



June 12, 2018

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

Docket Number 2018-05042 and RIN number 0970-AC72

Dear Ms. McHugh:

On behalf of the Child Welfare League of America, a coalition of private and public entities and individuals dedicated to ensuring the safety, permanency, and well-being of children, youth, and their families, we appreciate the opportunity to provide input on the Advanced Notice of Proposed Rulemaking (ANPRM) in the Federal Register on March 15, 2018 seeking to change the 2016 Adoption and Foster Care Analysis Reporting System (AFCARS) Final Rule.

As noted in our April comments rejecting a proposed delay in implementation, *the CWLA National Blueprint for Excellence in Child Welfare promotes the principle that each entity should collect meaningful data to support its ability to make decisions; improve proactively; and help children, youth, and families to achieve identified outcomes.*

We believe the delay will negatively impact title IV-E agencies from being able to effectively achieve their desired outcomes for children and families. AFCARS are an important part of the accountability commitment expected of child welfare organizations. As a national leader in the field of child welfare for almost 100 years that sets the best practice standards we are concerned about the continued delay of the implementation of the revised AFCARS reporting elements.

The 1993 AFCARS Rule (1993 Rule) is outdated and does not reflect contemporary child welfare practice. The 1993 Rule is also not comprehensive because it does not collect data related to the ICWA, a federal law directly applicable to children in title IV-E funded child welfare contexts. The 1993 Rule is also not comprehensive because it does not include data statutorily required by other federal laws including the Fostering Connections to Success and Increasing Adoptions Act and the Preventing Sex Trafficking and Strengthening Families Act. Until the Final Rule is implemented ACF is not in compliance with the statutory requirements of section 479.

Current AFCARS leaves out data and information that can better inform policy, practice and research. This is critical in an era when Congress and others are calling for more evidence-based practice and policy. CWLA is particularly concerned about the possible removal of data and data elements that will better inform how we serve and care for families and children most effected by the Indian Child Welfare Act (ICWA), placement decisions regarding institutional placements, adoption information including dissolution and disruption data, education and health outcomes as well as vital placement and care issues for children and youth that identify as LGBTQ.

### **History of AFCARS**

The Final Rule is the first update of AFCARS since 1993, when AFCARS was first implemented on December 22, 1993. We feel the delay will push access to needed data and information that has been limited by the continued reliance on this original inadequate set of data elements finalized more than two decades ago. A delay deprives communities and citizens of the benefits of data that reflects child welfare practice today, not child welfare practice as it was in 1993. The Final Rule published on December 14, 2016 was to be effective January 13, 2017. This continues a pattern of delay after earlier efforts to revise and improve information through earlier public comment periods and attempts to update AFCARS in 2003, 2008, 2010, 2015 and now most recently 2016.

There will always be a rational for delaying revisions due to new concerns resulting from future changes to child welfare law and practice when they occur. The decision to invest in technology is always challenging.

We believe the Final Rule represents a compromise between the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters. The Final Rule was a product of refinement and additional streamlining risks undermining the comprehensiveness of the Final Rule (falling short of the requirements of sec.479)

Since the AFCARS were last implemented several items have been added to state plan requirements. This combined with other legislative and policy changes enacted or implemented highlight the need for greater information. We highlight the following in Title IV-B and Title IV-E state plan requirements that include descriptions and mandates:

- “a description developed after consultation with tribal organizations in the State, of the specific measures taken by the state to comply with the Indian Child Welfare Act”
- “a description of the activities that the state has undertaken for children adopted from other countries, including the provision of adoption and post-adoption services;”
- “provide that the state shall collect and report information on children who are adopted from other countries and who enter into state custody as a result of the disruption of a placement for adoption or the dissolution of an adoption, including the number of



children, the agencies who handled the placement or adoption, the plans for the child, and the reasons for the disruption or dissolution;”

