

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970-AC47

Adoption and Foster Care Analysis and Reporting System

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. This notice of proposed rulemaking (NPRM) builds on an earlier proposed rule, published January 11, 2008 that addressed the requirements for State title IV-E agencies to collect and report data to ACF on children who are in out-of-home care and in subsidized adoption or guardianship arrangements with the State and AFCARS penalty requirements of the Adoption Promotion Act of 2003. This NPRM proposes many of the same changes and additions as the earlier NPRM and includes several new modifications to address changes made by the Fostering Connections to Success and Increasing Adoptions Act of 2008, such as collecting and reporting data related to the title IV-E guardianship assistance program, sibling placement, the extension of title IV-E assistance to children age 18 or older, educational stability plans and transition plans for children in foster care and the inclusion of Tribal title IV-E agencies. Additionally, modifications were made to address new requirements in the Preventing Sex Trafficking and Strengthening Families Act, which was enacted on September 29, 2014 to include information on: Victims of sex trafficking, children in foster care who are pregnant or parenting, and children in non-foster family settings.

DATES: In order to be considered, we must receive written comments on this NPRM on or before April 10, 2015.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule via regular postal mail to Kathleen McHugh, Division of Policy, Children's Bureau, Administration on Children, Youth and Families, Administration for Children

and Families, 1250 Maryland Avenue SW., 8th Floor, Washington, DC 20024. Please be aware that mail sent to us may take an additional 3-4 days to process due to changes in mail handling resulting from the anthrax crisis of October 2001. If you choose to use an express, overnight or other special delivery method, please ensure first that they are able to deliver to the above address. You may also transmit comments electronically via the Internet at <http://www.regulations.gov/>. We urge you to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the proposed rule, you should access <http://www.regulations.gov/>. Comments will be available for public inspection Monday through Friday 7:30 a.m. to 4:00 p.m. at the above address by contacting Kathleen McHugh at (202) 401-5789.

Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act (PRA) section of this preamble. A copy of these comments also may be sent to the Department representative listed above.

FOR FURTHER INFORMATION CONTACT:

Kathleen McHugh, Children's Bureau, Administration on Children, Youth and Families, (202) 401-5789 or by email at kathleen.mchugh@acf.hhs.gov. Do not email comments on the NPRM to this address.

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I. Executive Summary per Executive Order 13563

Executive Order 13563 requires that regulations be accessible, consistent, written in plain language, and easy to understand. This means that regulatory preambles for lengthy or complex rules

(both proposed and final) must include executive summaries. Below is the executive summary for this AFCARS NPRM.

(1) Purpose of the AFCARS NPRM

(a) *The need for the regulatory action and how the action will meet that need:* The AFCARS regulations need to be revised and updated to: (1) Incorporate statutory requirements since 1993; (2) implement our statutory authority to assess penalties for noncompliant data submissions; (3) enhance the type and quality of information title IV-E agencies report to ACF by modifying and expanding data elements and requiring title IV-E agencies to submit historical data; and (4) remove outdated and antiquated requirements that will allow title IV-E agencies and ACF to keep the pace with new technology. Per existing regulations, title IV-E agencies must submit data on a semi-annual basis to ACF and we propose this to remain the same. The regulations specify the reporting population, standards for compliance, and all data elements and methods for capturing and reporting AFCARS data. In large part title IV-E agencies report the child's information as of a certain date in the six-month report period rather than a detailed accounting of events that may have occurred over the six-month report period while in foster care. This NPRM allows us to gather longitudinal data and improve the data collected by including more comprehensive data on children in foster care and adding new data elements to better measure child welfare performance and outcomes of children and families.

(b) *Legal authority for the NPRM:* The existing regulations (at 45 CFR 1355.40 and the appendices to part 1355) were published in December 1993 in response to a statutory mandate for adoption and foster care data in section 479 of the Social Security Act (the Act). That mandate remains in effect. In addition, section 474(f) of the Act requires that the Secretary impose penalties for failure to submit AFCARS data under certain circumstances. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which she is responsible under the Act. The Department must have, per section 479 of the Act, a data collection system which provides comprehensive national information on:

- The demographic characteristics of adopted and foster children and their parents;
- the status and characteristics of the foster care population;

- the number and characteristics of children entering and exiting foster care, children adopted and children placed in living arrangements outside of the responsible title IV–E agency;

- the extent and nature of assistance provided by government programs for foster care and adoption and the characteristics of the children that receive the assistance; and

- the number of foster children identified as sex trafficking victims before entering or while in foster care.

(2) *Summary of the Major Provisions of the NPRM*

(a) *Reporting Populations.* We propose two reporting populations: The out-of-home care reporting population and the adoption and guardianship assistance reporting population. We propose to define the out-of-home care reporting population to include a child of any age who is in foster care or a child who has run away or whose whereabouts are unknown at the time the title IV–E agency becomes responsible for the child. Once the child enters foster care, he or she remains in the out-of-home care reporting population until the title IV–E agency's responsibility for the child ends. This proposal is very similar to current AFCARS practice. The adoption and guardianship assistance reporting population includes any child who is in a finalized adoption under a title IV–E adoption assistance agreement and any child who is in a legal guardianship under a title IV–E guardianship assistance agreement. Agencies continue to report a child through the report period in which his or her title IV–E agreement ends.

(b) *Data Structure.* As stated above, we propose that title IV–E agencies report AFCARS information in two separate data files: an out-of-home care data file and an adoption and guardianship assistance data file.

- For the out-of-home care data file, title IV–E agencies will report a combination of point-in-time information that's not likely to change (e.g., demographics) and information on the events in the child's life over time, including every time the child enters or exits foster care and every placement change. This will support longitudinal and cohort analysis of the data that will be particularly useful for the Child and Family Services Reviews (CFSRs) and ACF's other efforts to analyze performance with respect to child and family outcomes.

- For the adoption and guardianship assistance data file, title IV–E agencies will report information that describe the circumstances of the child and adoptive

family or guardians at a single point-in-time in the report period. This information is not likely to change over time.

(c) *Data Elements.* We propose to keep and revise the vast majority of data elements currently in AFCARS and add new data elements. We modify existing out-of-home care data elements on the child's placements, circumstances surrounding the child at removal, prior adoptions, and reasons for exiting care, among others. These modifications are necessary to clarify data element descriptions and conform to the new data structure. We propose new data elements that will allow us to better understand the characteristics of children in foster care and provide better context for their outcomes. Some of these include:

- Timely plans to transition out of foster care and the frequency of caseworker visits;
- the child's educational level, educational stability and involvement with special education;
- existing and previous health, behavioral and mental health conditions, and information on the timeliness of health assessments;
- domestic and intercountry adoptions and prior adoptions and guardianships; and
- new elements to better track Tribal, State and Federal financial support of foster care, adoption and guardianships.

(d) *Compliance and Penalties.* The proposed rule will strengthen our ability to hold title IV–E agencies accountable for submitting quality data. A title IV–E agency must meet basic file standards, such as timely data file submissions and more specific data quality standards, such as 10 percent or less of a variety of errors for its out-of-home care data file. A title IV–E agency that does not meet the standards upon initial submission of the data will have six months to correct and submit its data. If a title IV–E agency does not meet the standards after corrective action, ACF will apply the penalties required in statute. Penalty amounts are one-sixth of one percent of the agency's title IV–E foster care administrative funds for initial noncompliance and one-fourth of one percent of such funds for continued noncompliance.

