

Talking Points: The Adoption and Foster Care Analysis and Reporting System (AFCARS) Final Rule

Background:

The Adoption and Foster Care Analysis and Reporting System (AFCARS) final rule provides the first update of AFCARS regulations since 1993 and finalizes AFCARS revisions proposed in the 2015 Notice of Proposed Rulemaking (NPRM) and 2016 Supplemental NPRM (SNPRM). The regulations specifies AFCARS reporting populations, reporting periods, standards for compliance and all data elements for the out-of-home care population and Title IV-E adoption and guardianship assistance files. For the first time, the rule collects historical information on all children in foster care and information related to the Indian Child Welfare Act (ICWA) of 1978.

Highlights of the rule include updating statutory requirements since the rule was first issued in 1993, implementing statutory penalties for noncompliant data submissions and enhancing the type of information reported to better measure outcomes of children and families including information related to ICWA.

Overview:

- The Adoption and Foster Care Analysis and Reporting System (AFCARS) final rule focuses on enhancing comprehensive data collection for reporting populations, data structure and data elements. The rule strengthens data accuracy through compliance and penalties.

The final rule makes several important changes to the AFCARS regulations:

- **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 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.
- **Revised data elements.** The collection of the revised data elements will allow the collection of key provisions in the [Fostering Connections](#) to Success and Increasing Adoptions Act of 2008 (i.e. educational well-being, timely health assessments and transition plans), sex trafficking information and defined actions states take for Indian children as outlined by ICWA. The new elements will also allow the better understanding of characteristics of children in foster care and provide context for their outcomes.
- **Penalty structure.** The final rule incorporates the statutory penalty structure in law since 2003 to any Title IV-E agency that is not in compliance with regulatory requirements.

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 (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.

Major Changes:

1. Revise the Reporting Populations: There are two reporting populations: the out-of-home care population and the title IV-E adoption and guardianship assistance reporting population. The out-of-home care file includes a child of any age who is in out-of-home care for more than 24 hours. The title IV-E adoption and guardianship assistance reporting population includes any child who is in a finalized adoption under a title IV-E adoption assistance agreement and any child who is in a legal guardianship under a title IV-E guardianship assistance agreement.

2. Revise the Data Structure: Title IV-E agencies will report AFCARS information in two separate data files: an out-of-home care data file and a title IV-E adoption and guardianship assistance data file. Title IV-E agencies are required to submit the AFCARS data twice a year based on two six-month reporting periods.

- For the out-of-home data file, title IV-E agencies will report a combination of point-in-time information, such as demographics and other information about a child and historical information on the events in the child’s life over time, including every living arrangement change. State title IV-E agencies must report data elements related to ICWA in the out-of-home care data file. Examples of these are listed below.
- For the title IV-E adoption and guardianship assistance data file, title IV-E agencies will report data elements essential to understanding the child’s federal benefits at a single point-in-time in the report period: basic demographic information about the child, subsidy amounts, and adoption finalization and subsidy termination dates.

3. Revise Data Elements: In the final rule, we added new data elements to the out-of-home care file and modified existing data elements on the child’s living arrangements, permanency plans, circumstances surrounding the child at removal, and prior adoptions, among others. Some of the new data elements include:

- the child’s educational level, educational stability and special education;
- the dates of caseworker visits;
- additional details about a child’s exit to adoption/guardianship;
- child, legal guardian, foster, and adoptive parent sexual orientation;
- tribal membership of children and foster/adoptive parents; and
- whether a child is a victim of sex trafficking;

State title IV-E agencies must report information to determine whether a child is an “Indian child” as defined in ICWA, and if so, information on the Indian child as defined in ICWA, which are based both on ICWA statutory requirements and Bureau of Indian Affairs final rule.

(<https://www.federalregister.gov/documents/2016/06/14/2016-13686/indian-child-welfare-act-proceedings>). Some of these new data elements include:

- inquiries as to whether there is reason to know that the child is an Indian child as defined in ICWA;

- notification to tribes and parents about a child custody proceeding;
- active efforts made to prevent removal and to reunify the Indian family; and
- statutory foster care and adoptive placement preferences as defined in ICWA that are available and with whom the child is placed.

4. Strengthen Data Quality Through Compliance and Penalties: The final rule will strengthen our ability to hold title IV-E agencies accountable for submitting accurate data. A title IV-E agency must meet basic file standards, such as timely data file submissions and more specific data quality standards, such as 10 percent or less of errors. A title IV-E agency that does not meet the data quality standards upon initial submission of the data will have six months to correct and submit its data. If a title IV-E agency does not meet the standards after corrective action, CB will apply the penalties required in statute since 2003. Penalty amounts are one-sixth of one percent of the agency's title IV-E foster care administrative funds for initial noncompliance and one-fourth of one percent of such funds for continued noncompliance.