

June 13, 2018

Ms. Kathleen McHugh, Director  
Policy Division  
Administration for Children and Families  
United States Department of Health and Human Services  
330 C Street, SW  
Washington, DC 20024

**RE: Proposed rulemaking for Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970-AC72]**

**Submitted via email to [CBComments@acf.hhs.gov](mailto:CBComments@acf.hhs.gov).**

The Center for the Study of Social Policy (CSSP) is a national nonprofit organization recognized for its leadership in reforming public systems. We work directly with state and local child welfare systems providing technical assistance on policy and practice strategies impacting families with young children, adolescents, transition age youth and expectant and parenting youth in foster care, youth facing homelessness, and youth who identify as lesbian, gay, bisexual, transgender or questioning (LGBTQ). We also serve as a federal court-appointed monitor in several states engaged in system improvement while under a class action Settlement Agreement. All of our work is devoted to ensuring that all children and youth served by public systems including the child welfare system achieve positive outcomes and can maximize their potential.

CSSP welcomes the opportunity to provide comments on the Advance Notice of Public Rulemaking (ANPRM) regarding the proposal to streamline data collection through the Adoption and Foster Care Analysis and Reporting System (AFCARS). CSSP previously provided comment on the NPRM for the 2016 Final Rule (81 FR 90524), the Supplemental Notice of Proposed Rulemaking (SNPRM) for AFCARS data elements related to the Indian Child Welfare Act of 1978 (ICWA) (81 FR20283), and the most recent NPRM regarding the proposed delay for compliance and effective date for the AFCARS 2016 Final Rule (83 FR 11450).

CSSP strongly opposes reducing the data elements in AFCARS as proposed in the current ANPRM. In order to use data to effectively drive policy, program, and resource development, allocation, and implementation – the states and the federal government need accurate and relevant data that are aligned with current best practice in child welfare. The 2016 Final Rule was a positive step toward collecting currently unavailable data. Without such data, federal, state and local leaders are unable to assess and evaluate the impact of their work and investments. There is broad state and local support to expand the AFCARS data elements. The AFCARS 2016 Final Rule was adopted following an extensive and thorough comment process and many states, including California, Minnesota, and the District of Columbia, have already started to collect these new data elements.

As described in more detail below, the benefit of adding these data elements far outweigh any associated costs and data collection burdens; they are each critically important to improving child welfare systems' ability to better support and promote the safety, permanency, and well-being of the children they serve.

#### *Alignment with Federal Laws and Reporting Requirements*

AFCARS data are used by HHS and state governments in multiple ways including assessing agency compliance with Title IV-E; preparing reports to Congress and state legislatures; budgeting based on trends in child welfare populations; identifying areas for technical assistance; and justifying policy changes and legislative proposals. The 2016 Final Rule was the first update to AFCARS since 1993, when AFCARS was first implemented. Since that time, several key pieces of federal child welfare legislation have passed, including the *Fostering Connections to Success and Increasing Adoptions Act (PL 110-351, 2008)* and the *Preventing Sex Trafficking and Strengthening Families Act (PL 113-183, 2014)*, both of which require the Children's Bureau to collect and report on critical data elements that are currently not included in AFCARS. The required data elements included in these statutes are important for policy and program development aimed at promoting overall well-being outcomes for children and youth in foster care. Specifically, these statutes require states to implement new programs and policies for improving education outcomes for children and youth in care and promoting well-being for children and youth who have been or are at risk of experiencing commercial sexual exploitation (CSEC).

Most recently with the *Family First Prevention Services Act (Family First)*, which was passed as part of the *Bipartisan Budget Act (PL 116-123, 2018)*, it is even more important for states and the federal government to have accurate and relevant data about the children and youth currently in care and potential foster and adoptive parents. These data are central to states' abilities to identify and implement services to prevent the removal and placement of children in foster care as well as reduce reliance on congregate care in favor of placing children in family-like settings whenever possible.

The production of relevant and accurate data is foundational to ensuring that desired policy changes are in fact reaching the intended beneficiaries and objectives of new laws. These data can support better decision-making which can lead to improved outcomes (including expedited permanency for children and youth) which can ultimately lead to more effective and in some cases lower federal and state expenditures on high cost and ineffective placements and supports.