(3) *Costs and Benefits*

We have determined that the costs to title IV–E agencies as a result of this rule will not be significant. We estimate that costs will be approximately \$24 million annually for AFCARS for the first five years of implementation, half of which (\$12 million) we estimate will be reimbursed by the Federal government

as allowable costs under title IV–E. Depending on the cost category and each agency's approved plans for title IV–E and cost allocation, they may claim allowable costs as Automated Child Welfare Information System costs at the 50 percent rate, administrative costs for the proper and efficient administration of the title IV–E plan at the 50 percent rate, or training of agency staff at the 75 percent rate. Many title IV–E agencies already collect the information proposed in this NPRM. Other existing data sets cannot yield similar information because AFCARS is the only national, comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or achieve adoption or guardianship with the involvement of the State or Tribal title IV–E agency. Further, we are required by section 479 of the Act to establish and maintain such a data system, so other data sources could not meet our statutory mandate.

II. Background on Foster Care and Adoption Data Collection

In 1982, the Department of Health and Human Services (HHS), through a grant to the American Public Human Services Association (formerly the American Public Welfare Association), implemented the Voluntary Cooperative Information System (VCIS) to collect aggregate information annually about children in foster care and special needs adoptions from State child welfare agencies. While some States reported data to VCIS, by 1986, Congress and other stakeholders recognized that there were a number of weaknesses in VCIS. Namely, VCIS was criticized for intermittent reporting by the States, the use of a variety of report periods, a lack of common definitions for data elements, a lack of timeliness of the data, poor data quality and the collection of aggregate data that had limited analytic utility.

As a result of these and other concerns, the President signed the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509) on October 21, 1986, which in part added section 479 to title IV–E of the Act. Section 479 of the Act describes the series of steps that HHS was required to take to establish a national data collection system for foster care and adoption. We were required to develop a system that avoids unnecessary diversion of resources from agencies responsible for adoption and foster care and assures that the data collected is reliable and consistent over time and across jurisdictions through the use of uniform definitions and methodologies. Furthermore, the law

required the system to provide comprehensive national information on the demographic characteristics of adopted and foster children and their parents (biological, foster and/or adoptive parents); the status of the foster care population (including the number of children in foster care, length and type of placement, availability for adoption and goals for ending or continuing foster care); the number and characteristics of children placed in or removed from foster care; children adopted or whose adoptions have been terminated; children placed in foster care outside the State that has placement and care responsibility; and, the extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children to whom such assistance is provided.

On August 19, 1993, the President signed into law the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66). Public Law 103-66 provided State title IV-E agencies with the opportunity to obtain title IV-E funds to plan, design, develop and implement a Statewide Automated Child Welfare Information System (SACWIS). On December 22, 1993, ACF published a final rule to establish AFCARS and implement SACWIS. In the AFCARS final rule, we required State title IV-E agencies to submit certain data to us on a semi-annual basis about children in foster care and adoptions that involve the State title IV-E agency. The rule required State title IV-E agencies that chose to develop a SACWIS to ensure that their system collected the AFCARS data and reported the data to ACF. We also set forth a minimum set of data standards that each State title IV-E agency had to meet in order to be in compliance with the AFCARS requirements and not be assessed a penalty.

State title IV-E agencies were required to report the first AFCARS data to us for Federal fiscal year (FFY) 1995. However, it was not until FFY 1998, when we implemented AFCARS financial penalties for a State title IV-E agency not submitting data or submitting data of poor quality that the data became stable enough for ACF and others to use for a wide variety of purposes.

On November 19, 1997, four years after SACWIS funding was made available, the President signed the Adoption and Safe Families Act of 1997 (Pub. L. 105-89), which required the use of AFCARS data for two specific activities: the calculation of Adoption and Legal Guardianship Incentive Payments (section 473A of the Act) and

the Child Welfare Outcomes Annual Report (section 479A of the Act). Since that time, data from AFCARS also has been used to provide samples for the current CFSRs and title IV-E reviews, develop outcome and performance measures for the current CFSRs and the Government Performance and Results Act (GPRA), calculate State allocations for the Chafee Foster Care Independence Program (section 477 of the Act), generate short- and long-term budget projections, conduct trend analyses for short- and long-term program planning and respond to requests for information from the Congress, other Federal agencies, States, media and the public about children in foster care and children being adopted.

While AFCARS data is used for many purposes, there are no penalties currently for non-compliant data submissions. Due to a settlement of several States' appeals of AFCARS penalties, ACF discontinued withholding Federal funds for a title IV-E agency's failure to comply with AFCARS requirements in January 2002 (see ACYF-CB-IM-02-03). However, on December 2, 2003 the President signed the Adoption Promotion Act of 2003 (Pub. L. 108-145), which required ACF to institute specific financial penalties for a State title IV-E agency's noncompliance with AFCARS requirements. We notified State title IV-E agencies in ACYF-CB-IM-04-04, issued February 17, 2004, that we would not assess penalties until we issued revised final AFCARS regulations.

Ten months after the publication of the 2008 Notice of Proposed Rule Making (hereafter referred to as the 2008 NPRM), on October 7, 2008 (73 FR 2082), the President signed into law the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351). Public Law 110-351 amended title IV-E of the Act to create an option for title IV-E agencies to provide kinship guardianship assistance payments, to extend eligibility for title IV-E payments up to age 21, to de-link adoption assistance from Aid to Families with Dependent Children (AFDC) eligibility through an eight-year phase-in and to provide federally-recognized Indian Tribes and Tribal organizations or consortia with the option to operate a title IV-E program directly, among many other provisions. These recent statutory changes to the title IV-E program are significant and thus contributed to our decision to issue a new NPRM rather than proceed with a final rule based on the 2008 NPRM. We conducted additional consultation through a Request for Comment

published in the **Federal Register** on July 23, 2010 (75 FR 43187).

Public Law 110-351 also required HHS to issue an Interim Final Rule (IFR) implementing the inclusion of Tribal title IV-E agencies. We published the IFR on January 6, 2012 (77 FR 896), which defined "title IV-E agency" as the State or Tribal agency administering or supervising the administration of the title IV-B and title IV-E plans. The IFR also revised the regulations at 45 CFR 1355.40 and the appendices to part 1355 to apply the AFCARS requirements to all title IV-E agencies.

In September 2014, the President signed into law the Preventing Sex Trafficking and Strengthening Families Act (Pub. L. 113-183). Public Law 113-183 modified the AFCARS requirements in section 479 of the Act, the annual Child Welfare Outcomes Report in section 479A of the Act, and added several reports to Congress requiring the collection and reporting of certain information. This includes information on victims of sex trafficking, children in foster care who are pregnant or parenting, and children in foster care in non-foster family settings and the services they receive.

III. Consultation and Regulation Development

In the preamble to the AFCARS final regulation issued December 22, 1993, we indicated that we would revisit the regulations to assess how we may improve AFCARS (58 FR 67917). Prior to the publication of the 2008 NPRM, we analyzed the types of technical assistance requested by and provided to title IV-E agencies, our findings from AFCARS Assessment Reviews and reports from the past several years issued by the Government Accountability Office (GAO) and the Department's Office of the Inspector General (OIG) on AFCARS-related issues. We included in the 2008 NPRM an extensive discussion of the consultation process we conducted through a variety of focus groups and a **Federal Register** notice published on April 28, 2003 (68 FR 22386).

In the 2008 NPRM, we focused improvements on five general areas by restructuring the data to capture more information over time, expanding and clarifying the reporting populations, capturing greater detail on children in out-of-home care, improving the quality of data and eliminating unnecessary data and inefficiencies in the data submission process. Specifically, we proposed that AFCARS data support longitudinal data analysis by capturing comprehensive information on the child's experience in the title IV-E

agency's foster care system. We also proposed to expand the out-of-home care reporting population to include all children placed away from their parents or legal guardians for whom the title IV-E agency has placement and care responsibility. This proposal included children who were placed in juvenile justice facilities under the title IV-E agency's placement and care responsibility, but who never entered foster care. We also added and clarified a number of data elements so that title IV-E agencies could provide us with greater detail on the demographics and circumstances of children in out-of-home care. The proposed changes to the out-of-home care reporting population were designed to permit an enhanced analysis of the factors that may affect a child's permanency and well-being.

