



June 13, 2018

Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
Director, Policy Division
330 C Street SW
Washington, D.C. 20024

RE: Proposed Rulemaking for Adoption and Foster Care Analysis and Reporting System; RIN 0970-AC72

To Whom It May Concern:

On behalf of the Human Rights Campaign's nearly 3 million members and supporters nationwide, I write in response to the request for public comment regarding proposed changes by the Administration for Children and Families (ACF) to AFCARS' data collection procedures published March 15, 2018. As the nation's largest organization working to achieve equal rights for the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community, HRC strongly supports comprehensive federal data collection efforts that directly address sexual orientation and gender identity. HRC strongly urges ACF to maintain the current data elements of AFCARS and to collect information on the sexual orientation, gender identity, and gender expression of children both in out-of-home care and of foster parents, adoptive parents, and legal guardians. By retaining sexual orientation, gender identity, and gender expression ("SOGI") in the data elements of AFCARS, ACF can ensure that the child welfare system is able to provide a safe, loving, and affirming placement to every child who is unable to live with their parents.

I. The data elements currently in AFCARS are not overly burdensome and have already been streamlined through numerous comment periods.

The December 14, 2016 AFCARS Final Rule (“Final Rule”) established that questions regarding sexual orientation, gender identity, and gender expression should be included in AFCARS data collection process. The Final Rule is the result of streamlining the original proposed rule.¹ Stakeholders and interested parties had ample opportunity to provide feedback and voice concerns on the data elements included in AFCARS. The Final Rule from 2016 reflects this public input and the data elements that it introduces, including questions about SOGI, are not overly burdensome. Any additional burden incurred by collecting these data elements are far outweighed by the benefits of more informed policy; without accurate and comprehensive information about sexual orientation and gender identity, it is impossible to know how the child welfare system can best serve LGBTQ children and youth.

These changes also bring AFCARS into compliance with statutory requirements for data collection as outlined in the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110-351) as well as changes to foster care services introduced in the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), and the *Child and Family Services Improvement and Innovation Act* (P.L. 112-34). The Final Rule also introduces data elements that ensure implementation of the *Indian Child Welfare Act* (P.L. 95-608), which seeks to improve outcomes for tribal youth. Again, any burdens resulting from these changes are mitigated by the improvements that comprehensive data will make possible in implementing and assessing these policies.

Furthermore, the 2016 Final Rule represents the first time AFCARS has been amended since 1993. The data elements introduced by the Final Rule represent a much-needed updating of AFCARS and reflect advances in child welfare policy and practice. The child welfare profession has acknowledged the importance of collecting SOGI information about children for creating individualized case plans and tracking outcomes in individual cases. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued professional guidelines addressing managing SOGI information in child welfare systems. The guidelines emphasize that population-based data for LGBTQ youth in foster care is necessary for policymakers to make informed, evidence-based decisions about allocating resources, providing support, and assessing outcomes for LGBTQ

¹ 2015 NPRM: <https://www.federalregister.gov/documents/2015/02/09/2015-02354/adoption-and-foster-care-analysis-and-reporting-system>; 2016 SNPRM: <https://www.federalregister.gov/documents/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>

children.² Removing SOGI data elements from AFCARS data collecting procedures would leave ACS out-of-step with the current recommendations of child welfare specialists and professionals.

II. Maintaining the collection of SOGI data is critical to the safety, permanency, and well-being of LGBTQ children in foster care.

Data collection and LGBTQ children

We strongly recommend that ACS maintains the data elements in the Final Rule related to sexual orientation, gender identity, and gender expression. LGBTQ youth are disproportionately overrepresented in the foster care system. A 2013 study conducted with the R.I.S.E Project³, a 5 year \$13.3 million demonstration grant funded by the ACF to create a model program to support LGBTQ youth in the foster system, found that 19% of youth ages 12-21 in foster care self-identify as LGBTQ. This is 1.5 to 2 times the number of LGBTQ youth estimated to be living outside of foster care.⁴ LGBTQ youth are also more likely to be living in congregate care, such as group homes, residential treatment facilities, and psychiatric institutions. They are also more likely to have been homeless, more likely to have been hospitalized for emotional reasons, and more likely to report being mistreated by the foster care system -- at rates 2 times higher than their non-LGBTQ peers.⁵ Further data on the experiences of LGBTQ youth in the foster care system is imperative to improving outcomes, reducing costs, and reducing disparities.

