

<h1 style="margin: 0;">ACF</h1> <p style="margin: 0;">Administration for Children and Families</p>	<b>U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES</b> <b>Administration on Children, Youth and Families</b>	
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	<b>3. Originating Office: Children's Bureau</b>	
	<b>4. Key Words: Adoption and Foster Care Analysis and Reporting System (AFCARS); Penalties; Title IV-E State Plan Compliance</b>	

**PROGRAM INSTRUCTION**

**TO:** State Agencies Administering or Supervising the Administration of Titles IV-B and IV-E of the Social Security Act.

**SUBJECT:** Adoption and Foster Care Analysis and Reporting System Penalties

**LEGAL AND RELATED**

**REFERENCES:** Sections 479 and 1123A of the Social Security Act and 45 CFR 1355.40.

**PURPOSE:** The purpose of this program instruction (PI) is to notify States of the new policy and procedures regarding the collection of funds resulting from penalties being assessed due to a State's substantial failure to meet the Adoption and Foster Care Analysis and Reporting System (AFCARS) standards and requirements in 45 CFR 1355.40.

**BACKGROUND:**

Federal regulations at 45 CFR 1355.40, which implement section 479 of the Social Security Act (the Act), set forth the AFCARS requirements for the collection of uniform, reliable information on children who are under the placement and care responsibility of the State title IV-B/IV-E agency, and children adopted under the auspices of the State public child welfare agency. States were required to begin collecting the AFCARS data on October 1, 1994 and submit it semi-annually to the Administration for Children and Families (ACF). In order to encourage the collection of accurate and timely data, the ACF included a penalty structure in the data collection system regulations. States were given a three year penalty-free implementation period.

States that fail to meet any of the standards set forth in 45 CFR 1355.40 (a-d) are considered to be in substantial noncompliance with the requirements of the title IV-E State plan. Penalties for those States determined not to be in substantial compliance will begin with the AFCARS data collection reporting period October 1, 1997 through March 31, 1998. The AFCARS penalty for

fiscal year 1998 can total up to five percent per report period (two and a half percent for adoption data and two and a half percent for foster care data); for fiscal 1999 and thereafter the penalty can be up to ten percent per report period (five percent for adoption data and five percent for foster care data). The amount of the penalty to be collected is calculated on the amount of section 427 (now repealed) incentive funds that were available to States as of June 30, 1993 (see Appendix F to 45 CFR 1355). The Federal regulation for AFCARS does not contain a provision that would allow States that failed to meet the requirements in 45 CFR 1355.40 an opportunity to develop and implement a corrective action plan before ACF imposes a penalty.

The Social Security Amendments of 1994 added section 1123A to the Act which, among other things, requires the Department to allow States the opportunity for corrective action before Federal funds are withheld for substantial nonconformity with State plans under titles IV-B and IV-E. Section 1123A became law subsequent to the promulgation of 45 CFR 1355.40 and, therefore, supersedes the AFCARS penalty process to the extent that the two cannot be reconciled.

In order to make the AFCARS penalty collection process consistent with section 1123A, ACF will allow an opportunity for the State to come into compliance through a corrective action plan for noncompliant AFCARS file(s) before imposing a penalty. Federal regulations implementing section 1123A are forthcoming. Until such time, States are to follow the procedures below.

#### **DISCUSSION:**

In accordance with Federal regulations at 45 CFR 1355.40, States are to submit their AFCARS data semi-annually, by May 15 and November 14 of each year. These data are reviewed by the Federal AFCAR system for their compliance with the AFCARS standards. A report is generated by the Federal AFCAR system which is transmitted to the State via the same electronic means that the State used to submit its data. The report serves as an advance notice to the State of its compliance status, but is not an official notification by ACF.