We also proposed in the 2008 NPRM to improve AFCARS data quality in several ways by clarifying existing data element descriptions, strengthening the assessment and identification of errors within a title IV-E agency's data file, and developing cross-file checks to identify defaults and other faulty programming that resulted in skewed data across the title IV-E agency's entire data file. We proposed to implement penalties for title IV-E agencies that do not meet our data file and data quality standards for AFCARS consistent with section 474(f) of the Act. In addition, we proposed to eliminate features that are no longer useful such as removing the requirement that the title IV-E agency report summary adoption and foster care data files, merging most of the currently reported adoption information into the out-of-home care data file and removing outdated technical submission requirements from the regulation.

In response to the 2008 NPRM, we received comments from 77 State and local child welfare administrators, advocates, educators, researchers and members of the public. While many commenters supported the overall direction of the NPRM, they also had many specific areas of concern, which are detailed in the next section and throughout the NPRM. Most commenters expressed overwhelming support for the shift to longitudinal reporting on children entering, currently in and exiting foster care. Commenters also generally supported the idea that longitudinal data is more valuable and beneficial than current point-in-time data reporting for evaluating child welfare outcomes. However, several commenters expressed concerns about implementing a longitudinal methodology for AFCARS data with existing data systems and resources.

In response to the 2008 NPRM commenters expressed concern with our proposed expansion of the out-of-home care reporting population to include children who were under the placement and care responsibility of the title IV-E agency but whose only living arrangement was a juvenile justice facility. Commenters questioned how the title IV-E agency would obtain detailed information for AFCARS on the children in juvenile justice facilities. However, commenters did support collecting information on children in foster care who also are involved with the juvenile justice system. Commenters also opposed our proposal to consider a placement at home as a discharge because it could artificially inflate the rate of foster care re-entry if the child re-entered foster care after the placement at home.

Commenters in response to the 2008 NPRM generally supported our proposals to collect information on the child's prior adoptions and whether the child has siblings in out-of-home care or siblings who are adopted or in a legal guardianship. Commenters also supported our proposal to expand our collection of child and family circumstances that are present at the child's removal, but commenters opposed collecting that information at any point beyond removal. Commenters also requested that the AFCARS data elements incorporate kin as an additional relationship type between the child and/or the child's family and the foster parent(s), adoptive parent(s) or legal guardian(s). The section-by-section discussion of the proposed rule that follows in the preamble addresses public comments received in response to the 2008 NPRM and how they were considered in this proposed rule.

As we synthesized and analyzed comments from the 2008 NPRM, the President signed into law Public Law 110-351. As stated above, based in part on the significant statutory changes to the title IV-E program, we decided to issue a new NPRM rather than proceed with a final rule based on the 2008 NPRM. To inform our development of this NPRM, we requested comments through a **Federal Register** notice published on July 23, 2010 (75 FR 43187) (hereto referred as the 2010 FR Notice) and conducted another round of consultation sessions with States, Indian Tribes, Tribal organizations or consortia and other interested parties in the Summer and Fall of 2010.

Our consultation from the 2010 **Federal Register** (FR) Notice yielded 53 comments from the public, including State and local child welfare administrators, Indian Tribes, Tribal

organizations or consortia, advocates, educators and researchers. During consultation we solicited feedback on

- Whether and how data collection and reporting requirements should change in order to provide a comprehensive national picture of children in foster care and those adopted with the involvement of the title IV-E agency;
- The circumstances under which a child should be included in the reporting population and the information the title IV-E agency should collect on children in its placement and care responsibility who are placed in settings other than foster family homes, group homes and child care institutions;
- The case level data on children in foster care, adoption and guardianship that is important to collect and report on an ongoing basis, including data that is not collected currently, that can inform and support Federal monitoring activities of the new provisions of title IV-E of the Act created by Public Law 110-351;
- The case level data on children in foster care that should be collected and reported that would provide insight into the environment and circumstances surrounding the child at removal, including why a child remains in foster care or why a child's permanency plan changes; and,
- What information should be collected about caseworker visits with a child.

Many commenters in response to the 2010 FR Notice echoed the support expressed by commenters to the 2008 NPRM to restructure AFCARS to support longitudinal data analysis in order to provide a comprehensive national picture of children who are involved with the title IV-E agency. Commenters to the 2010 FR Notice felt that it is important to include in the AFCARS out-of-home care reporting population and title IV-E guardianship and adoption assistance reporting population children age 18 or older who are involved with the title IV-E agency and to track accurately in AFCARS children who are in the placement and care responsibility of the Tribal title IV-E agency. However, commenters also expressed concern with the burden associated with reporting a longitudinal data file and additional data elements to AFCARS. Commenters to the 2010 FR Notice asked us to be clear about who would be included in each reporting population and asked that we consider aligning the AFCARS data elements with data elements from other data systems, such as the National Child Abuse and Neglect Data System

(NCANDS) and the National Youth in Transition Database (NYTD).

Some commenters to the 2010 FR Notice felt that most of the information associated with the new provisions created by Public Law 110–351 could be collected through case narratives in the child’s record, rather than through AFCARS. Commenters also expressed that it would be difficult to capture comprehensive information in AFCARS on caseworker visits and the reasons why a child’s permanency plan changes or, generally, why the child remains in foster care. Conversely, other commenters to the 2010 FR Notice highlighted specifically that it would be helpful to collect the same information on children who exit foster care to guardianship as children who exit foster care to adoption, whether the child has siblings in out-of-home care or siblings who have been adopted or are in a guardianship, and information relating to the educational stability of the child, such as the proximity of the child’s school to the child’s placement, the child’s grade and the child’s academic performance.

In developing this proposed rule, we considered these comments as well as comments to the 2008 NPRM. The section-by-section summary found later in this preamble provides more discussion on how specific comments factored into our proposal.

IV. Overview of Major Proposed Revisions to AFCARS

An overview of the major proposed revisions to AFCARS follows and includes many of the changes we proposed in the 2008 NPRM and other changes in response to the new statutory provisions of the Act resulting from Public Law 110–351.

References throughout this proposed rule to “child” or “children” are inclusive of all children who are served by the title IV–E program, including those age 18 or older. We are choosing to use a single reference, as opposed to using multiple references such as “youth” or “young adult,” because we believe it is less cumbersome and is easier to comprehend for the regulation.

Restructuring Data

We propose, as we did in the 2008 NPRM, to restructure the AFCARS data file in two ways, (1) to support longitudinal data analysis; and (2) to require title IV–E agencies to submit two data files an out-of-home care data file and an adoption and guardianship assistance data file.

Support Longitudinal Data Analysis

We propose that the out-of-home care data file contain longitudinal data elements that provide historical information on children who enter foster care; however, the adoption and guardianship assistance data file will not contain any longitudinal data elements. Title IV–E agencies are required to report in the existing AFCARS foster care data file some living arrangement, provider and permanency information relative to the child’s most recent experiences in his or her most recent foster care episode only. We propose instead that title IV–E agencies collect and report historical information in the out-of-home care data file on (1) the date and circumstances of each of the child’s removals and placements into foster care; (2) the type of environment the child was living in at the time of each of the child’s removals and the title IV–E agency’s authority for placement and care responsibility; (3) the date and type of each living arrangement the child experiences while in out-of-home care; (4) the demographics on each foster family home provider, if applicable; (5) information on each of the child’s permanency plans and concurrent permanency plans, if applicable; (6) the date, location and purpose of each caseworker visit with the child; (7) each date that a petition to terminate parental rights (TPR) was filed and each TPR date; and (8) the date and reasons of each of the child’s exits from out-of-home care.

