

An Overview of the Adoption and Foster Care Analysis and Reporting System Notice of Proposed Rulemaking

Presented By:



Children's Bureau

An Office of the Administration for Children & Families

AGENDA

During this call we will review:

- AFCARS Background and History of Regulation Development
- 2019 Notice of Proposed Rulemaking (NPRM) Overview
- Next Steps and Resources



AFCARS NPRM

AFCARS BACKGROUND AND HISTORY OF REGULATION DEVELOPMENT

BACKGROUND AND HISTORY OF REG. DEVELOPMENT

Where we are now:

- Issuing 2019 NPRM in response to [Executive Order \(E.O.\) 13777](#) and HHS Regulatory Reform Task Force that identified the AFCARS Dec. 2016 final rule ([81 FR 90524](#)) as one in which the reporting burden may impose costs that exceed benefits.
- CB solicited specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the 2016 final rule ([83 FR 11449](#)).
- 36 states convincingly argued for streamlining the rule by providing detailed work and cost estimates associated with the burden of the rule that had not been provided in earlier comment periods.
- HHS subject matter experts with an interest in AFCARS data identified a number of data elements that are not needed to meet a title IV-B/IV-E statutory requirement and program monitoring, Congressional reporting, or budgeting.

BACKGROUND AND HISTORY OF REG. DEVELOPMENT

NPRM Purpose

- NPRM drafting: Balance desires for increased reporting and data with the need to minimize burden per the E.O. We examined each data element asking why are we collecting this information and how are we going to use this information. NPRM proposed only those data elements for which we can answer these questions.
- The out-of-home care data file in the 2016 final rule requires title IV-E agencies to report information on approximately 272 items.
- 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.

BACKGROUND: INDIAN CHILD WELFARE ACT (ICWA)- RELATED DATA ELEMENTS

- We propose to maintain:
 - Whether state inquired whether the child is an Indian child,
 - Child's tribal membership and all potential tribes,
 - Whether ICWA applies and whether the Indian child's tribe(s) was sent legal notice, and
 - Tribal membership of parents (biological, foster, or adoptive) and legal guardians.
- We propose to remove data elements tied to the Department of Interior's regulations, the ICWA statute, and court actions such as:
 - Identification of specific entities the state inquired with regarding the child being an Indian child,
 - Good cause findings and qualified expert witness testimony, and
 - Whether active efforts were made prior to the termination/modification.

BACKGROUND: SEXUAL ORIENTATION DATA ELEMENTS

- We propose to remove sexual orientation of child, foster/adoptive parents, and legal guardians based on:
 - Office of Management and Budget (OMB) paper advising new questions should be validated with specific techniques and emphasizes the importance that respondents are confident that their responses are private, anonymous, and confidential.
 - State comments that collecting this information should be tied to case planning needs, not as a routine matter.
- We maintained circumstance at removal “Family conflict related to child’s sexual orientation, gender identity, or gender expression.” This will tell us whether the child’s sexual orientation or gender identity was a circumstance at removal.



AFCARS NPRM

2019 NPRM OVERVIEW

NPRM OVERVIEW

- The AFCARS regulations are located at [45 CFR 1355.41-47](#). We propose changes to most but not all of the 2016 final rule, which we will address.
- In the Scope (§ 1355.41), we propose conforming changes only.

NPRM OVERVIEW

§ 1355.42(a) Reporting population

- We are not proposing changes. Out-of-Home Care reporting population includes:
 - Children who are under the title IV-E agency's responsibility for placement and care who are placed in a foster care setting
 - Children who are eligible for title IV-E under an interagency agreement between the title IV-E agency and another public agency (an Indian tribe or Juvenile Justice agency)

§ 1355.43 Data Reporting Requirements

- Propose conforming changes only.

NPRM OVERVIEW

§ 1355.44(a) General Information

- We are not proposing any changes to:
 - Title IV-E agency name (submitter of the data file)
 - Report date
 - Local agency
 - Child record number

NPRM OVERVIEW

§ 1355.44(b) Child Information

- Proposal: Report characteristics of child in out-of-home care: demographics, health assessment, health, behavioral or mental health conditions, school enrollment, educational level, special education, pregnant or parenting, prior adoption or guardianship, and siblings.
- Data elements modified:
 - Sex of child
 - Reason to know a child is an “Indian Child” as defined in ICWA
 - Child’s tribal membership
 - Application of ICWA and Notification (regarding ICWA)
 - Child financial and medical assistance
- Data elements removed:
 - Child sexual orientation
 - Court determination that ICWA applies
 - Request to transfer to tribal court and denial of transfers
 - Date and timely health assessment
 - Educational stability

NPRM OVERVIEW

§ 1355.44(c) Parent or Legal Guardian Information

- Proposal: Report characteristics of child's parents or legal guardians including year of birth, tribal membership, and termination/modification of parental rights.
- Data elements modified: none
- Data elements removed:
 - Involuntary termination/modification of parental rights under ICWA
 - Voluntary termination/modification of parental rights under ICWA

