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

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: RIN 0970-AC72 - Request for Public Comments on the Adoption and Foster Care Analysis and Reporting System (AFCARS), December 14, 2016 AFCARS Final Rule ("Final Rule") (45 CFR 1355 (Mar. 15, 2018))**

Dear Ms. McHugh:

The Youth Law Center, a national organization that advocates to transform foster and juvenile justice systems across the country so that children can thrive, writes to support the adoption of the Final Rule regarding AFCARS data elements, including those related to youth of Indian heritage, education, sexual orientation, gender identity, and gender expression. The data elements in the final rules have been thoroughly reviewed and revised over several public notice and comment periods during which the issue of the burden of data elements was specifically addressed. Therefore, the Youth Law Center urges the U.S. Department of Health and Human Services, Administration on Children Youth and Families ("ACYF"), to maintain the current data elements in the Final Rule.

**A. The Streamlined Data Elements in the Final Rule Are Basic, Not Overly Burdensome**

We believe that the data elements in the Final Rule are necessary, not burdensome, and should be retained. The Final Rule reflects the public comments received by ACYF and are not overly burdensome. The [data elements in the Final Rule](#) represent a streamlined version of those originally proposed in 2015 and revised in 2016. Furthermore, states, tribes, and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements over many years. The burdens identified by commenters have been adequately addressed in the Final Rule.

The data elements in the Final Rule reflect many of the significant changes in child welfare policy and practice since the last AFCARS update in 1993 and will facilitate the implementation of the data collection required by several federal child welfare related acts over the last decade including: the *Preventing Sex Trafficking and Strengthening Families Act of 2014* (P.L. 113-183); the *Child and Family Services Improvement and Innovation Act 2011* (P.L. 112-34); and the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L.110-351) (Fostering Connections). Additionally, the Final Rule will assist with implementation and oversight of both long established federal law like the *Indian Child Welfare Act of 1978* (P.L. 95-608) (ICWA), improving outcomes for tribal youth, and recently passed laws like the *Family First Prevention Services Act of 2018* (P.L 115-123) (Family First), reducing institutional care and supporting care in families, by requiring the collection of basic data at the core of child welfare practice essential to providing effective services to children and families. States and tribes will also continue to benefit from federal funding and support for improving their information technology through the current development of the new Comprehensive Child Welfare Information System (CCWIS), offsetting many of the concerns about the burden of requiring the collection of new data elements.

The Final Rule was carefully considered and will help to ensure child welfare agencies are gathering data on critical child and family-related outcomes necessary to track safety, permanency, and well-being. The long overdue new requirements will provide accurate and consistent data across states on key outcomes, bring child welfare data collection in line with statutory changes enacted since 1993, and shift data collection toward a more longitudinal approach which will help evaluate children and families' needs more effectively. All states 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. Any claims of cost burdens by states are overstated, as all states will expend these costs to update their systems regardless of the specific requirements in the Final Rule. These AFCARS updates provide a finite number of data elements that are universal across states, necessary to identify trends, and essential to continue to improve child welfare systems and effectively meet the needs of children and families.

A. ICWA Data Collection Requirements Reflect Basic Information Needed for Effective Child Welfare Practice and Oversight

The Final Rule requires collection of basic ICWA related data that agencies should already have been collecting. ICWA was first enacted in 1978, yet AFCARS will require for the first time information about children to whom the act applies. States and tribal entities will only be

required to report most of the ICWA-related data elements if ICWA applies in a child's case, greatly reducing any burden associated with being required to collect and report these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts the ability to effectively meet the needs of this population in a given jurisdiction, but also impedes the ability to effectively monitor ICWA compliance and to identify trends to improve child welfare services to American Indian and Alaska Native youth and families nationally.

B. Educational Data Cannot Be Streamlined Further Without Negatively Impacting Child Wellbeing and Compliance Monitoring

Maintaining the AFCARS data on school enrollment, educational level, educational achievement, and special education is essential to monitoring states' compliance with Fostering Connections and, most importantly, to ensuring the well-being of children in foster care. The limited education data in AFCARS is necessary to inform and improve state practice and policy and enable states to measure and track the educational progress of children in care. Although educational information was not part of AFCARS prior to the Final Rule, several of these data elements are already being collected by states pursuant to the requirements of Fostering Connections and should not create an unnecessary burden for child welfare professionals. Where these data elements are not already being collected, data sharing between child welfare and education entities can minimize the burden of collecting this data. The educational data elements included in the Final Rule are unambiguous and straightforward – qualitative review or case study is not required for accurate reporting. Furthermore, research available on the educational performance of students in foster care overwhelmingly indicates that increased attention to educational issues is critical. The data elements on school enrollment, educational level, educational achievement, and special education included in the Final Rule should be retained.

