

## Q&A

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### Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule

#### Frequently Asked Questions

##### What information will title IV-E agencies report based on the AFCARS final rule?

- As a result of the final rule, Title IV-E agencies will be required to report historical and point-in-time information on:
  - All children who are in out-of-home care, including additional information when the child exits out-of-home care to adoption or guardianship;
  - Children with Title IV-E adoption assistance agreements or Title IV-E guardianship assistance agreements;
  - New data collection in response to updated provisions in Title IV-E, including information on a child's timely health assessments, diagnosed conditions, why a child changes schools, whether the child is receiving special education services and the number of siblings who are in foster care with whom the child may be living;
  - New data collection related to the Indian Child Welfare Act of 1978 (ICWA) required of state Title IV-E agencies, specifically:
    - Whether there is reason to know a child is an "Indian child" as defined in ICWA; For children to whom ICWA applies, information on:
      - Removal of a child from his/her home;
      - Child custody hearing notification to tribes and parents;
      - Active efforts to prevent removal and to reunify the Indian family;
      - Statutory foster care and adoptive placement preferences;
      - Voluntary and involuntary termination/modification of parental rights; and
      - Transfers from state court to tribal court.

##### What are the most important changes included in the final rule?

- The final rule makes several important changes to the AFCARS regulations:
  - *Incorporate new requirements* – The AFCARS final rule will better support our current data needs to understand a child's experience in out-of-home care, including more robust information on Indian children as defined in ICWA. Additionally, the final rule will incorporate significant changes to the title IV-E program since AFCARS regulations were published in 1993, including changes to title IV-E made by the Fostering Connections to Success and Increasing Adoptions Act of 2008 and Preventing Sex Trafficking and Strengthening Families Act legislation.
  - *Revised data structure* – For the first time, title IV-E agencies will report comprehensive (historical) information on children in out-of-home care. This data combined with the proposed point-in-time data will provide comprehensive information on a child's entire experience in out-of-home care.
  - *Revised reporting populations* – For the first time, title IV-E agencies will report data on children with finalized title IV-E guardianship assistance agreements. Also title IV-E agencies will report information on children with finalized title IV-E adoption assistance agreements, rather than all children adopted with state involvement.
  - *Data elements* – We kept and revised many data elements currently in AFCARS and added

new data elements. The new data elements will allow us to obtain information about key provisions in Fostering Connections (e.g., educational well-being, timely health assessments, and transition plans), sex trafficking information, and certain actions states take for Indian children as defined by ICWA. The new elements also will allow us to better understand the characteristics of children in foster care and provide context for their outcomes.

- *Penalty structure* –Incorporates the statutory penalty structure in law since 2003 to any title IV-E agency that is not in compliance with regulatory requirements.

#### **When will title IV-E agencies be required to report the first AFCARS data files under the final rule?**

- Title IV-E agencies have two full federal fiscal years to comply with the final rule at sections 1355.41 through 1355.47. The first data files under the final rule are due to the Children’s Bureau between April 1 and May 15, 2020.
- Since the final rule was published during FY 2017, we start counting the two full fiscal years beginning on October 1, 2017 (FY 2018). This means that the first official report period reflects October 1, 2019 to March 31, 2020, making the first due date for data files no later than May 15, 2020. Until then, State and tribal title IV-E agencies must continue to report data related to children in foster care and who have been adopted with title IV-E agency involvement to ACF in accordance with section 1355.40 and the appendix to part 1355.
- Title IV-E agencies must continue to report AFCARS data to ACF without interruption because AFCARS data is used for various reports, planning and monitoring, and to make the Adoption and Guardianship Incentive awards.

#### **What penalty structure will be applied to AFCARS data?**

- The statute provides a specific penalty structure for AFCARS that applies to all title IV-E agencies. If the title IV-E agency submits data that does not meet regulatory standards, the title IV-E agency will have a 6 month opportunity to correct and resubmit its AFCARS data.
- If the agency’s resubmitted data does not meet the regulatory standards, then the Children’s Bureau will apply a penalty amount of 1/6 of 1% of the state’s/tribe’s title IV-E foster care administrative funds. An additional penalty of 1/4 of 1% is assessed for each subsequent report period the data is out of compliance.

#### **What happens if a title IV-E agency does not report AFCARS data?**

- ACF will notify an agency if it fails to meet the compliance standards and will be afforded an opportunity to correct the information and submit a corrected file. If the agency does not submit or correct its data within the timeframe allotted in the law, we will apply the penalty provisions.

#### **Can the Children’s Bureau waive the penalty?**

- No. There is no flexibility in applying the statutory penalty structure. It applies to all title IV-E agencies.

#### **Does the penalty apply to the ICWA-related data elements that state title IV-E agencies will be required to report?**

- Yes. The ICWA-related data elements are in the out-of-home care data file and are subject to the same data quality standards and penalty provisions as all other data elements in the out-of-home

care data file.

**What kind of technical assistance (TA) will be available to title IV-E agencies to comply with the final rule?**

- The Children’s Bureau will provide TA through site visits and AFCARS assessment reviews, conference calls with individual title IV-E agencies, technical bulletins, and questions and answers.

**How does the Comprehensive Child Welfare Information System (CCWIS) final rule (published on June 2, 2016) impact AFCARS reporting?**

- The CCWIS rule affects how title IV-E agencies may receive reimbursement for the costs to develop and maintain an electronic case management system. This is optional funding available to an agency, whereas AFCARS is a mandatory data reporting requirement on all title IV-E agencies.
- If a title IV-E agency chooses to build a CCWIS, it must contain the information in the AFCARS final rule. However no matter what kind of electronic case file title IV-E agencies have, workers must still document case information in an electronic case file from which AFCARS data may be extracted.

**There have been a number of high-profile Indian Child Welfare Act cases with tribes and foster parents in custody battles. Would this rule have any impact on those types of cases?**

- Not directly. This rule requires only that state title IV-E agencies collect and report certain information related to ICWA for Indian children in the AFCARS out-of-home care reporting population. The new ICWA-related data collection will help to better understand the out-of-home-care experience for American Indian/Alaska Native (AI/AN) children and inform efforts to improve outcomes for children and families in state child welfare systems.
- This rule will:
  - 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; and
  - 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.

**Why haven’t these regulations been updated since the 1990s?**

- The regulations were first issued in 1993, and therefore we did not need to update them in the 1990s. We proposed to update them in 2008, but shortly after publication, the Fostering Connections to Success and Increasing Adoptions Act of 2008 was enacted and made substantial changes to title IV-E necessitating a new proposed rule, which we proposed in 2015.

**How will this regulation help lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth in the foster care system?**

- We understand that LGBTQ youth are over-represented in the child welfare system, but we do not have a full picture of their experiences in foster care. Often they have unique service needs, are at an increased risk for poor outcomes, are more likely to be placed in group settings and experience more placements. By requiring LGBTQ-related information to be reported in AFCARS, we hope to move closer toward our goal to better support children and youth in foster care who

identify as LGBTQ and ensure that foster care placement resources and services are designed appropriately to meet their needs. We anticipate that this is the first step in addressing the needs of this population, and also will assist title IV-E agencies in recruiting and training foster care providers in meeting the needs of these youth.