

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	1. Log No: ACYF-CB-IM-18-01	2. Issuance Date: March 16, 2018
	3. Originating Office: Children's Bureau	
	4. Key Words: Title IV-E of the Social Security Act, Adoption and Foster Care Analysis and Reporting System (AFCARS), Indian Child Welfare Act of 1978 (ICWA)	

INFORMATION MEMORANDUM

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

SUBJECT: Adoption and Foster Care Analysis and Reporting System (AFCARS) Advance Notice of Proposed Rulemaking (ANPRM) and Notice of Proposed Rulemaking (NPRM) to revise the implementation dates in 45 CFR section 1355.40

LEGAL AND RELATED: Title IV-E of the Social Security Act; 45 CFR 1355

PURPOSE: The purpose of this Information Memorandum (IM) is to inform title IV-E agencies of the ANPRM (published on March 15, 2018 and [83 FR 11449](#)) and the NPRM regarding implementation of the December 2016 AFCARS final rule (published on March 15, 2018 and [83 FR 11450](#)).

INFORMATION: The Children’s Bureau published two notices in the Federal Register in March 2018 regarding AFCARS: an ANPRM soliciting comment and a NPRM regarding implementation of the December 2016 AFCARS final rule.

Background:

- AFCARS is authorized by section 479 of the Social Security Act, which mandates that the Department of Health and Human Services (HHS) regulate a data collection system for national adoption and foster care data. Requirements are set forth in regulations at 45 CFR 1355.40 and the appendices to part 1355. AFCARS data include information on characteristics of children entering and exiting foster care and children adopted with the involvement of the title IV-E agency. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995.
- On December 14, 2016, the Children’s Bureau published a final rule promulgating revised AFCARS requirements ([81 FR 90524](#)). The rule was a culmination of proposed rules published in 2008, 2015, and April 2016. The final rule increased the number of data points title IV-E agencies must report and, among other changes, included for the first time data points related to the Indian Child Welfare Act of 1978 (ICWA). As published in December

2016, the new AFCARS requirements were scheduled to begin with the submission of data for FY 2020 (period covering October 1, 2019 to March 31, 2020 and the period April 1 to September 30, 2020) with the first semi-annual data submission due by May 15, 2020. Until that time, title IV-E agencies must continue to report data under the original AFCARS requirements at 45 CFR 1355.40 and the appendices to part 1355.

- On February 24, 2017, the President issued [Executive Order 13777](#) on Enforcing the Regulatory Reform Agenda to lower regulatory burdens on the American people. 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 U.S. Department of Health and Human Service's Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

Based on this determination, the Children's Bureau issued two notices in the Federal Register. These notices are described below.

NPRM on implementation delay:

- The NPRM was published in the Federal Register on March 15, 2018 and comments are due on April 16, 2018.
- It does two things:
 - Proposes to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41-.47) by two years until October 1, 2021 and;
 - Proposes to extend the reporting of AFCARS data in accordance with the current AFCARS regulation (45 CFR 1355.40 and the appendices to 45 CFR 1355) until September 30, 2021.

ANPRM:

- The ANPRM was published in the Federal Register on March 15, 2018 and comments are due on June 13, 2018.
- An ANPRM is a solicitation of comments that an agency may choose to issue before issuing a NPRM. This ANPRM does not propose a regulatory change; it only solicits comments.
- Through it, we seek public suggestions on streamlining the AFCARS data elements and removing any undue burden imposed by the AFCARS final rule issued in December 2016 ([81 FR 90524](#)).

Purpose and goal of the ANPRM

- We encourage state and tribal title IV-E agencies that did not comment on the previously issued proposed rulemakings in 2015 and 2016 to do so now. We provide a 90-day period for comments to the ANPRM to encourage all title IV-E agencies to provide thorough comments.
- The ANPRM lists questions asking commenters to:
 - Identify the data elements, non-ICWA-related and ICWA-related, that are overly burdensome for title IV-E agencies and to provide an explanation with cost and burden estimates for recordkeeping and reporting;
 - Provide recommendations on data elements to retain with a justification for using the data at the national level;
 - Provide recommendations on data elements to remove with an explanation as to why the data are not reliable or necessary at the national level; and

- Provide suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data.

Process for the public to submit comments.

- Comments to the ANPRM must be received by June 13, 2018.
- Comments to the NPRM on implementation delay must be received by April 16, 2018.
- You may submit comments, identified by docket number 2018-05038 and/or RIN number 0970-AC47 (NPRM) or docket number 2018-05042 and/or RIN number 0970-AC72 (ANPRM), by one of the following methods:
 - Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for sending comments. We recommend this method.
 - Email: CBComments@acf.hhs.gov. Include appropriate docket number and/or RIN number in subject line of the message.
 - Mail: Mail written comments to: Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street SW, Washington, DC 20024. Please allow sufficient time for mailed comments to be received before the close of the comment period.

/s/

Jerry Milner
Acting Commissioner
Administration on Children, Youth and Families

Attachments:

[AFCARS ANPRM](#)

[AFCARS NPRM on implementation delay](#)