We received many comments in response to both the 2008 NPRM and the 2010 FR Notice on our proposal to require title IV–E agencies to report recent and historical data on children who enter foster care. Commenters to both the 2008 NPRM and the 2010 FR Notice overwhelmingly expressed support for the shift to longitudinal data reporting on children entering, currently in and exiting foster care and were generally supportive of the idea that longitudinal data is more valuable and beneficial than current point-in-time data for evaluating child outcomes. However, several commenters to both the 2008 NPRM and the 2010 FR Notice expressed concerns with implementing a longitudinal methodology for AFCARS with existing data systems and resources. Specific concerns included that some title IV–E agencies’ data systems do not fully support longitudinal information for children placed in non-foster care settings who are never placed in foster care, the impact of the new historical AFCARS data set on current foster care metrics

(e.g., placement stability, foster care episode duration and the title IV–E penetration rate) and whether and/or how adjustments will be made to account for new rules in trend analysis and a general concern for the quality of the historical data. Commenters to the 2008 NPRM also requested clarification and technical assistance on the logistics surrounding the submission of a historical data file and making the substantial system changes and adjustments that title IV–E agencies will need to make in order to comply with the revised AFCARS rules.

We recognized the concerns expressed by the commenters to both the 2008 NPRM and the 2010 FR Notice and used them to modify and clarify our proposal for longitudinal data analysis in this NPRM. We believe there is substantial support for our proposal, which also was reinforced by some commenters acknowledging that their title IV–E agencies have collected longitudinal data on children in foster care for many years and have used the longitudinal data to conduct complex analysis on their foster care populations. Since the publication of the 2008 NPRM, several State title IV–E agencies have implemented a comprehensive case management information system that supports the collection and storage of all information relevant to a child’s out-of-home care experience. Additionally, enhancements in the title IV–E agency’s case management system to support new data collection requirements may be eligible for SACWIS development funding. We have been and will continue to work with Tribal title IV–E agencies as they develop information systems that will be used to support their title IV–E program and to meet the data collection requirements of AFCARS. We believe the anticipated benefits of obtaining longitudinal data are vast and include the elimination of information gaps that exist in the current AFCARS data, which raise questions about the child’s experiences and make the data more difficult to analyze, better information for the CFRs or other Federal monitoring efforts and the building of our ability to conduct sophisticated analysis on a child’s or groups of children’s experience in foster care. Thus, based on the supportive comments to both the 2008 NPRM and the 2010 FR Notice and the anticipated benefits, we continue to propose restructuring AFCARS in order to support longitudinal data analysis by capturing more comprehensive information on the experiences of children who are placed in foster care.

AFCARS Data Files

As in the 2008 NPRM, we propose to eliminate a number of features in the AFCARS regulation that are no longer useful to us or the title IV-E agencies. We propose to dispose of the requirement for title IV-E agencies to report summary foster care and adoption data files and to merge the information on adoptions into the out-of-home care data file. Currently, title IV-E agencies must submit four data files (see appendices A and B to part 1355) a foster care data file with information on all children in foster care under the responsibility of the title IV-E agency or another public agency with an agreement with the title IV-E agency, an adoption data file with information on all children adopted during the report period in whose adoption the title IV-E agency had some involvement and two summary data files in which the title IV-E agency indicates aggregate numbers of foster care records and adoption records and the age distribution of the children in each of those records. Summary data files are no longer necessary due to advances in technology that better verify the completeness of data submissions; commenters to the 2008 NPRM were appreciative and supportive of this proposal.

Our proposal continues the 2008 NPRM proposal of including most of the information from the existing foster care and adoption data file in one data file, called the out-of-home care data file, as well as adding a new data file, called the title IV-E adoption and guardianship assistance data file, to report information on children who are in a finalized adoption or legal guardianship under a title IV-E adoption or guardianship assistance agreement and on the agreement itself. Our current proposal for the title IV-E adoption and guardianship assistance data file differs slightly from the 2008 NPRM where we proposed to collect information on the adoption assistance agreement (both title IV-E and State funded) and a guardianship subsidy (State and title IV-E funded, if the State had an approved demonstration waiver). We did not receive substantive comments in response to the 2008 NPRM on this proposal. Generally, we propose in this NPRM to collect the same information, if applicable, on adoptions and legal guardianships. The new data file structure will most likely eliminate the need to resubmit prior data files since the out-of-home care data file will now include historical information on the child's current and prior removals and out-of-home care

episodes; any identified data corrections may occur either in the title IV-E agency's corrective data file (described in section 1355.45) or in the data file due at the next regular six-month report period.

We also continue our proposal to remove information on technical submission requirements from the regulation. These major changes we propose to make to AFCARS will reduce the burden associated with submitting two additional data files, will provide a logical flow of data for the child's entire out-of-home care episode in one file and will provide the title IV-E agencies and us with flexibility to keep the pace with newer technology. These changes, along with all other features of the proposed database, are detailed in the section-by-section discussion found later in this preamble.

Reporting Populations

This NPRM proposal is very similar, for the most part, to current AFCARS practice regarding reporting populations. We propose that the out-of-home care reporting population include a child of any age who is placed in foster care as defined at 45 CFR 1355.20 or a child who has run away or whose whereabouts are unknown at the time the child is placed under the placement and care responsibility of the title IV-E agency. The out-of-home care reporting population continues to include a child who is under the placement and care responsibility of another public agency that has an agreement with the title IV-E agency pursuant to section 472(a)(2)(B) of the Act, or an Indian Tribe, Tribal organization or consortium with which the title IV-E agency has an agreement or contract and on whose behalf title IV-E foster care maintenance payments are made.

Based on the comments we received in response to the 2008 NPRM, we propose an out-of-home care reporting population that is closer to the current AFCARS foster care reporting population than to that proposed in the 2008 NPRM. In the 2008 NPRM we proposed an expanded out-of-home care reporting population that would have included every child under the State's age of majority placed away from his or her parents or legal guardians for 24 hours or more for whom the title IV-E agency has placement and care responsibility regardless of the child's living arrangement, including a child whose only placement was in a non-foster care setting such as a detention facility, hospital or jail. In the 2008 NPRM, we proposed that a child who returns home while still in the title

IV-E agency's placement and care responsibility no longer be included in the AFCARS out-of-home care reporting population and the child would be reported as having exited from out-of-home care. We now propose that the child remain in the out-of-home care reporting population until the title IV-E agency no longer has placement and care responsibility; *i.e.*, a child remains in the out-of-home care reporting population through the end of the report period in which the title IV-E agency's placement and care responsibility ends.

We propose that the adoption and guardianship assistance reporting population include any child who is in a finalized adoption under a title IV-E adoption assistance agreement with the title IV-E agency pursuant to section 473(a) of the Act and any child who is in a legal guardianship under a title IV-E guardianship assistance agreement with the title IV-E agency pursuant to section 473(d) of the Act. A child remains in the title IV-E adoption and guardianship assistance reporting population through the end of the report period in which the agreement ends or is terminated.

