

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
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INFORMATION MEMORANDUM

TO: State, Tribal, and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act

SUBJECT: 2020 Final Rule on Revised AFCARS Data Elements

LEGAL AND RELATED: Title IV-E of the Social Security Act – §479; 45 CFR 1355.40 et seq.

PURPOSE: To inform title IV-E agencies that the Children's Bureau (CB) published a final rule to revise the AFCARS data elements in the *Federal Register* on May 12, 2020 ([85 FR 28410](#)).

BACKGROUND: Currently, title IV-E agencies report to AFCARS case-level information on all children in foster care and those who have been adopted with title IV-E agency involvement (per [45 CFR 1355.40](#) and the [appendices A-E of 1355](#)). CB published a final rule revising AFCARS in December 2016 ([81 FR 90524](#)) that significantly expanded the data elements title IV-E agencies must report. The Department of Health and Human Services (HHS) Regulatory Reform Task Force (per [Executive Order \(E.O.\) 13777](#)) identified the 2016 final rule as one in which the reporting burden may impose costs that exceed benefits. In response, CB published an Advance Notice of Proposed Rulemaking (March 15, 2018, [83 FR 11449](#)) soliciting specific feedback on the 2016 final rule, followed by a proposed rule (April 19, 2019, [84 FR 16572](#)) to streamline the AFCARS data elements from the 2016 final rule and reduce the reporting burden on title IV-E agencies.

INFORMATION: The 2020 final rule improves on the 2016 final rule because it is responsive to stakeholders by expanding data collection in key areas without impeding agencies' primary function of serving children and families. While we scaled back the information to be reported from the 2016 final rule, the 2020 final rule allows for a sophisticated analysis related to a child's experience in out-of-home care and includes information about: sibling placements, child health and education, caseworker visits, sex trafficking victims, mental health conditions, prior adoptions/guardianships, whether the youth is pregnant or parenting, and the sex of the foster/adoptive parents and legal guardians. Importantly, the 2020 final rule will provide us greater insight into the experiences of children in foster care who fall under the protection of the Indian Child Welfare Act of 1978, but within the strictures of HHS authority. Also, through the 2020 final rule, we will gain greater insight into the experiences of children whose sexual orientation/gender identity played a role in their entry into foster care.

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These data points will allow analysis of the child’s demographics intersecting with other data points, such as: whether the child is a member of a tribe, whether the child is placed with relatives, the number of entries/exits experienced, length of time to permanency from removal, diagnosed conditions, whether the child is placed with same sex couples, and the like. We believe this will help agencies better ensure the well-being of children and families and the data will help inform CB monitoring efforts that look at case circumstances and may help inform disproportionality. Lastly, CB made conforming changes only in the areas of: scope, data file structure and standards (45 CFR 1355.43), the Adoption and Guardianship Assistance Data File (45 CFR 1355.45), and compliance (45 CFR 1355.46), and did not make any changes to the reporting populations (45 CFR 1355.42) and penalties (45 CFR 1355.47).

The timing of publication of this rule is important because without it, the 2016 final rule would have gone into effect in October 2020. Promulgating this regulation now will ease the burden that the 2016 final rule placed on the reporting title IV-E agencies. Under the 2020 final rule, title IV-E agencies will have more than two fiscal years to implement the requirements of 45 CFR 1355.41-47.

Implementation Timeframe: We are providing two full Federal fiscal years for title IV-E agencies to comply with [45 CFR 1355.41 through 1355.47](#), which we believe is sufficient for title IV-E agencies to implement changes for AFCARS. The first official report period will cover **October 1, 2022 to March 31, 2023**, making the first due date for data files no later than **May 15, 2023**. Title IV-E agencies must continue to report AFCARS data in the same manner they do currently, per [45 CFR 1355.40](#) and [appendices A-E to part 1355](#) through September 30, 2022 (data file due no later than November 14, 2022). We will provide technical assistance to title IV-E agencies throughout this implementation period.

Compliance and Penalties for the 2020 Final Rule: Beginning with the data file due May 15, 2023, data must meet the reporting requirements and quality standards, such as the information must be complete, submitted on time, and internally consistent (45 CFR [1355.43](#) and [1355.46](#)). If a title IV-E agency fails to meet the standards, CB will provide technical assistance and the title IV-E agency will have an opportunity to correct and resubmit the data (45 CFR 1355.46(d)). CB will implement the statutory penalty structure in the law at §474(f) of the Act, thus, if the title IV-E 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.

Inquiries to: [CB Regional Program Managers](#) and AFCARS@acf.hhs.gov

/s/

Elizabeth Darling
Commissioner
Administration on Children, Youth and Families

Attachment: AFCARS 2020 Final Rule ([85 FR 28410](#))