In the event a State is determined not to be in substantial compliance, it will be allowed the opportunity for corrective action before a penalty will be imposed. A corrective action plan for AFCARS will consist of the ACF's notification letter to the States that failed the AFCARS standard(s), and the States' submission of compliant AFCARS file(s) for the report period that failed. The letter sent to States that fail to meet the AFCARS standards will identify minimum action steps a State must take in order to avoid a penalty and come into substantial compliance. Given the time period required in this PI in which States must submit a compliant file (within four and a half months after the due date for the previous data submission), ACF believes that a separate corrective action plan is not necessary at this time.

The following identifies the procedure ACF will utilize to notify States that are not in substantial compliance with the AFCARS standards in 45 CFR 1355.40, and to collect the penalty, if applicable.

#### **PROCEDURE**

A State must correct the AFCARS file(s) that failed and come into compliance with the standards outlined in 45 CFR 1355.40 (a-d). A State is to submit the compliant file(s) for the report period for which it was not in compliance by the end of the next report period. (Example: AFCARS reports due by May 15 that fail the AFCARS standard(s) must be corrected and submitted by September 30 of that year). States that submit AFCARS data which meet the standards in the required time period will be determined to be in substantial compliance, and no penalty will be imposed. **EXCEPTION:** For the report period ending March 31, 1998, for which the report was due by May 15, 1998, States that failed the AFCARS standard(s) will be given four and a half months to submit the corrected AFCARS file(s) from the date the notification letter was sent to the State.

#### 1. AFCARS corrective action.

Within 30 calendar days of each AFCARS submission due date (May 15 or November 14), ACF will send a notification letter to States that failed to meet the standards in 45 CFR 1355.40 (a-d). The letter will include, at a minimum, the following information as applicable:

- The required corrective action;
- The penalty report generated by the Federal AFCAR system as an enclosure;
- The due date for the submission of a compliant AFCARS file(s);
- The amount of the State's penalty to be assessed and collected from title IV-E administrative funds if State fails to submit a compliant file(s);
- The State agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.13, if a penalty is assessed;
- The availability of technical assistance to the State to the extent feasible to implement corrective action;
- The appeal process; and
- The process ACF will implement to assess a penalty and collect funds if a State does not implement corrective action, or come into compliance with the required standards.

For States that enter into corrective action, the following will apply:

(a) Suspension of the AFCARS penalty. The AFCARS penalty will be suspended until the last day of the report period subsequent to the report period for which the noncompliance occurred (i.e., September 30 or March 31).

(b) Withdrawing the AFCARS penalty. For States determined to be in substantial compliance, ACF will not assess an AFCARS penalty when a State successfully completes the corrective action within the required time frame.

(c) Recovery of the AFCARS penalty. States that fail to successfully submit a compliant AFCARS file(s) by the required submission due date, as specified in the notification letter, will receive a final determination of compliance letter by ACF within 10 days after the corrective action submission due date.

#### 2. Administrative and judicial review.

States determined not to be in substantial conformity with 45 CFR 1355.40 requirements may under section 1123A of the Act:

- (a) Appeal the final determination of noncompliance, and any subsequent recovery of funds, to the HHS Departmental Appeals Board within 60 days after receipt of the final determination letter, in accordance with Federal regulations at 45 CFR Part 16, and
- (b) Have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the State receives notice of the decision by the Board. The State must appeal to the District Court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

**EFFECTIVE DATE:** May 15, 1998.

/s/

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James A. Harrell  
Deputy Commissioner  
Administration on Children, Youth,  
and Families

