

## **Questions and Answers – AFCARS NPRM**



### **AFCARS Q&As**

**Topic:** The Children’s Bureau (CB) at the Department for Health and Human Services (HHS), Administration for Children and Families published a Notice of Proposed Rulemaking (NPRM) today, April 19, 2019 on revising the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements ([84 FR 16572](#)).

#### **What is AFCARS?**

- Title IV-E agencies currently report to AFCARS case level information on all children in foster care and children adopted with the involvement of the state/tribal Title IV-E agency.
- Title IV-E agencies report data to AFCARS two times per year, in May and November.
- The data reflects the child’s experience as of the end of the report period.
- While there is a record in the file for each child in foster care, the individual child is not personally identified. Each record has an encrypted record number that represents the person number used by the Title IV-E agency. There are no names, addresses, or social security numbers reported to AFCARS.

#### **Who is reported to AFCARS?**

- Children who are under state and tribal child welfare (Title IV-E) agencies responsibility for placement and care who are placed in a foster care setting and children adopted with the involvement of the Title IV-E agency.
- Children who are eligible for Title IV-E foster care under an interagency agreement between the IV-E agency and another public agency, such as an Indian tribe or Juvenile Justice agency.

#### **How is AFCARS data used?**

- Determine the allotment of funds for different programs, develop budgets, prepare congressional reports, and conduct Title IV-B and IV-E program monitoring.
- Prepare the [Child Welfare Outcomes](#) report, [Trends in Foster Care and Adoption](#) report and [AFCARS](#) reports.
- Conduct the [Child and Family Services Reviews](#) and [Title IV-E foster care eligibility reviews](#).

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### **What is the 2016 AFCARS final rule?**

- On December 14, 2016, CB published a final rule revising the AFCARS requirements ([81 FR 90524](#)). This was a month before the end of the previous administration. It was the first revision to AFCARS since 1993.
- It significantly expanded the data elements required to be reported by state and tribal Title IV-E agencies and for the first time, required state Title IV-E agencies to report to AFCARS information on the Indian Child Welfare Act of 1978 (ICWA).

### **What happened after the 2016 final rule was published?**

- [Executive Order \(E.O.\) 13777](#) was issued February 24, 2017 and it directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification.
- The HHS Regulatory Reform Task Force identified the 2016 AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

### **What did CB do in response to E.O. 13777?**

- In response to E.O. 13777, CB published an Advance NPRM (ANPRM) on March 15, 2018 ([83 FR 11449](#)) that solicited comments on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the 2016 final rule.

### **Why is the AFCARS NPRM being issued?**

- In response to the ANPRM, 36 states convincingly argued for streamlining the 2016 final rule by providing detailed work and cost estimates associated with the burden of the 2016 final rule that had not been provided in earlier comment periods.
- The NPRM was published in the Federal Register to propose streamlining the AFCARS data elements in the 2016 final rule, thus reducing the reporting burdens for state and tribal child welfare Title IV-E agencies.
- The proposed revisions would streamline the AFCARS data points related to a child's experience in foster care and adoption or legal guardianship to those with a specific purpose such as statutory requirements and program monitoring, congressional reporting or budgeting. This proposal continues to be responsive to stakeholders by retaining key data in which they are interested and noted in their comments to the ANPRM.

### **What was CB's process in determining what to propose in the 2019 NPRM?**

- CB analyzed the comments received in response to the March 2018 solicitation, in which 36 states responded that the 2016 final rule was overly burdensome and could be streamlined.
- Additionally, CB reviewed each data element in the 2016 final rule and evaluated whether it is needed for the purposes of a Title IV-B/IV-E statutory requirement, program monitoring, congressional reporting or budgeting.

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### **What changes are proposed in the 2019 NPRM?**

- The 2016 final rule required Title IV-E agencies to report information in the out-of-home care data file for approximately 272 items, 153 of which are new. We propose to reduce these items to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify. We propose a simplification of certain data elements to require that Title IV-E agencies report only essential information on children that meets the threshold for a specific purpose, as stated above.
- **Data elements retained from the 2016 final rule:** CB proposes to retain data elements on the child, placements, and parents, including the child’s health, behavioral or mental health conditions, circumstances present at removal, prior adoption and guardianship, youth who are pregnant or parenting, youth who may be victims of sex trafficking, permanency plans, and caseworker visits.
- **Data elements modified from the 2016 final rule:** CB proposes to retain and simplify data elements on the child and placements including the child’s health assessments, child financial and medical assistance, educational information, and special education to keep only essential information as identified by ANPRM commenters. CB also proposes to reduce the ICWA-related data elements to information that is essential for identifying nationally the population of children to whom ICWA applies.
- **Data elements removed from the 2016 final rule:** CB proposes to remove data elements related to sexual orientation for the child, adoptive parents, foster parents, and legal guardians; educational stability; private agency placement; juvenile justice involvement; and transition planning because we do not use the information for the reasons cited above. CB proposes to remove data elements that required states to report detailed information on ICWA’s requirements and are tied to the Department of Interior’s regulations, the ICWA statute, and court actions, including court findings related to involuntary and voluntary termination of parental rights; good cause findings; qualified expert witness testimony; and information on active efforts.

### **What changed in the 2019 NPRM regarding the health assessment and educational data points?**

- The 2016 final rule required Title IV-E agencies to report whether the child had a timely health assessment and the date. Per ANPRM comments that these data points were too detailed, CB proposed in the 2019 NPRM to only ask whether the child had a health assessment during the current out-of-home care episode.
- The 2016 final rule required Title IV-E agencies to report the child’s educational level and school enrollment which CB proposes to keep in the 2019 NPRM. The 2016 final rule also required reporting on whether the child is enrolled or is in the process of enrolling in a new school at the initial placement into foster care and when there was a placement change. CB did not propose those data points in the NPRM for several reasons, including that the information is qualitative, too detailed for a national data set, and CB does not have a specific purpose for the information.

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### **How can the public submit comments?**

- The comment period closes on **June 18, 2019**.
- The public may submit comments, identified by RIN number 0970-AC72, by one of the following methods:
  - Federal eRulemaking Portal: [Regulations.gov](https://www.regulations.gov). Follow the instructions for sending comments. We recommend this method.
  - Email: [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov). Include RIN number 0970-AC72 in subject line of the message.

### **What is the status of the 2016 final rule?**

- On August 21, 2018, CB published a final rule to delay implementation of the 2016 final rule for **one** additional fiscal year, until October 1, 2020 ([83 FR 42225](#)).
- In the meantime, Title IV-E agencies will continue to submit AFCARS data per the requirements in [45 CFR 1355.40](#) and the [appendix to part 1355](#), as they have been since 1995.
- The delay allows us to complete the regulatory process of this NPRM (see [ACYF-CB-IM-18-03](#)).

### **What happens if a Title IV-E agency does not report AFCARS data or reports poor quality data?**

- The data must meet the data quality standards set in regulation, such as the information must be complete, submitted on time, and internally consistent.
- If a Title IV-E agency fails to meet the standards, we provide technical assistance and give an opportunity to correct and resubmit the data.
- We will implement the statutory penalty structure included in the law at section 474(f) of the Act. If the agency does not resubmit or correct its data, we will apply the penalty provisions as outlined in [45 CFR 1355.47](#).
- CB cannot waive the penalty because there is no flexibility in applying the penalty structure to all Title IV-E agencies, which has been in law since 2003.

### **What happens after the comment period ends?**

- CB will review and analyze all comments received, the administration will decide what changes, if any, to make to the proposal, and issue a final rule after OMB reviews and approves it.