NPRM OVERVIEW

§ 1355.44(d) Removal Information

- Proposal: Report information on each of the child's removals including date of each removal, environment at removal, circumstances at removal, and whether the child was a victim of sex trafficking prior to entering, or while in, foster care.
- Data elements modified:
 - Minor revisions to 3 circumstances at removal
- Data elements removed:
 - Removals under ICWA
 - Authority for placement and care responsibility

NPRM OVERVIEW

§ 1355.44(e) Living Arrangement and Provider Information

- Proposal: Report information on each of the child's living arrangements for each out-of-home care episode including dates of each placement, whether placements are foster family homes or other living arrangements, location of living arrangements, and demographics about the foster parents (e.g., marital status and tribal membership).
- Data elements modified:
 - Other living arrangement type
 - Child's relationships to the foster parents
 - Sex of foster parents
- Data elements removed:
 - Private agency living arrangement
 - Sexual orientation of foster parents
 - Available ICWA foster care and pre-adoptive placement preferences
 - Foster care and pre-adoptive placement preferences under ICWA
 - Good cause under ICWA and Basis for good cause

NPRM OVERVIEW

§ 1355.44(f) Permanency Planning

- Proposal: Report information on permanency planning for children in out-of-home care including permanency plans and dates, dates of permanency hearings and periodic reviews, and caseworker visit dates and locations.
- Data elements modified: none
- Data elements removed:
 - Juvenile justice
 - Transition plan and date
 - Active efforts (related to ICWA)

NPRM OVERVIEW

§ 1355.44(g) General Exit Information

- Proposal: Report information on each of the child's exits from out-of-home care (when the title IV-E agency's placement and care ends) including date of exit and reason.
- Data elements modified: none
- Data elements removed: none

NPRM OVERVIEW

§ 1355.44(h) Exit to Adoption and Guardianship Information

- Proposal: Report information only if child exited to adoption or legal guardianship including demographics on adoptive parents or legal guardians (e.g., marital status and tribal membership), siblings, and whether the child was placed within or outside of the state or tribal service area or into another country for adoption or guardianship.
- Data elements modified:
 - Child's relationship to the adoptive parents or guardians
 - Sex of adoptive parents or guardians
- Data elements removed:
 - Sexual orientation of adoptive parents or guardians
 - Jurisdiction name where child was placed for adoption/guardianship
 - Available ICWA adoptive placements
 - Adoptive placement preferences under ICWA
 - Good cause under ICWA and Basis for good cause

NPRM OVERVIEW

§ 1355.45 Adoption and Guardianship Assistance Data File

- We proposed conforming changes only in this section.

§ 1355.46 Compliance

- We proposed minor conforming changes only in this section.

§ 1355.47 Penalties

- We do not propose to revise this section.



AFCARS NPRM

NEXT STEPS AND RESOURCES

AFCARS NPRM NEXT STEPS

- The NPRM was published on **April 19, 2019**.
- Comment period is open for **60 days** and ends on **June 18, 2019**.
- Please submit comments via: [Regulations.gov](https://www.regulations.gov)
- Link to NPRM in: [Federal Register](#)
- 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 approval.
- Implementation of changes to AFCARS described in this NPRM will be dependent on the issuance of a final rule.
- Expect provisions in eventual final rule to be effective no sooner than the start of the second federal fiscal year following the publication of the final rule.

RESOURCES

Tips for Comments

- Section V of the NPRM preamble offers tips for providing useful comments to the AFCARS NPRM:
 - Consider how this proposed iteration of AFCARS will impact your work and budgets.
 - Note whether the information is readily available or collected as part of the title IV-E agency's casework.
 - Be specific on data elements, costs, and burden hours.
 - Provide an estimate for annual burden hours to adjust existing ways to comply, gather and enter information into the electronic case management system, and associated training.
 - Estimate timeframes for implementing.
 - How reporting the data elements in this NPRM will enhance your work with children and families.

RESOURCES

Tips for Comments, cont.

- For entities that do not report AFCARS (non-title IV-E agencies):
 - Provide specific reasons as to why you feel AFCARS is most effective for collecting the data proposed in this NPRM and why no other current method is feasible to collect information.
 - Describe any work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS.
 - Describe how this AFCARS data, which is aggregated at the national level, will help your specific work with title IV-E agencies, children, and families.

RESOURCES

Link to AFCARS NPRM to submit comments:

https://www.regulations.gov/document?D=ACF_FRDOC_0001-0087

CB Website, What's New in Laws and Policies:

<https://www.acf.hhs.gov/cb/laws-policies/whats-new>

CB Website, General info on AFCARS:

<https://www.acf.hhs.gov/cb/research-data-technology/reporting-systems/afcars>

Code of Federal Regulations, AFCARS:

- § [1355.40](#) and [appendix to part 1355](#)
- § [1355.41-1355.47](#)