Attachment

STATES	FY 1993 "427" Incentive Funds (45 CFR 1355, Appendix F)	Potential AFCARS Penalty Amount			
		2.5% <sup>1</sup>	5.0% <sup>2</sup>	10.0% <sup>3</sup>	20.0% <sup>4</sup>
ALABAMA	3,027,123	75,678	151,356	302,712	605,425
ALASKA	319,598	7,990	15,980	31,960	63,920
ARIZONA	2,489,758	62,244	124,488	248,976	497,952
ARKANSAS	1,810,474	45,262	90,524	181,047	362,095
CALIFORNIA	15,842,455	396,061	792,123	1,584,246	3,168,491
COLORADO	1,994,852	49,871	99,743	199,485	398,970
CONNECTICUT	1,054,704	26,368	52,735	105,470	210,941
DELAWARE	366,654	9,166	18,333	36,665	73,331
DIST. OF COL.	199,868	4,997	9,993	19,987	39,974
FLORIDA	6,804,391	170,110	340,220	680,439	1,360,878
GEORGIA	4,394,659	109,866	219,733	439,466	878,932
HAWAII	639,985	16,000	31,999	63,999	127,997
IDAHO	879,610	21,990	43,981	87,961	175,922
ILLINOIS	6,387,447	159,686	319,372	638,745	1,277,489
INDIANA	3,723,066	93,077	186,153	372,307	744,613
IOWA	1,847,327	46,183	92,366	184,733	369,465
KANSAS	1,592,415	39,810	79,621	159,242	318,483
KENTUCKY	2,706,817	67,670	135,341	270,682	541,363
LOUISIANA	3,530,254	88,256	176,513	353,025	706,051
MAINE	773,165	19,329	38,658	77,317	154,633
MARYLAND	2,212,265	55,307	110,613	221,227	442,453
MASSACHUSETTS	2,376,333	59,408	118,817	237,633	475,267
MICHIGAN	5,702,164	142,554	285,108	570,216	1,140,433
MINNESOTA	2,654,183	66,355	132,709	265,418	530,837
MISSISSIPPI	2,308,057	57,701	115,403	230,806	461,611
MISSOURI	3,248,788	81,220	162,439	324,879	649,758
MONTANA	603,395	15,085	30,170	60,340	120,679
NEBRASKA	1,092,142	27,304	54,607	109,214	218,428
NEVADA	663,931	16,598	33,197	66,393	132,786
NEW HAMPSHIRE	532,748	13,319	26,637	53,275	106,550
NEW JERSEY	2,767,869	69,197	138,393	276,787	553,574
NEW MEXICO	1,280,697	32,017	64,035	128,070	256,139
NEW YORK	8,170,105	204,253	408,505	817,011	1,634,021
NORTH CAROLINA	4,362,962	109,074	218,148	436,296	872,592
NORTH DAKOTA	482,456	12,061	24,123	48,246	96,491
OHIO	6,860,711	171,518	343,036	686,071	1,372,142
OKLAHOMA	2,303,200	57,580	115,160	230,320	460,640
OREGON	1,852,984	46,325	92,649	185,298	370,597
PENNSYLVANIA	6,647,943	166,199	332,397	664,794	1,329,589
RHODE ISLAND	528,687	13,217	26,434	52,869	105,737
SOUTH CAROLINA	2,658,774	66,469	132,939	265,877	531,755
SOUTH DAKOTA	548,013	13,700	27,401	54,801	109,603
TENNESSEE	3,307,398	82,685	165,370	330,740	661,480

TEXAS	12,481,051	312,026	624,053	1,248,105	2,496,210
UTAH	1,801,178	45,029	90,059	180,118	360,236
VERMONT	359,130	8,978	17,957	35,913	71,826
VIRGINIA	3,303,817	82,595	165,191	330,382	660,763
WASHINGTON	2,958,037	73,951	147,902	295,804	591,607
WEST VIRGINIA	1,318,260	32,957	65,913	131,826	263,652
WISCONSIN	3,151,205	78,780	157,560	315,121	630,241
WYOMING	360,017	9,000	18,001	36,002	72,003
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<b>TOTALS</b>	149,283,122	3,732,078	7,464,156	14,928,312	29,856,624

<sup>1</sup> The 2.5% penalty amount is for each AFCARS file (adoption or foster care) that fails during fiscal year 1998.

<sup>2</sup> The 5% penalty amount is for each AFCARS file (adoption or foster care) that fails beginning in fiscal year 1999.

<sup>3</sup> The 10% column represents the maximum amount of penalty that can be collected during a **report period** beginning with fiscal year 1999.

<sup>4</sup> The 20% column represents the maximum amount of penalty that can be collected during a **fiscal year** beginning with fiscal year 1999.