As previously noted, we propose that the AFCARS data file no longer include an adoption data file. The existing AFCARS adoption data file not only includes information on children who were adopted from foster care, but also those who were adopted through a private agency and in whose adoption the title IV-E agency had any involvement. We proposed in the 2008 NPRM that the title IV-E agency report in the out-of-home care data file additional information on children exiting out-of-home care to a finalized adoption. We also proposed that the title IV-E agency report in the adoption and guardianship assistance file information on children who were adopted from a private agency on whose behalf the title IV-E agency is paying an adoption subsidy or providing services. Our current proposal for the adoption and guardianship assistance reporting population differs from the adoption assistance and guardianship subsidy reporting population proposed in the 2008 NPRM which would have included any child under a title IV-E or State adoption assistance agreement in effect during the report period, including children in pre-adoptive homes and any child under a subsidized guardianship agreement supported by State and/or title IV-E funds, if the State had an approved demonstration waiver.

We modified our proposal for both the out-of-home care reporting population and the adoption and guardianship

assistance reporting population due to the many comments and feedback we received in response to the 2008 NPRM proposal and 2010 FR Notice. Commenters were generally concerned that title IV–E agencies would be held accountable for the timeliness and accuracy of AFCARS information on children that had to be gathered from various sources outside of the title IV–E agency’s control (e.g., juvenile justice agencies). Commenters also were concerned regarding our proposal to exclude from the reporting population children placed at home, stating that excluding these children would require changes to systems related to title IV–E determinations and funding, would create disincentives to responsive child welfare practices, would erroneously inflate the actual number of foster care entries and exits of a child and would not be reflective of many States’ mandates to consider such children as in foster care. In addition, ACF is required under section 479(c)(3) of the Act to capture information on adopted children, including demographics and information on the child and child’s adoptive parents. While there is no statutory mandate to collect similar information on children who have achieved permanency through legal guardianship, we propose to collect the same information on these children and their legal guardian(s) because we have the same need for information on children who are supported by title IV–E funding, per section 473(d) of the Act. We believe that our current proposal for the out-of-home care reporting population and the adoption and guardianship assistance reporting population will address the issues expressed by the commenters.

Capturing Greater Detail

We propose to add and clarify the type of case-level information collected on children who enter foster care and children who are under a title IV–E adoption or guardianship assistance agreement. These changes are designed to permit enhanced analyses of the factors that may affect a child’s permanency and to incorporate data elements that capture the provisions of Public Law 110–351. The changes include:

- Revised data elements designed to better capture the circumstances affecting the child and family at the time of removal;
- Revised data elements to better describe the child’s environment at removal and the location and type of living arrangements in which children are placed by the title IV–E agency;

- New data elements on caseworker visits with children in foster care;
- New data elements that allow us to identify minor parents who have their children with them in foster care, sibling groups and whether or not siblings are placed together;
- Revised data elements that enhance our understanding of permanency planning for children in foster care, including new data elements that identify why a child’s permanency plan changes, the child’s concurrent permanency plans and the child’s transition plan;
- New data elements that inform us about the child’s well-being, including the child’s educational level, educational stability and involvement with special education, as well as clarified data elements on the child’s health, behavioral and mental health conditions;
- Revised data elements that enhance our understanding of prior adoptions and legal guardianships, as well as the child’s exit to a new adoption or legal guardianship; and,
- Revised and new data elements designed to capture the number and characteristics of children who are in finalized adoptions and legal guardianships under title IV–E adoption and guardianship assistance agreements as well as information in the child’s title IV–E adoption or guardianship assistance agreement, including the amount of the subsidy and nonrecurring costs.

We received many supportive comments in response to both the 2008 NPRM and 2010 FR Notice on our proposal to capture greater detail on children who enter foster care and children who are under a title IV–E adoption or guardianship assistance agreement. Some commenters in response to the 2008 NPRM requested that we clarify our proposal for a number of data elements and we have made every effort to address those requests. We explain how individual comments factored into each data element in the section-by-section discussion of the NPRM found later in this preamble.

Improving Data Quality

As in our 2008 NPRM, we propose to improve AFCARS data quality in several ways. First, we propose to clarify and modify many existing data element descriptions that stakeholders and commenters to the 2008 NPRM and 2010 FR Notice informed us were problematic. Second, we propose to strengthen our assessment and identification of errors within a title IV–E agency’s data file through cross-file

checks to identify defaults and other faulty programming that result in skewed data across a title IV–E agency’s entire data file, increased internal consistency checks to validate the logical relationship between data elements, and modified requirements for missing data and invalid data within a data file. Finally, we propose to implement penalties consistent with section 474(f) of the Act for title IV–E agencies that do not meet our data file and data quality standards for AFCARS.

Burden

Commenters in response to the 2008 NPRM proposal and the 2010 FR Notice expressed some concern over the burden associated with reprogramming their information systems to collect and report additional data elements. Many of the commenters in response to the 2008 NPRM and 2010 FR Notice raised concerns about the ambiguity of the definitions for the data elements and the value of the additional data elements. We are cognizant of the potential burden associated with requiring title IV–E agencies to submit additional information to AFCARS, and of the requirement in section 479(c)(1) of the Act that instructs that AFCARS “avoid unnecessary diversion of resources from agencies responsible for adoption and foster care.” We recognize that regardless of the amount and type of information that will be in the final rule, the title IV–E agencies will have to write new extraction routines to report the AFCARS data. Throughout the process of drafting this proposed rule, we considered the burden of inputting the information and programming that may be associated with the addition of each new data element and we critically weighed the advantages of each data element proposed here against the potential increased burden to title IV–E agencies. We tried, as we did in the 2008 NPRM, to ask for information that caseworkers collect as part of their normal work duties and that is already collected in the majority of State title IV–E agency information systems. We recognize that Tribal title IV–E agencies have not collected this data previously but we have been providing support to Tribal title IV–E agencies as they consider developing an information system that will meet their needs. We will continue to provide intensive technical assistance to both State and Tribal title IV–E agencies once the final rule for AFCARS is published.

In response to the comments we received from both the 2008 NPRM and 2010 FR Notice, we did not include a number of data elements that we proposed in the 2008 NPRM, namely

data elements regarding family record numbers; child and family circumstances at the initial permanency plan, annually and at exit; information on the language of the child and foster parent(s); the marital status of the mother at birth and the biological parents at removal; and specific information about the people whom the child was living with at removal. Additionally, we propose to remove the requirement for title IV–E agencies to submit summary data files and combine or remove data elements that capture duplicative information.

Compliance and Penalties

We propose to define the standards and manner by which we assess and determine compliance on each data file submitted by the title IV–E agency, permit the opportunity for corrective action by the title IV–E agency and if necessary, assess a penalty for the title IV–E agency's continued noncompliance with AFCARS requirements. We propose to apply compliance standards to both the out-of-home care data file and the adoption and guardianship assistance data file, with exceptions for optional provisions of title IV–E. Specifically, we do not propose to apply the compliance standards to children in either data file who are age 18 or older and/or children in the adoption and guardianship assistance data file who are in a legal guardianship under a title IV–E guardianship assistance agreement. For the remaining children in each reporting population, we propose to assess each data file for errors such as missing, invalid or internally inconsistent data, cross-file errors and tardy transactions. The title IV–E agency must submit each data file to ACF on or before the reporting deadline, in the proper format and free of cross-file errors.

We propose to implement penalties for title IV–E agencies that do not meet our data compliance and data quality standards. We propose that the pool of funds that are subject to a penalty for noncompliance be the title IV–E agency's claims for title IV–E foster care administrative costs (including training) for the quarter in which each original data file is due (as opposed to the corrected data file), consistent with section 474(f) of the Act and the 2008 NPRM proposal.

Many commenters in response to the 2008 NPRM proposal and 2010 FR Notice requested tolerance for errors related to the collection and reporting of demographic data elements due to concerns about meeting compliance standards for these elements. Many commenters to both the 2008 NPRM and

2010 FR Notice also expressed concern with the proposed penalty structure. Some commenters requested that we provide incentives in addition to or in lieu of penalties, vary penalties by degrees of non-compliance and phase-in or delay the implementation of penalties. We believe that the compliance standards and penalty structure we are proposing will ultimately increase the quality of the data that is collected and reported by title IV–E agencies.