C. Data Elements Related to Sexual Orientation, Gender Identity and Expression (“SOGIE”) Are Necessary to Improve Child Welfare Practice, Outcomes for Foster Youth, Compliance Monitoring, and Resources Through Cost Savings

The Youth Law Center supports maintaining the data elements in the Final Rule related to sexual orientation, gender identity, and gender expression in order to improve foster youth outcomes, identify and fund needed resources, and reduce disparities experienced by lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) youth in the foster care system. The Final Rule

requires the collection of data on removals related to family conflict involving SOGIE issues, and includes voluntary questions on sexual orientation for foster youth over the age of 14, foster parents, adoptive parents, and guardians. Voluntary questions on gender identity and expression should be added for foster youth over the age of 14 to cover the full spectrum of youth impacted by the removal question related to SOGIE and on gender identity for foster and adoptive parents to improve placement resources.

Safety, permanency, and well-being are the main objectives for every child, including LGBTQ children, in the custody of a child welfare system, and the Social Security Act requires collection of data regarding characteristics of all children in care.<sup>1</sup> Many studies have documented that LGBTQ youth are disproportionately overrepresented in foster care and suffer worse safety, permanency, and well-being outcomes than their non-LGBTQ peers.<sup>2</sup> Youth in foster care that identify as LGBTQ or gender-nonconforming account for as much as 22% of the foster care population, more than the estimated 7% to 11% of the general youth population.<sup>3</sup> Foster youth that identify as LGBTQ are more likely to have lived in group care, experienced placement instability, been hospitalized for mental health reasons, crossed over into the juvenile justice system, experienced poor mental or behavioral health outcomes, or been homeless after exiting foster care.<sup>4</sup> Including voluntary questions for foster and adoptive parents and guardians opens up opportunities to tap new communities for affirming placements for LGBTQ foster youth and permanent families for all children and youth in foster care. LGBTQ foster youth will be inadequately served until child welfare systems have more information about their lives and outcomes, to better respond to and more effectively address their individual needs. Tremendous cost savings could be achieved through improved data collection related to SOGIE and the implementation of effective interventions to prevent removals, reduce instability, improve permanency in family home settings, and minimize costly stays in group care, hospitals and juvenile justice facilities.

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<sup>1</sup> 42 U.S.C. 679.

<sup>2</sup> Bianca D.M. Wilson, Khush Cooper, Angel Kastanis, Sheila Nezhad, *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST. (Aug. 2014), [https://www.acf.hhs.gov/sites/default/files/cb/pii\\_rise\\_lafys\\_report.pdf](https://www.acf.hhs.gov/sites/default/files/cb/pii_rise_lafys_report.pdf); Center for the Study of Social Policies, *Out of the Shadows: Supporting LGBTQ Youth in Child Welfare through Cross-System Collaboration*, 2016 <https://www.cssp.org/pages/body/Out-of-the-shadows-current-landscape.pdf>; 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>

<sup>3</sup> Center for the Study of Social Policies, *Out of the Shadows*, *supra*.

<sup>4</sup>Ibid.

D. Data Collection Through Voluntary Questions on Sexual Orientation and Gender Identity Provide Useful and Reliable National Level Data Needed to Assess, Monitor, and Improve Child Welfare Services, Programs, and Outcomes

Child welfare and other public social service systems, increasingly focused on outcomes and accountability, have recognized the importance of collecting sexual orientation and gender identity (“SOGI”) information about children not only for individual case and service planning, but to measure performance, trends, and outcomes on a national level to improve services and provide accountability for competently serving children in the system. 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 a set of professional guidelines addressing all aspects of managing SOGI information in child welfare systems.<sup>5</sup> The guidelines address the need to collect SOGI information for a variety of reasons, including developing case plans and tracking outcomes in individual cases, and as part of the larger framework for federal oversight and system reform efforts to effectively serve children of all sexual orientations, gender identities, and gender expressions.

Many public agencies already collect SOGI information on youth. Sexual orientation questions have been included on school-based surveys of adolescents since the mid-1980s through versions of the Youth Risk Behavior Survey, and researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention and the differences in offense and detention patterns.<sup>6</sup> The regulations promulgated under the Prison Rape Elimination Act (“PREA”) require the collection of SOGI information in both youth and adult detention and correctional facilities as part of the initial screening process to identify residents and inmates who may be vulnerable to sexual assault while incarcerated.<sup>7</sup> PREA national level data is reported at least annually and provides information that can be used to create policies and interventions to reduce victimization of vulnerable populations. Increasing numbers of state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed policies requiring the collection of SOGI data as part of the initial intake and assessment. National level data is used to inform federal policy and develop interventions and strategies to improve services and practice.

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<sup>5</sup> Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>

<sup>6</sup> Angela Irvine, “We’ve Had Three of Them”: Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System, 19 COLUM. J. OF GENDER & L. 675 (2012).

<sup>7</sup> National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

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E. Conclusion

For the reasons outlined above, we urge HHS to retain all of the data elements in the Final Rule, including the data elements related to ICWA, education, sexual orientation, and gender identity and expression. We also urge HHS to add voluntary questions on gender identity and gender expression for foster youth age 14 and older, and for adoptive and foster parents. We appreciate the opportunity to comment on the benefits of these data elements outlined in the Final Rule.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Ramiu', with a stylized flourish at the end.

Maria Ramiu

Senior Staff Attorney, Youth Law Center