- “a plan for the ongoing oversight and coordination of health care services for any child in a foster care placement, which shall ensure a coordinated strategy to identify and respond to the health care needs of children in foster care placements, including mental health and dental health needs, and shall include an outline of—
  - a schedule for initial and follow-up health screenings that meet reasonable standards of medical practice;
  - how health needs identified through screenings will be monitored and treated, including emotional trauma associated with a child’s maltreatment and removal from home;
  - how medical information for children in care will be updated and appropriately shared, which may include the development and implementation of an electronic health record;
  - steps to ensure continuity of health care services, which may include the establishment of a medical home for every child in care; the oversight of prescription medicines, including protocols for the appropriate use and monitoring of psychotropic medications;
  - how the state actively consults with and involves physicians or other appropriate medical or non-medical professionals in assessing the health and well-being of children in foster care and in determining appropriate medical treatment for the children;
  - and steps to ensure that the components of the transition plan development process ...that relate to the health care needs of children aging out of foster care, including the requirements to include options for health insurance, information about a health care power of attorney, health care proxy, or other similar document recognized under state law.”
- “policies and procedures for identifying, documenting in agency records, and determining appropriate services with respect to any child or youth over whom the state agency has responsibility for placement, care, or supervision and who the state has reasonable cause to believe is, or is at risk of being, a sex trafficking victim;”
- “provides assurances that each child who has attained the minimum age for compulsory school attendance under state law and with respect to whom there is eligibility for a payment under the state plan is a full-time elementary or secondary school student or has completed secondary school, ...;”

- “provides that reasonable efforts shall be made to place siblings removed from their home in the same foster care, kinship guardianship, or adoptive placement, unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings; and in the case of siblings removed from their home who are not so jointly placed, to provide for frequent visitation or other ongoing interaction between the siblings, unless that State documents that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings;”

### **The Indian Child Welfare Act**

CWLA has a concern that new data requirements regarding Indian Child Welfare Act (ICWA) will be weakened.

States have already been putting in place the infrastructure needed to comply with the ICWA regulations such as revising processes and forms, adjusting their systems to capture the data needed and be able to monitor the safety, permanency and well-being of the children and families they are involved with, revising court processes, and training staff. The Capacity Building Centers funded through HHS have Indian Child Welfare Act (ICWA) as one of their 4 priority areas of focus for their work with the states, tribes, and courts. The staff at these centers have expended much effort to support these entities in their efforts.

CWLA notes that in a recent web-based presentation, HHS highlighted the burden on the child welfare workforce. As highlighted in that power-point presentation, state performance in Child and Family Services Reviews shows flat performance over the last decade and that *“every state is struggling with recruitment and retention of qualified case work staff. Caseworks are critical to the improvement of child welfare outcomes and are responsible for gathering most of the information that is to be reported to AFCARS.”*

We agree with this sentiment in assessing the importance and burden on the child welfare workforce, but we feel that the proper response is not to further delay a twenty-five-year-old standard but to raise the importance and the investment in child welfare workforce development with multiple strategies that we stand ready to assist in.

In line with this we stand ready to work with ACF in seeking enhanced funding to assist states in updating their AFCARS data and state information systems.

In this matter of collecting data that can help measure the implementation of the Indian Child Welfare Act, we agree with earlier points made by ACF in 2016:

*“Collecting data on Indian children, including ICWA-related data, is within the authority of section 479 because it is in line with the statutory goal of assessing the status of children in foster care. ACF is exercising its authority to ... [impose] a limited new set of ICWA-related data because section 479(a) authorizes “the collection of data with respect to adoption and foster care in the United States” and Indian children are children living within the United States and are those intended to benefit from both ICWA and titles I V-B and IV-E. The ... data relevant to AI/AN children ... supports ACF in assessing the current state of the well-being of Indian children as well as state implementation of title*



*IV-E and IVB. ACF proposes to use the collected data to make data-informed assessments; and to develop future policies concerning tribal-state consultation, ICWA implementation, and training and technical assistance to support states in the implementation of title IV-B and title IV-E programs." (81 FR 20287)"*

Indian Tribes and tribal organizations, including those whose mission is centered on Indian child welfare, were universally supportive of the Final Rule following decades of requests to modify AFCARS to address the lack of actionable data on Indian children for whom state agencies receive federal funds under Title IV-E of the Social Security Act.

As states have put in place the policies, processes and infrastructure needed to implement the ICWA regulations they have involved all relevant stakeholders, in particular the tribes. They have worked collaboratively with the tribes not only in their state but in other states because of the make-up of the children and families they serve. This collaborative work and relationship and coordination building has included data sharing of child welfare information with the tribes and having tribal representation as part of the state compliance committee.