Implementation of changes to AFCARS described in this NPRM will be dependent on the issuance of a final rule. We expect provisions in an eventual final rule to be effective no sooner than the start of the second Federal fiscal year following the publication of the final rule. A precise effective date will be dependent on the publication date of the final rule, but this construct provides title IV–E agencies with at least one full year, and possibly longer, before we will require them to begin collecting and reporting new AFCARS data. We welcome public comments on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the final rule.

V. Section-by-Section Discussion of NPRM

Section 1355.40 Scope of the Adoption and Foster Care Analysis and Reporting System

In section 1355.40, we propose to revise the statement of scope for AFCARS. The proposed scope statement explains which entities must report data to ACF and what data those entities must report.

Section 1355.40(a)

In paragraph (a), we propose that all title IV–E agencies collect and report AFCARS data to ACF. This is consistent with our legislative authority in section 479 of the Act. Currently, all States, the District of Columbia and Puerto Rico operate title IV–B and IV–E programs. As a result of Public Law 110–351, Indian Tribes, Tribal organizations or consortia can now administer title IV–E programs directly and those that do so are required to collect and report AFCARS data.

Section 1355.40(b)

In paragraph (b), we propose to revise the general parameters for collecting and reporting AFCARS data. We propose that a title IV–E agency collect and submit to us information for the

reporting populations proposed in new section 1355.41 and that the information must be submitted to us on a semi-annual basis in an out-of-home care data file and an adoption and guardianship assistance data file as required in proposed new section 1355.42. This information includes a child's demographics and characteristics, removal, living arrangements and experiences in out-of-home care, as well as the nature of finalized title IV–E adoptions and guardianships and information on title IV–E adoption and guardianship assistance agreements.

Current AFCARS regulations require title IV–E agencies to report data in the foster care data file on a child's demographics, most recent removal and circumstances of that removal, current placement settings, permanency goals and Federal assistance. In the current AFCARS adoption data file, we collect information on a child's demographic information, special needs status, birth and adoptive parent(s), placement information and adoption support. While we propose to continue to require reporting of some of the same data that is currently collected in the foster care and adoption data files in the out-of-home care data file, we now propose requiring a title IV–E agency to report information on legal guardianship and other topics, as detailed below.

In the 2008 NPRM we proposed to expand the scope of certain information title IV–E agencies must report in the out-of-home care data file to include a child's entire historical and current experience in out-of-home care in order to establish a more comprehensive and longitudinal database. Because comments on the 2008 NPRM and the 2010 FR Notice were generally supportive of the move to a longitudinal database and because the existing data does not meet our program needs, we again propose to expand the scope of information. As in the 2008 NPRM, we propose to collect information on education, concurrent planning and demographic information on a child's adoptive parents in the out-of-home care data file. For the first time, we propose to collect information on caseworker visits. We also propose to collect information on a child's adoption assistance agreement in the adoption and guardianship assistance data file, as in the 2008 NPRM. However, because we have the same need for information on children supported by title IV–E guardianship assistance program, we also propose to collect equivalent information on a child's title IV–E guardianship assistance agreement.

Section 1355.41 Reporting Populations

In new section 1355.41, we propose the reporting populations for the AFCARS out-of-home care and adoption and guardianship assistance data files. The definition of each reporting population describes which children the title IV-E agency is required to collect and report information on in each respective data file.

Section 1355.41(a) Out-of-Home Care Reporting Population

In paragraph (a), we explain our proposed out-of-home care reporting population. A child who enters the out-of-home care reporting population continues in the population until placement and care responsibility ends.

In paragraph (a)(1), we propose at what point a child enters the out-of-home care reporting population. We also propose that the title IV-E agency must report data as described in section 1355.43 on each child for whom the title IV-E agency has placement and care responsibility and who meets one of the conditions in paragraphs (a)(1)(i) through (a)(1)(iii).

In paragraphs (a)(1)(i) through (a)(1)(iii), we further clarify the out-of-home care reporting population.

In paragraph (a)(1)(i), we specify that the child enters the out-of-home care reporting population if he or she is in foster care as defined in section 1355.20, which defines foster care as 24-hour substitute care for any child placed away from his or her parent(s) or guardian(s) and for whom the title IV-E agency has placement and care responsibility. This includes instances when a child has been placed in a foster care setting following placement in a non-foster care setting.

In paragraph (a)(1)(ii), we specify that the out-of-home care reporting population includes any child who is under the placement and care responsibility of another public agency that has an agreement under section 472(a)(2)(B) of the Act, or an Indian Tribe, Tribal organization or consortium that has a contract or agreement, with the title IV-E agency to pay title IV-E foster care maintenance payments on the child's behalf.

In paragraph (a)(1)(iii), we specify that a child enters the out-of-home care reporting population if he or she has run away or his or her whereabouts are unknown at the time that the title IV-E agency receives placement and care responsibility for the child.

The proposal for paragraphs (a)(1)(i) and (a)(1)(iii) differ from both current AFCARS foster care reporting population and the out-of-home care

reporting population proposed in the 2008 NPRM. The foster care reporting population in existing AFCARS regulations includes all children who are in foster care for more than 24 hours under the responsibility of the State agency administering or supervising the administration of the title IV-B Child and Family Services Plan (CFSP) and the State title IV-E plan, that is, all children who are required to be provided the assurances in section 422(b)(10) of the Act. The existing AFCARS foster care reporting population includes children at the time they enter foster care as defined in 45 CFR 1355.20. In the 2008 NPRM, we proposed a new and expanded out-of-home care reporting population to include every child under the State's age of majority placed away from his or her parent(s) or legal guardian(s) for 24 hours or more for whom the State title IV-E agency had placement and care responsibility regardless of the child's living arrangement. This included a child whose only placement while under the placement and care responsibility of the title IV-E agency was in a non-foster care setting such as a detention facility, hospital or jail. Many commenters to the 2008 NPRM proposal felt the definition was too broad. States were particularly concerned about the burden of having to gather data from other State systems that serve a child in a juvenile justice, mental health or hospital setting. Commenters to the 2010 FR Notice expressed similar concerns about data collection and staff burden. We considered the comments to both the 2008 NPRM and the 2010 FR Notice and modified the out-of-home care reporting population definition in proposed section 1355.41(a)(1) to address these concerns. This proposal is similar to the foster care reporting population in the existing AFCARS in that those children whose only placement is a non-foster care setting (e.g., juvenile justice, mental health or hospital facility) would not be part of the out-of-home care reporting population. Additionally, those children who are placed initially in a non-foster care setting and then enter foster care as defined in 45 CFR 1355.20 are considered to be removed as of the start date of the child's placement into foster care.

The proposal for paragraph (a)(1)(ii) is similar to the existing AFCARS regulations that define the foster care reporting population (Appendix A to part 1355, section II). All title IV-E agencies can enter into agreements/contracts with Indian Tribes, Tribal organizations or consortia and

agreements with separate public agencies such as juvenile justice or mental health agencies in order to claim title IV-E on behalf of title IV-E eligible children. These other public or Tribal entities with which the title IV-E agency has an agreement do not submit information on children in the reporting population to ACF separately from the title IV-E agency. Rather, information on children under the placement and care responsibility of an agency that has an agreement with the title IV-E agency must be a part of the title IV-E agency's AFCARS data submission.

