 Final Rule.

The private agency arrangement data element outlined in the 2016 Final Rule is necessary to ensure that Title IV-E agencies comply with Section 479(c)(3)(A) of the Act requiring agencies to collect foster and adoptive parent demographics. As more title IV-E agencies contract out child welfare services to private providers—including the recruitment, training, licensure, ongoing support of, and placement of children with foster/adoptive families—this element is critical in providing adequate oversight to ensure that private providers accurately and consistently provide this required information to the title IV-E agency. Therefore, we propose retaining the private agency arrangement element as written in the 2016 Final Rule.

Private agency living arrangement. Indicate the type of contractual relationship with a private agency for each of the child’s living arrangements reported in the living arrangement and provider information item. Indicate “private agency involvement” if the child is placed in a living arrangement that is either licensed, managed, or run by a private agency that is under contract with the title IV–E agency. Indicate “no private agency involvement” if the child’s living arrangement is not licensed, managed or run by a private agency.

As the proportion of services contracted out to private agencies increases, so should the level of oversight of private agencies, both by HHS and other stakeholders. We do not currently have a count of the number or proportion of children who are placed in private agency homes or facilities, nor do we know how child outcomes differ between private and public agency placements. These data should be collected to hold private agencies—who receive federal funding via title IV-E foster care maintenance payments—to the same accountability as public agencies for providing adequate care and oversight of children in foster care.

Recommendation #3: Retain the transition plan and date of transition plan elements from the 2016 Final Rule.

¹ <https://www.unco.edu/cebs/foster-care-research/pdf/Academic-Growth-Trajectories.pdf>

The transition plan data elements outlined in the 2016 Final Rule are necessary to ensure that title IV-E agencies comply with Section 475(5)(H) of the Act, requiring agencies to develop a personalized plan to aid youth in their transition to adulthood. Therefore, we propose retaining the two transition plan data elements as written in the 2016 Final Rule.

Transition plan. Indicate whether a child has a transition plan that meets the requirements of Section 475(5)(H) of the Act, including plans developed before the 90-day period. Indicate “yes,” “no,” or “not applicable.”

Date of transition plan. Indicate the month, day and year of the child’s transition plan, if the title IV-E agency indicated that the child has a transition plan that meets the requirements of Section 475(5)(H) of the Act; otherwise leave this item blank.

Proper and advanced transition planning for older youth in foster care is an important way to help ensure they have a successful and positive transition into adulthood. It is well-documented that youth who exit foster care without finding a permanent home (“age out”) are at risk of experiencing a wide range of negative outcomes, from homelessness to unemployment and lower rates of high school and college graduation. These outcomes have financial impacts, both for the young people who age out and for our larger society (e.g., Medicaid costs, public assistance, lost wages, etc.).² Every annual cohort of youth leaving foster care costs nearly \$8 billion. This figure stresses the importance not only of investing in services for transition-age foster youth but also of providing HHS with the information it needs to make sure this planning happens.

Recommendation #4: Replace the proposed health assessment element with the date of health assessment element from the 2016 Final Rule.

Collecting data on health assessments is necessary to ensure that title IV-E agencies comply with Section 422(b)(15)(A) of the Act, which requires agencies to plan for the medical needs of children in foster care, including a timely schedule for health screenings in accordance with medical standards (Health Oversight and Coordination Plan). The health assessment element proposed in the NPRM asks whether the child had a health assessment during the *current out-of-home care episode*. This element does not accurately capture whether the agency is complying with the Act’s standard of *timely* health screenings. Based on Child Trends’ analysis of FY 2017 AFCARS data, the average length of a child’s current out-of-home care episode is 20.1 months, and many children spend years in one out-of-home care episode. The American Academy of Pediatrics recommends well-child visits at least once a year through adolescence.³ Therefore, one screening or health assessment in a multi-year episode is not timely.

² <https://www.aecf.org/resources/cost-avoidance-the-business-case-for-investing-in-youth-aging-out-of-foster/>

³ <https://www.healthychildren.org/English/family-life/health-management/Pages/Well-Child-Care-A-Check-Up-for-Success.aspx>

Instead of reporting whether the assessment took place during the current out-of-home care episode, we recommend reporting the date of the most recent health assessment.

Date of health assessment. Indicate the month, day, and year of the child's most recent health assessment.

Reporting the date of the assessment will likely present the same level of burden as reporting whether the assessment occurred during the current out-of-home care episode, and would result in more accurate information about the timeliness of the assessments. Prompt and regular medical care is critical to promoting children's physical health. The inclusion of the health assessment date provides stakeholders with a baseline understanding of how agencies are responding to the health care needs of children in foster care. By improving health services for children, stakeholders can better meet the Children's Bureau's mission of promoting the safety, well-being, and permanency of children in foster care.

Recommendation #5: Retain the juvenile justice element from the 2016 Final Rule.

Collecting data on juvenile justice involvement is necessary to provide adequate services for children and youth in foster care. Because information on juvenile justice involvement is not collected consistently across states, the precise proportion of youth in the custody of title IV-E agencies who are also juvenile justice-involved ("cross-over" or "dual-involved" youth) is unknown, but estimates range up to 50 percent.⁴ Understanding the prevalence and needs of dual-involved youth has been and remains a bipartisan Congressional priority, as evidenced by the introduction of the Child Outcomes Needs New Efficient Community Teams (CONNECT) Act in 2016 and 2019, which would provide grants to improve data collection on dual-involved youth. Retaining the juvenile justice element as written in the 2016 Final Rule would begin to address this priority by—at the minimum—providing an accurate count of dual-involved youth.