These disparities in experiences with the foster care system are consistent with a growing body of research demonstrating that LGBTQ youth suffer from a range of health and mental health disparities associated with family rejection, school bullying, societal stigma, and discrimination. The Human Rights Campaign Foundation and the University of Connecticut recently published a report based on a survey of over 12,000 LGBTQ teens. Among the key findings are 67% of LGBTQ teens hear their family members make negative comments about LGBTQ people, 73% have experience verbal threats based on their sexual orientation or gender identity, and 95% report difficulty sleeping at night due to stress. In order to identify these risks, the child welfare system must affirmatively collect information about the sexual orientation and gender identity, and expression of the children in its custody. Failure to understand these aspects of a child's identity can lead to poor decisions that seriously undermine the child's permanency, safety, and well-being.

² Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, "Sexual and Gender Minority Youth in Foster Care," August 2014. https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf

³ <https://lalgbtcenter.org/rise>

⁴ See "Sexual and Gender Minority Youth in Foster Care, *supra* note 2

⁵ *Ibid.*

The 2016 Final Rule introduced voluntary questions regarding the sexual orientation of foster youth over the age of 14. HRC strongly urges that these questions be retained. The poor outcomes experienced by LGBTQ youth are extremely costly for state and tribal welfare systems. Identifying LGBTQ youth through a voluntary sexual orientation question enables states and tribes to implement effective interventions, minimize stays in congregate care, and improve the permanency of placements. All of these measures reduce the overall costs of the child welfare system and justify any burden incurred by asking a question about sexual orientation.

HRC urges ACF to retain the data element related to the removal of a child from a family home due to “family conflict related to child’s sexual orientation, gender identity, or gender expression.” Family preservation, or helping a child remain with their family of origin, is a priority of the current ACF administration. Including information about removal in AFCARS can inform approaches to and funding for family conflict and acceptance work. The high numbers of LGBTQ youth who end up in foster care suggests that improved family preservation could significantly reduce the number of LGBTQ children who are removed from their families. Removing this data element would impair the ability of states and tribes to improve outcomes for LGBTQ youth and to reduce the over-representation of LGBTQ youth in care.

Data Collection and LGBTQ parents

In addition to LGBTQ youth in the foster care system, it is also critical to collect SOGI-related data on foster and adoptive parents. Like LGBTQ youth, LGBTQ parents are disadvantaged by the foster care system and remain a significantly under-tapped resource in the effort to place children with permanent families. National surveys indicate that nearly 2 million LGBTQ adults are interested in adopting children.⁶ Given the chronic shortage of foster homes in the United States, every effort should be made to recruit and retain all qualified prospective resource families. Including the SOGI of foster families in AFCARS will increase disclosure and ensure that all applicants are thoroughly assessed, which will allow for placements that are most likely to be successful and permanent. Data collection will help identify trends in the types and successes of placements, such as the number of foster placements that result in permanent adoptions. Comprehensive data about SOGI in the foster care system is necessary to maximize the pool of permanent placements for children. To that end, ACF should retain the question in AFCARS regarding the sexual orientation of adoptive and foster parents and guardians.

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⁶ The Williams Institute and the Urban institute, *Foster and Adoptive Parenting by Gay and Lesbian Parents in the United States*, (2007). <https://williamsinstitute.law.ucla.edu/research/census-lgbt-demographics-studies/lgbt-parenting-in-the-united-states/>

HRC urges the U.S. Department of Health and Human Services and the ACF to retain all of the data elements in the 2016 AFCARS Final Rule, including those related to sexual orientation, gender identity, and gender expression. LGBTQ children are among the most vulnerable populations that ACF serves. By retaining SOGI questions in its data collection efforts, ACS can take important steps to ensure that all LGBTQ youth in foster care feel safe, affirmed, and loved.

Sincerely,

A handwritten signature in black ink that reads "David Stacy". The script is fluid and cursive, with the first letters of "David" and "Stacy" being capitalized and prominent.

David Stacy
Government Affairs Director
Human Rights Campaign