The need to do better by all children and families propel them forward. Having the correct data that can reflect what is working and what more needs to be done to ensure the safety, permanency and wellbeing for them is critical. The Child and Family Services Reviews examine the states performance for ALL children and families and it is common to see the Performance Improvement Plans for states with action items related to ICWA. AFCARS data is part of the national picture of how states are doing. To delay having a comprehensive set of AFCARS data elements means hampering ACFs responsibility of monitoring overall performance but more importantly the improvement of outcomes for ALL children and families served.

We also note that state representatives had offered eighteen recommendations to streamline or eliminate ICWA-related data elements. The Children's Bureau concurred with 13 of the recommendations with a clear explanation outlined in the 2015 Final Rule.

We believe that the ICWA is an important responsibility for HHS and child welfare agencies. Past oversight efforts by Congress and others including the Government Accountability Office (GAO) have noted a lack of information and state data. We fully support ICWA and effectively enforcing this 1978 law. We do support efforts to better coordinate activities between the various Federal agencies and we stand ready in supporting funding to assist in this coordination.

### **Additional Important Data Added**

The Child Welfare League of America supports a number of key new and revised changes to the 2016 AFCARS Final Rule. This includes: longitudinal data that will allow for better tracking and information on children in care; information regarding children who have been adopted; new

data elements on a child's timely health assessment and diagnosed conditions; the ICWA data elements and data that impacts on gender-equity and the treatment of youth who identify as LGBTQ, sibling placements. Regarding this last issue we refer to a recent report supported by the Children's Bureau, a study by RISE conducted by the UCLA Williams Institute:

*"Over 19% of young people in L.A. County's child welfare system, the largest child welfare system in the U.S., identify as LGBTQ. This from a study ... ([http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS\\_report\\_finalaug-2014.pdf](http://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_finalaug-2014.pdf)). This groundbreaking study also revealed LGBTQ children and youth to be significantly more disadvantaged than their non-LGBTQ counterparts in numerous ways. For instance, they are more likely to report being ill-treated while in care. They also have a higher number of placements, which means they bounce from school to school, leading them to drop out at higher rates; they are more likely to live in group homes instead of with loving families; they have a higher number of hospitalizations due to mental health problems, and they are discharged from the system at age 18 or 20 without permanent family or community connections. It is notable that the majority of LGBTQ youth in the sample were youth of color. Nearly 40 percent of the 1100 individual homeless transition age youth we welcome to the Los Angeles LGBT Center's daytime drop-in center and three residential programs, come from the foster care system or probation."*

CWLA understands that collection of this information needs to be conducted in an appropriate manner. We recommend that the data elements in the Final Rule be retained and not further streamlined. The 2016 Final Rule represents a streamlining and revision of the original proposed rule (2015 NPRM and 2016 SNPRM). Burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, in addressing burden as well as addressing concerns on how to collect this data in an appropriate manner. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system and reduced systemic costs.

### **Cost Concerns**

We also note that in 2015 the Children's Bureau published an important and significant update to state information systems. This new Comprehensive Child Welfare Information System (CCWIS) removed some of the onerous requirements around a single comprehensive state system and now allows the use of cost-effective and innovative technologies to automate and stay up to date on the collection of high quality case management data. While Congress has not provided enhanced federal matching funds as it did with the original design, we would certainly work with you in seeking such additional support.



ACF expresses concern for the potential added costs to states stating in the Delay NPRM that they “do not want states to incur these costs unnecessarily as we further assess burden under the rule.” We feel the delay and this proposal to revise what is collected will require states to incur more costs, not less, and to divert resources. Both the delay and revisions create uncertainty which is a burden on Title IV-E agencies, states, and tribes as they plan and execute critical updates to their child welfare information systems.

States will spend more time and resources implementing future AFCARS update at the very time we hope we can begin to focus on the new financing structure that is now a part of the Title IV-B and Title IV-E law.

Considering the 25-year history of the evolution of AFCARS, there is no assurance that additional delays will not result because of the next set of priorities, laws and changes in practice. In the interim, the child welfare system, which we believe is underfunded and under resourced, will continue to lack the latest data and information that can document the real needs of these children and families.

The Child Welfare League of America thanks you for the opportunity to submit comments on steps to improve AFCARS. If you have any questions, please do not hesitate to contact John Sciamanna at [jsciamanna@cwla.org](mailto:jsciamanna@cwla.org).

John Sciamanna  
Vice President of Public Policy  
Child Welfare League of America