#### *Benefits of the Expanded 2016 Final Rule Data Elements*

AFCARS is an essential tool for collecting national and state data to inform policy development, identify gaps in services, and highlight populations that are experiencing disparate outcomes. These data need to identify the distinct reasons for entry into foster care and child demographic information – including sexual orientation, gender identity, race, tribal affiliation, and whether youth are pregnant or parenting. Being able to disaggregate overall population data will permit us to better understand barriers to achieving positive well-being and permanency outcomes for youth in foster care.

Particularly in light of the recently passed *Family First* legislation, child welfare systems must have data to inform the development and implementation of evidence-based prevention services, reduce the reliance on congregate care, and improve recruitment and retention of foster parents. Without understanding the reasons for entry into care – for example, how many children enter foster care due to parent child conflict related to the child's sexual orientation or gender identity– child welfare systems will not be able to design prevention services to meet the needs of these candidates of foster care. Furthermore, if child welfare systems are unable to disaggregate well-being and permanency outcomes including the reason for entry into care, placement type, length of stay in foster care, permanency goal, or receipt of health care, states' ability to make smart, data-driven investments that reduce the costs associated with placement in foster care while maximizing opportunities to promote the well-being of children and families will be hindered.

## *Support for Including Expanded Demographic Data on Key Population Characteristics*

### Youth who are Pregnant or Parenting

Given the high percentage of youth in foster care who are pregnant or already parents, it is vital that states and the federal government collect data on a youth's parenting status. The pregnancy rate for youth in foster care is higher than their peers who are not in foster care and youth in foster care who are pregnant or parenting face unique challenges. For youth in foster care who are pregnant or parenting, the government has a responsibility to promote their healthy development and well-being and that of their children. *Family First* provides that youth in foster care who are pregnant or parenting and their children are newly eligible for prevention services financed through Title IV-E. Removing this data element from AFCARS now will hinder a state's ability to have the needed data to drive practice, policy and resource decisions regarding pregnant and parenting youth – in terms of meeting current needs as they transition from the child welfare system and preventing future child welfare system involvement for their children. The burden and cost of collecting this data element is minimal in comparison to the potential cost savings from reducing future placements in foster care, decreasing time to permanency, and ensuring needed medical and mental health care for these youth and their children.

### Children and Youth Who Identify as LGBTQ

Research indicates that LGBTQ youth are involved with child welfare systems at high rates and that these youth experience poorer health, safety, and well-being outcomes compared to their cisgender, heterosexual peers. One study in Los Angeles County found that LGBTQ youth were over represented in foster care at a rate of 1.5 to 2 times, often due to being rejected by their families, and that approximately one-fifth of youth in foster care identify along the LGBTQ spectrum.

We know from the places that do collect this data that LGBTQ youth in foster care are subjected to higher numbers of placement changes, lower rates of permanency, and are more likely to be placed in congregate care settings. We need these data from all states in order to develop foster care recruitment, retention and support strategies and evidence-based interventions to meet these youth's unique needs. *Family First* requirements for Title IV-E reimbursement for the placement of children in family foster homes and reducing reliance on congregate care facilities further heightens the need for these data for both planning and implementation.

### *Need to Collect Data related to the Indian Child Welfare Act (ICWA)*

The 2016 Final Rule included the addition of critical data elements related to American Indian/Alaska Native (AI/AN) children, who are subject to the *Indian Child Welfare Act (ICWA) of 1978 (PL 95-608, 1978)*. These data elements, as reported in a 2005 report from the Government Accountability Office are not currently collected at a national level. It has been almost four decades since ICWA enactment and there remain substantial gaps in data, practice, and policy that need attention in order to reduce AI/AN disproportionality and improve tribal, state, and federal responses to child abuse and neglect. AI/AN children are overrepresented within state foster care systems nationally and in some states are overrepresented in care at a rate as high as 10 times their population rate.

The 2016 Final Rule includes the first federal data elements that can provide detailed information on ICWA implementation, allowing tribes, states and federal agencies to develop a greater understanding of the trends in out-of-home placement and barriers to permanency for AI/AN children. Improved policy development, technical assistance, training and resource allocation can and should stem from having access to these data. Removing or reducing any of these data elements in AFCARS will only continue to hinder, rather than support, child welfare's ability to respond to the well-being and permanency needs of AI/AN children.

