

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, DC 20024

RE: Proposed rulemaking for streamlining the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements and removing any undue burden related to reporting AFCARS, 45 CFR 1355 (Mar. 15, 2018) [RIN 0970--AC72]

Submitted via email to CBComments@acf.hhs.gov.

Dear Ms. McHugh,

Northwest Resource Associates (NWRA) writes to the Administration of Children and Families (ACF) in order to present comments regarding the notice that the Federal Register published on March 15, 2018 (83 Fed Reg. 11450). Within the December 14, 2016 Adoption and Foster care Analysis and Reporting System (AFCARS) Final Rule ("Final Rule") lies Section 479 of the Social Security Act mandating the Department of Health and Human Services (DHHS) to collect national, uniform, and reliable information on children in state foster care and adoptive care. The statutory language is expansive and suggests a broad collection of data for children under state care who are in foster care or adoption that includes their demographics, characteristics, and status while in care. NWRA requests that the current data elements in the AFCARS Final Rule be maintained as it pertains to vulnerable children in the foster care system.

Previously, NWRA submitted comments regarding the decision to delay the implementation of the 2016 AFCARS Final Rule and the negative effects the decision would entail for those within foster care. In relation to that decision, we feel as though any streamlining, modifying or eliminating of data elements within AFCARS pertaining to federal child welfare would too produce adverse effects when addressing the needs of vulnerable children. Because AFCARS has not been updated since 1993, data elements added in the Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the *Preventing Sex Trafficking and Strengthening Families Act* (P.L. 110--351) and changes in foster care services and oversight 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). Critically, the Final Rule will also provide data to ensure Implementation and oversight of the *Indian Child Welfare Act* (P.L. 95--608), improving outcomes for tribal youth. The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System (CCWIS), and many of the data elements will assist states in implementing the recently passed *Family First Prevention Services Act* ("Family First," P.L. 115--123)

Furthermore, organizations and the public were provided multiple opportunities to address the burdens and benefits related to updating the 25--year--old AFCARS regulation including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect those numerous public comments, are not overly burdensome and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Of those the benefits clearly outweigh the potential burdens when focusing on child welfare.

Adoption and Foster Care

NWRA advocates for those within the foster care system seeking adoption thus AFCARS' data point collection system would be a tremendous asset in providing effective advocacy for these vulnerable children. The data point collection would provide essential insight to the child's experience in care by developing a deeper understanding on information regarding failed adoptions, children whom linger within the foster care system and those who have been rehomed.

In addition, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. The data element relating to educational stability should be retained as it is consistent with and supported by both federal child welfare and education law. School Enrollment: We support the inclusion of basic information to track a child's enrollment in school. This change also aligns AFCARS with the requirements of the *Fostering Connections Act*. The issue of variations in the definitions of "elementary," "secondary," "post--secondary education or training," "college," "not school--aged," and "not enrolled," across states and jurisdictions is minimal, as the data element is based on the statutory requirement in section 471(a)(30) of the Social Security Act.

As it pertains to foster care youth the following elements of the 2016 AFCARS Final Rule should be maintained;

Educational Level: Requiring states to report on the highest educational level achieved as of the last day of the reporting period will allow for better tracking of educational trends, such as retention rates and college attendance.

Educational Stability: The data element relating to educational stability should be retained as it is consistent with and supported by both federal child welfare and education law. *Fostering Connections* mandates educational stability. Child welfare agencies must take steps to place children close to the schools they have been attending and to plan for and collaborate with education agencies to ensure that children remain in the same school when their living situation changes unless a school change is in the child's best interest. Since the adoption of *Fostering Connections* in 2008, most state and county agencies have changed policy and practice to encourage school stability, which has been further supported by the Every Student Succeeds Act (ESSA). However, without data it is difficult to measure progress and trends. Collecting this data will allow longitudinal information about children to be tracked and maintained over time. This will be critical to determining the overall school stability of children during their entire stay in care.

Special Education: We strongly support the need for this data element. Studies indicate that anywhere from 35% to 47% of children and youth in out-of-home care receive special education services at some point in their schooling (compared to the national average of under 13% of school aged children). However, we currently have no reliable national data on the exact number of students in care who qualify for services under the IDEA. Retention of this data element would fill this gap. This data is important to both child welfare and education agencies and it would focus state and local agencies' attention on effectively delivering services to these children. Furthermore, there will be little variability across states and jurisdictions, as the definitions for Individual Education Programs and Individual Family Service Plans are outlined within the Individuals with Disabilities Education Act (IDEA). The limited education elements are tailored to address current areas of weakness in data collection and reporting and must be retained to ensure the safety, permanency, and especially the well-being of all children in foster care.

More so, all of the information collected on foster care youth and adoption will provide a road-map for future policies and practices. This will lead to more effective advocacy for those who have been impacted by the foster care system.

LGBTQ

Moreover, information collected through AFCARS regarding lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth provides remarkable acumen. It is crucial or data on these individuals' sexual identity to be collected not only to track their experiences and how they may differ from other children but also to set a precedent regarding youths' ability to identify themselves.

In addition, research indicates that reducing the severity of family rejection based on sexual orientation gender identification and expression (SOGIE) results in a reduction in suicidal ideation and self-harm, depression, substance use and sexually transmitted infections. All of these negative public health outcomes are costly not only to children personally, but to the child welfare system and our communities as a whole. This data element related to family rejection will help drive effective case planning and services resulting in better outcomes for youth and families and cost savings to states and tribes.

In April 2011, ACF confirmed and reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."¹ ACF further acknowledged that LGBTQ youth are overrepresented in the population served by the child welfare system and in the population of youth experiencing homelessness. Yet, LGBTQ youth will be inadequately served until states and tribes have more information about these youth and their experiences and outcomes, and how institutions can better respond to their individual needs.