Juvenile justice. Indicate whether the child was found to be a status offender or adjudicated delinquent by a juvenile judge or court at any time during the report period. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate "yes" or "no."

Knowing more about the characteristics and outcomes of dual-involved youth can help agencies determine how to better serve these youth, and ultimately figure out ways to prevent or reduce dual system involvement.

Recommendation #6: Retain the child sexual orientation elements from the 2016 Final Rule.

⁴<http://www.ncjj.org/pdf/Juvenile%20Justice%20Geography,%20Policy,%20Practice%20and%20Statistics%202015/WhenSystemsCollaborateJJGPSCaseStudyFinal042015.pdf>

Collecting data on sexual orientation is necessary to provide adequate services for children and youth in foster care. No national-level data exists on the number of LGBTQ children in foster care. However, local-level studies and evaluations tell us that LGBTQ youth are overrepresented in the foster care population⁵ and experience greater placement instability and increased rates of homelessness and criminal justice involvement compared to their non-LGBTQ peers.⁶ To help youth overcome these issues and make thoughtful and constructive decisions about their care, it is imperative that title IV-E agencies collect information on sexual orientation and gender identity. Therefore, we recommend retaining the child sexual orientation element.

Child's sexual orientation. For children age 14 and older, indicate whether the child self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "decline," if the child declined to provide the information. Indicate "not applicable" for children age 13 and under.

In the discussion of comments on the 2018 NPRM, HHS concluded that including this element in AFCARS would not yield reliable information due to the self-reporting nature of the element. However, information on sexual orientation has been reliably collected in a variety of other child- and youth-serving settings, such as schools, juvenile justice, and health care systems. Additionally, in instances where youth do not want to disclose their sexual orientation or are unsure of how to respond, the 2016 Final Rule provides a "decline" option.

Recommendation #7: Retain the foster and adoptive parent sexual orientation elements from the 2016 Final Rule.

Collecting data on the sexual orientation of foster/adoptive parents is necessary to provide adequate out-of-home care placements for children and youth in foster care. In the discussion of comments on the 2018 NPRM, HHS concluded that stakeholders who would like to know the sexual orientation of foster/adoptive parents can use other data elements (e.g., sex and marital status of foster/adoptive parents) to determine which couples identify as "non-heterosexual." However, this approach is not an accurate or respectful way of identifying such couples because it encourages stakeholders to make assumptions and judgements about foster/adoptive parents and takes away the self-identification aspect of reporting sexual orientation. Additionally, it would not reflect single foster/adoptive parents who are not part of a couple. Therefore, we propose retaining the foster and adoptive parent sexual orientation elements from the 2016 Final Rule.

First foster parent sexual orientation. Indicate whether the first foster parent self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't

⁵ <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>

⁶ https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf

know," "something else," or "declined" if the first foster parent declined to identify his/her status.

Second foster parent sexual orientation. Indicate whether the second foster parent self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "declined" if the second foster parent declined to identify his/her status.

First adoptive parent or legal guardian sexual orientation. Indicate whether the first adoptive parent or legal guardian self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "declined" if the first adoptive parent or legal guardian declined to identify his/her status.

Second adoptive parent or legal guardian sexual orientation. Indicate whether the second adoptive parent or legal guardian self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "declined" if the adoptive parent or legal guardian declined to identify his/her status.

Recruiting and retaining high-quality foster/adoptive homes is one of the core responsibilities of title IV-E agencies, but agencies across the country are struggling to do so. While widespread data on foster/adoptive parent sexual orientation are not available, small-scale studies have shown that same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.⁷ Stakeholders can use data on the sexual orientation of foster/adoptive parents to tailor recruitment and retention strategies to reach this valuable and untapped resource.

Recommendation #8: Retain all Indian Child Welfare Act (ICWA) elements from the 2016 Final Rule.

Collecting data related to Native American children is necessary to understand how to effectively support Native American children and families. Currently, Native American children are overrepresented in the foster care population and face some of the worst outcomes. ICWA-related elements required by the 2016 Final Rule would allow the field to understand the circumstances under which Native American children enter the foster care system, the rate of utilization of relatives or kin as a placement, and the ways in which these cases flow through state and tribal courts. These elements will also hold agencies accountable for due diligence in determining a child's eligibility for ICWA and for notification of tribes of the child's involvement with child welfare. The way that race/ethnicity is currently collected in AFCARS does not likely yield an accurate account of the number of Native American children in foster care, as it relies on the discretion of

⁷ <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>.

child welfare workers. Therefore, we recommend retaining all 60 of the 2016 Final Rule elements related to ICWA.

Conclusion

Thank you for your time and commitment to the safety and well-being of children, youth, and families. We appreciate this opportunity to provide recommendations and to reiterate that improvements to the AFCARS will improve on the important work done on their behalf by title IV-E agencies across the country.

For any questions regarding these comments, please contact Sarah Catherine Williams at Child Trends (swilliams@childtrends.org; 404.680.0287).

Sincerely,

/s/

Carol Emig
President