In existing AFCARS policy, the title IV-E agency is required to report on all children up to the State's age of majority and a child of any age that is eligible for and receiving a title IV-E payment. We propose to modify the AFCARS reporting population to include a child of any age for whom the title IV-E agency has placement and care responsibility when such a child has been placed in foster care in accordance with the regulatory definition of foster care in section 1355.20. We propose to include a child of any age in the out-of-home care reporting population to be consistent with the changes in Federal law per the enactment of Public Law 110-351, which amended section 475(8)(B) of the Act. Section 475(8)(B) now provides the option for title IV-E agencies to adopt a definition of "child" for the title IV-E foster care program that allows title IV-E reimbursement for an eligible child up to age 21 who meets certain education and employment conditions. We propose the out-of-home care reporting population to include a child of any age that meets the conditions in paragraphs 1355.41(a)(1)(i) through (a)(1)(iii) whether or not the child receives a payment that is federally subsidized because this will allow us to establish a more comprehensive and longitudinal national database on all children in out-of-home care.

We modified the out-of-home care reporting population from the existing AFCARS regulation by including those children for whom the title IV-E agency has placement and care responsibility but who have runaway or whose whereabouts are unknown at the time that the title IV-E agency receives placement and care responsibility for the child. We propose this modification to update the regulation to incorporate current AFCARS practice regarding a child who has runaway or whose whereabouts are unknown.

As we did in the 2008 NPRM, we want to clarify that the proposed out-of-home care reporting population does not include children who are under the

title IV–E agency’s “supervision” authority, unlike the current regulation. We found the reference to “supervision” problematic because we never defined the term “supervision” further in AFCARS regulations or policy. We have received questions about whether the existing AFCARS foster care reporting population includes children in a variety of settings for whom the title IV–E agency has only a legal duty to supervise with no concurrent placement and care responsibility. To be clear, children who are receiving only services in the homes of their parent(s) or legal guardian(s) and children who may be placed away from their parent(s) or legal guardian(s) but for whom the title IV–E agency has no placement and care responsibility (e.g., placed in a juvenile justice or mental health facility) are not a part of the proposed AFCARS out-of-home care reporting population.

In paragraph (a)(2), we clarify that once a child enters the out-of-home care reporting population he or she remains in the out-of-home care reporting population through the end of the report period in which the title IV–E agency’s placement and care responsibility ends, regardless of any subsequent living arrangement while in out-of-home care. For example, we propose to continue including in the out-of-home care reporting population a child who moves from a placement in a foster care setting to a non-foster care setting such as a detention facility, hospital or jail. We also propose to include in the out-of-home care reporting population a child whose whereabouts are unknown or a child who runs away, a child who has returned home and is placed with his or her parent(s) or legal guardian(s) under the continued placement and care responsibility of the title IV–E agency, or, a child age 18 or older who is living independently. In these situations, the child remains under the title IV–E agency’s placement and care responsibility and therefore these children must be included in the out-of-home care reporting population.

We propose to require the title IV–E agency to continue to report information on all of a child’s placements once he or she enters the out-of-home care reporting population including various out-of-home care placement settings that are outside of the definition of foster care. Including a child’s placement in non-foster care settings such as a detention facility, hospital or jail will permit title IV–E agencies and ACF to complete longitudinal analyses of a child’s total out-of-home care experience, as advocated by States and others in the field.

In the 2008 NPRM, we proposed to discontinue reporting AFCARS data for a child who is returned home to his or her parent(s) or legal guardian(s), and considered such a child to have exited the out-of-home care reporting population even if the child remained under the placement and care responsibility of the title IV–E agency. This proposal was a reversal from current AFCARS requirements which indicate that a child placed at home with his or her parent(s) or legal guardian(s) may be included in the foster care reporting population, but would be considered discharged for AFCARS purposes automatically after six months. Some commenters to the 2008 NPRM opposed our proposal and many felt strongly that children who are placed at home under the placement and care responsibility of the title IV–E agency should remain in the out-of-home care reporting population, as they felt that considering a placement at home as a discharge would artificially inflate the rate of foster care re-entry if the child moved to a foster care setting after the placement at home. After considering these comments, we agree that we want to collect data on all children once they have entered the out-of-home care reporting population until the title IV–E agency’s placement and care responsibility ends. Therefore, we propose that any child who enters the out-of-home care reporting population remain in the out-of-home care reporting population until the title IV–E agency’s placement and care responsibility for the child ends.

In paragraph (a)(3), we propose that for AFCARS purposes, an out-of-home care episode is defined as the period between a child’s entry into the out-of-home care reporting population and the date the title IV–E agency’s placement and care responsibility ends. If the title IV–E agency returns the child home to live permanently with his or her parents or legal guardians and placement and care responsibility ends, the child exits the out-of-home care reporting population.

The existing AFCARS regulations consider a child to have exited foster care when he or she is legally discharged from the title IV–E agency’s placement and care responsibility. The child exits the foster care reporting population for AFCARS purposes and completes an out-of-home care episode in these circumstances. Our current proposal differs from the existing AFCARS regulation and the 2008 NPRM proposal, which proposed that the title IV–E agency discontinue reporting a child to AFCARS if the child is placed at home with his or her parents, even if

the child remains under the placement and care responsibility of the title IV–E agency. Many States over the years have highlighted the need for more definitive guidance on when the child should be considered to have exited the AFCARS foster care reporting population so we are proposing the end of the placement and care responsibility as the point at which a child exits the out-of-home care reporting population.

Section 1355.41(b) Adoption and Guardianship Assistance Reporting Population

In paragraph (b), we explain our proposed reporting population for the adoption and guardianship assistance data file.

In paragraph (b)(1) we propose that the title IV–E agency must report data as described in section 1355.44 on each child who meets one of the conditions in the paragraphs (b)(1)(i) or (b)(1)(ii).

In paragraph (b)(1)(i), we propose to require the title IV–E agency to report information required by section 1355.44 on any child for whom there is a finalized adoption under a title IV–E adoption assistance agreement (per section 473(a) of the Act) with the reporting title IV–E agency that is or was in effect at some point during the report period. The existing AFCARS regulation does not include an adoption and guardianship assistance data file. In the existing AFCARS regulation, title IV–E agencies report in the adoption file on any child adopted in the State during the report period, in whose adoption the title IV–E agency had any involvement. Our current proposal differs from the reporting population for the existing AFCARS adoption data file and the reporting population proposed in the 2008 NPRM for the adoption and guardianship subsidy data file. In the 2008 NPRM we proposed that title IV–E agencies report on any child with a title IV–E adoption assistance agreement or a State adoption assistance agreement in effect during the report period, including children in pre-adoptive homes. Unlike the 2008 NPRM, we do not propose to include a child in a pre-adoptive living arrangement in the adoption and guardianship assistance reporting population.

We received comments to the 2008 NPRM and 2010 FR Notice suggesting concern about barriers to obtaining ongoing information about a child post-adoption. States were particularly concerned about intrusiveness, inability and lack of authority to gather this data. To address some of these comments, and in an effort to eliminate duplicate information in the AFCARS files in paragraph (b)(1), we now propose to

limit the reporting population of the adoption and guardianship assistance data file to include only those children with finalized adoptions who are under title IV–E adoption assistance agreements. We propose to collect this information to supplement, rather than duplicate, data collected upon exit to adoption in proposed section 1355.43(h). Further, we only are collecting ongoing information on children under title IV–E adoption assistance agreements to remain within the scope of AFCARS described in section 1355.40. Information collected will be limited to basic demographic information on the adopted child, as well as information regarding the title IV–E adoption arrangement and assistance agreement in effect during the report period. Several State responders to the 2010 FR Notice commented that title IV–E agencies should not have to collect data on finalized adoptions. However, we cannot make this change as we are statutorily required, per section 479(c)(3) of the Act, to capture information on adopted children, including demographics and information about the child's title IV–E adoption from the assistance agreement. We anticipate that collecting this information will not increase burden significantly, as the child's demographic data and basic information related to the title IV–E agreement should not change between report periods and will not require updating by caseworkers. Similarly, information about updates to IV–E adoption and guardianship assistance payments should already be captured elsewhere in the title IV–E information system and should not require manual updates.