With LGBTQ youth being disproportionately overrepresented in foster care and suffering worse safety, permanency, and well-being outcomes than their non-LGBTQ peers data on these youth at the state level is urgently needed to improve outcomes, reduce costs, and reduce disparities. Data at the national level is necessary to inform federal law, policy and funding determinations, to identify best practices for replication and, critically, to enhance the Administration on Children and Families' efforts to prevent removal and allow to children to remain safely at home with their families.

Continually, in its April 2011 guidance, ACF confirmed that “LGBT parents should be considered among the available options for states and jurisdictions to provide timely and safe placement of children in need of foster or adoptive homes.”² Almost forty years of research has overwhelmingly concluded that children raised by same--sex couples are just as healthy, socially adjusted, and psychologically fit as children with heterosexual parents³. Recruitment of LGBQ families could provide a source of affirming, supportive homes for LGBTQ foster youth, reducing the costs that are associated with the placement instability and overrepresentation in congregate care that these youth experience. Due to this, data resulting from the voluntary sexual orientation question for adoptive and foster parents and guardians will help states and tribes recruit and support

¹ Administration for Children and Families, ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care (April 6, 2011) <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf>

² same as 1

³ ECDF Act Facts, Family Equality Council (2017), https://www.familyequality.org/get_informed/advocacy/ecdf/ecdf-facts/

LGBTQ caregivers, increasing the pool of available homes for foster children, and help identify states and agencies which can do better in recruitment of LGBTQ resource families.

American Indians and Alaska Natives

Likewise, information regarding American Indian and Alaska Native (AI/AN) within custody of state child welfare authorities is insufficient. It has been almost 25 years since the establishment of the AFCARS data collection system and 40 years since the enactment of ICWA. AI/AN children are still waiting to have basic data collected that describes their conditions, how relevant federal law under Title IV--B, Title IV--E, and ICWA is being implemented with respect to AI/AN children, and the identification of critical data that can inform local and national interventions to eliminate well-- documented and long term foster care disproportionality and service disparities that AI/AN children face. The Final Rule, which ACF developed under the statute, ensures the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children to whom ICWA applies, and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under the Social Security Act.

Due to the terminology previously used to evaluate these children, data collection has been unable to provide an accurate evaluation of AI/AN children within the foster care system. Through data regarding AI/AN children an increase in support to states and surge of effectiveness when allocating federal resources could be achieved to better serve this overrepresented population within foster care. Ultimately, the data accumulated regarding AI/AN children would ensure active efforts of implementing ICWA at state and local levels.

We have seen at the local level, while states and tribes are increasingly partnering to improve ICWA implementation and improve outcomes for AI/AN children, data collection is a consistent concern and hampers efforts by states and tribes to demonstrate the need for additional policies and resources with state legislators. Since the publication of the Final Rule in December of 2016 a number of states have already begun work with tribes in their state on data system improvements and begun discussions of how the data would be supported and shared among state and tribal governments. Unfortunately, this Advanced Notice of Proposed Rule Making (ANPRM) has caused these efforts to be called into question

and further delay the ability to seek real, meaningful answers to issues that frustrate AI/AN children's well-being on a daily basis.

Conjointly, an implication for not implementing the data elements for AI/AN children in the Final Rule is it sends a message to states and tribes that the federal government does not consider data collection on this population a priority issue, which also disincentivizes state and tribal efforts to address these issues at the federal and local level. Increasingly important is how both data sets would direct appropriate and effective policies to serve their populations and educate governments on areas needing improvements and reform.

The regulations themselves, in response to the comments from tribes and states, describe the importance of the 2016 Final Rule changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations, and federal agencies have stated that ICWA is the "gold standard" of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.

In light of these comments and the recent passage of the *Family First Prevention Services Act* by Congress in February of 2018 (Division E of the Bipartisan Budget Agreement Act, H.R. 1892) where Congress is clearly expanding the purposes of the Title IV--E program to include not only placement activities, but also prevention services to families, we see even more relevance and need for the data elements for AI/AN children and families included in the 2016 Final Rule.

While concerns of targeting and discrimination arose when encourage the allowance of children identifying their sexual orientation and/or citizenship in relation to American Indians and Alaska Natives are disassembled through the greater benefits. Additionally, The Final Rule stated that "information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality." Due to these regulations the safety of those who choose to identify their sexual orientation and/or citizenship would be protected.

Through the Final Rule many states already began implementation of AFCARS. Changing the system would in turn cause more of a burden rather than a relief, as those in compliance in AFCARS would once more have to adjust programs with accepting a monetary loss while diverting resources.

To address those whom have not yet implemented AFCARS a means of offsetting the difference in resources between organizations includes data sharing between child welfare and education. Even more so, all states have, and will continue to, update their data systems to meet the increasing demands of serving children and families and to stay current with the latest technology and data exchange advances. Any claims of cost burdens by states are overstated, as all states will expend these costs to update their systems regardless. AFCARS allows these updates to have a finite number of data elements that are universal across states, necessary to identify trends and to continue to improve our child welfare system responses.

We believe that streamlining, modifying, or eliminating any portion of the data point collection system in place through 2016 AFCARS Final Rule would do a great disservice to vulnerable youth within the foster care system. We strongly encourage you to maintain the new data points to requirements as outlined in the 2016 Final Rule in order to ensure the well-being of all children. Thank you for this opportunity to elaborate on the benefits of the data collection elements as outlined in the Final Rule.

Sincerely,



Kendra Morris-Jacobson
Director of Oregon Programs – Northwest Resource Associates