### *Promoting Education and Healthy Development for Youth in Foster Care*

The 2016 Final Rule included the addition of data elements related to the receipt of health care services and educational status of children placed in foster care. These data are aligned with the *Fostering Connections to Success and Increasing Adoptions Act's* (PL 110-351, 2008) emphasis on meeting the health and well-being of children and youth in foster care. Available research shows that children and youth in foster care have significant health care needs and graduate from high school at lower rates compared to their peers who are not in foster care. Child welfare systems are required to ensure the health and well-being of children and youth in foster care as well as promote their success in school. Having timely and accurate information on a state and national level about children's health and educational status is a basic responsibility of a child welfare system and should be monitored on a regular basis by child welfare workers. Any potential cost and burden of collecting these data within AFCARS is far overshadowed by the absolute necessity of having this data available to both states and the federal government for basic accountability as well as policy and investment decisions. Further, being able to disaggregate health and education data by demographic indicators will help policymakers and administrators allocate dollars to targeted populations with specialized needs.

### *Ensuring Permanency for Youth in Foster Care*

Every child and youth in foster care deserves to be raised in a permanent family. However, as current AFCARS data show, on September 30, 2016, 117,794 children were waiting to be adopted from foster care. States need additional data to understand existing gaps in recruitment strategies and supports to adoptive parents. The 2016 Final Rule included demographic information for adoptive parents. This information, which adoptive parents have the option to share, can provide insights about who chooses to become adoptive parents and can help inform recruitment strategies to better attract potential adoptive parents for the many waiting children and youth.

### *Alignment with a Comprehensive Child Welfare Information System (CCWIS)*

AFCARS implementation depends significantly on the ability of state agencies to implement a comprehensive child welfare information system. As we noted in our response to the CCWIS NPRM (81 FR 35449), the upcoming changes in AFCARS should be aligned with the redesign of CCWIS. Many states are well into their planning to implement a new CCWIS; a delay in the effective date of the 2016 Final Rule will cause confusion for states and prevent them from adequately building their systems to collect these important data. Lessons from previous system updates have shown that it is much more difficult to retrofit a system to collect information than to include essential data elements in the system at the time that it is being built. Any attempt to remove important data elements from AFCARS now will create regulatory uncertainty and undermine the implementation of an effective CCWIS – and possibly lead to additional future costs to states who may need to retrofit their systems later on.

### *Supporting Reliable Data Collection*

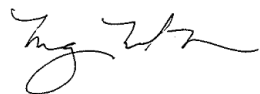
The data elements included in the 2016 Final Rule are not only important to driving policy and financial investments at a system-level but are also central to daily case planning activities for each and every child involved with child welfare. Without collecting information on reasons for entry into care; demographic data including information related to tribal affiliation, sexual orientation, and gender identity; receipt of health care; and educational status, frontline child welfare workers will continue to be at a disadvantage and face barriers in fulfilling their job responsibilities to promote children's safety, permanency, and well-being. Collecting these data routinely and as part of a state's administrative data should be, and in many places has become, standard practice. Having these data available through the national AFCARS data base is an important accountability tool for child welfare system performance and for ensuring individual, child, and family outcomes consistent with federal law.

### *Conclusion*

Reliable and complete state and national data are needed to guide decision-making and financial investments for achieving better child and family well-being outcomes, including shorter stays in foster care. By updating AFCARS through the 2016 Final Rule, HHS had taken a significant step toward correcting extensive gaps in federal child welfare data collection and analysis. Any attempt to remove data elements from the 2016 Final Rule will be detrimental and inhibit states' abilities to effectively promote permanency and well-being outcomes – directly undermining their legal responsibility to children, youth and families, decreasing the ability of the federal government and the states to use data to promote improved outcomes and ultimately increasing the financial burden to the federal government, states, and the public of ineffective child welfare programs and systems. Rather than reducing data collection, we strongly encourage HHS to move ahead with the 2016 Final Rule and additionally support state agencies with direct technical assistance as they work to implement changes in their data collection.

We look forward to working with HHS in the future on how to best use the data available in AFCARS to promote accountability and improved outcomes for all children and youth. If you have any questions, please don't hesitate to contact me, (202) 371-1565; [megan.martin@cssp.org](mailto:megan.martin@cssp.org).

Sincerely,



Megan Martin  
Vice President, Director of Public Policy  
Center for the Study of Social Policy