We are not proposing to include information on a child in a pre-adoptive placement in this data file, although he or she may have a title IV–E agreement and receive title IV–E adoption assistance before the adoption finalization. This information continues to be collected in the out-of-home care data file and the title IV–E agency must report information on the child's pre-adoptive living arrangement in proposed section 1355.43(e).

We propose to include a child in a finalized adoption under a title IV–E adoption assistance agreement in the adoption and guardianship assistance reporting population regardless of whether a financial subsidy is paid on the child's behalf. For example, a title IV–E agency would include in this reporting population a child with a finalized adoption under a title IV–E adoption assistance agreement that contains a subsidy amount of \$0, for the

purposes of receiving only Medicaid assistance.

With the increased activity in adoption and the corresponding outlays for the program, there has been an increase in requests for information from Congress, States, the media and other sources, regarding the population of adopted children receiving title IV–E assistance. In addition, section 479(c) of the Act mandates that we collect information on the extent and nature of assistance provided by Federal adoption programs and the characteristics of the child with respect to whom such assistance is provided. Although we propose for a title IV–E agency to report only children with finalized adoptions under title IV–E agreements in the adoption and guardianship assistance data file, we believe that the information proposed here in conjunction with the information proposed in paragraphs 1355.43(e) through (h) of the out-of-home care data file may present a more comprehensive picture of adoptions supported through the title IV–E program.

In paragraph (b)(1)(ii), we propose to collect the information in section 1355.44 on any child in a legal guardianship who is under a title IV–E guardianship assistance agreement, pursuant to section 473(d) of the Act, with the reporting title IV–E agency that is or was in effect at some point during the current report period. Information on each child adopted with the involvement of the title IV–E agency is currently reported to AFCARS, but no information is collected regarding children in legal guardianships. In the 2008 NPRM we proposed to collect limited information on any child on whose behalf a guardianship assistance payment was made pursuant to a title IV–E or State assistance agreement with the title IV–E agency. At the time the 2008 NPRM was published, the only subsidized guardianships under title IV–E were those in States with demonstration waivers.

We propose to collect information on any child in a legal guardianship receiving title IV–E guardianship assistance to gather data on children supported through the title IV–E guardianship assistance program established via changes to section 473(d) of the Act made by Public Law 110–351 in October 2008. To date, 31 title IV–E agencies have applied to participate in the title IV–E guardianship assistance program and additional title IV–E agencies may do so in the future. Comments to the 2008 NPRM, which pre-dated title IV–E authority for title IV–E guardianship assistance payments, were mixed

regarding the proposal to collect information about children in legal guardianships on an ongoing basis. Some commenters believed this information was among the most helpful enhancements proposed for AFCARS while others had concerns about intrusion into the lives of guardianship families and the agency's ability to collect accurate data on these families. We received similar comments to the 2010 FR Notice from several States opposed to collecting data on legal guardianships. States were particularly concerned about intrusiveness, inability and lack of authority to gather the data. To address some of these concerns, we modified our proposal in paragraph (b)(2) to limit the adoption and guardianship assistance reporting population to only those children who are in a legal guardianship under a title IV–E guardianship assistance agreement, rather than all children receiving State or Federal guardianship assistance. In addition, we propose to collect only basic demographic information and information readily accessible regarding the child's title IV–E guardianship arrangement and assistance agreement in effect during the report period. As such, there is minimal intrusion on the legal guardian(s), if any, and the title IV–E agency has ready access to the information requested via the title IV–E guardianship assistance agreement.

While there is no statutory mandate to collect information for children who have achieved permanency through legal guardianship, unlike that for adoption, we propose to collect this limited information because we have the same need for information on children supported by title IV–E funding, per section 473(d) of the Act as we do for adopted children. Title IV–E agencies are currently required to collect and report financial information for children under title IV–E guardianship assistance agreements per Form CB–496, in the same manner that title IV–E agencies are to report information on children under title IV–E adoption assistance agreements. While we receive aggregate information on number of guardianships and average subsidy amounts through Form CB–496, we propose to collect child-level information on guardianships through AFCARS to conduct more nuanced data analysis on the characteristics of children under title IV–E guardianship assistance agreements.

Commenters to the 2008 NPRM also expressed concern with using the term “legal guardian” because States may use different terms in practice. This is no longer an issue since the guardianship

assistance data file is comprised of children under a relative legal guardianship per section 473(d) of the Act and the statute defines the term "legal guardianship" in section 475 of the Act.

In paragraph (b)(2), we clarify that a child remains in the adoption and guardianship assistance reporting population through the end of the report period in which the title IV–E agreement ends or is terminated. Neither the current AFCARS regulations nor the 2008 NPRM proposal include such clarification regarding the circumstances under which a child exits the reporting population for this data file. We propose to include this information to respond to commenters to the 2008 NPRM who requested clarification on the circumstances of exit for the adoption and guardianship assistance reporting population, and length of time title IV–E agencies are required to collect information on a child in this reporting population.

Section 1355.42 Data Reporting Requirements

We propose to add a new section 1355.42 on data reporting requirements, including specifying the report periods for the data files, general provisions for collecting and submitting the out-of-home care and adoption and guardianship assistance data files and record retention rules to comply with AFCARS requirements. This section was first proposed in the 2008 NPRM.

Section 1355.42(a) Report Periods and Deadlines

In paragraph (a), we propose that each title IV–E agency submit an out-of-home care data file and an adoption and guardianship assistance data file to ACF on each child in the reporting populations on a semi-annual basis. The two six-month report periods are from October 1 to March 31 and from April 1 to September 30 of each Federal fiscal year. These report periods are the same as in the existing AFCARS, and also were proposed in the 2008 NPRM.

In consultations held prior to the publication of the 2008 NPRM, there were several suggestions that we consider moving to annual, or even less frequent reporting, rather than semi-annual reporting of AFCARS data. Specifically, in the consultations held prior to the 2008 NPRM, commenters were concerned that ACF would be unable to compile an annual data file from two semi-annual submissions for the purposes of the current CFSRs and the annual outcomes report to Congress. However, we can assure title IV–E agencies that our software currently

allows us to create an annual data file for these purposes. We also expect that the new requirements proposed for using a permanent and encrypted person identification number (sections 1355.43(a)(4) and 1355.44(a)(3)) will aid both our own and title IV–E agencies' ability to create annual data files. ACF explained the rationale for proposing to maintain semi-annual submissions for AFCARS in greater detail in the preamble of the 2008 NPRM (73 FR 2088).

We also propose in paragraph (a) that title IV–E agencies submit their data files to us within 30 calendar days of the end of the report period. Therefore, a title IV–E agency will be required to submit AFCARS data files to ACF every year by April 30 and October 30. If this date falls on a weekend, the title IV–E agency must submit the data files by the end of the following Monday. This is a change both from the current AFCARS, which allows a 45 day period in which agencies are required to submit their data files to ACF and from the 2008 NPRM where we proposed a 15 day submission deadline. Commenters to the 2008 NPRM believed that 15 days was an insufficient amount of time to prepare and submit data files. We noted these concerns and extend the proposed submission deadline to 30 days. We believe that a 30 day timeframe is workable and also will better meet title IV–E agency and Federal needs for data for the reasons described below.

AFCARS data is used extensively in a number of ACF priorities and requirements, including the current CFSRs and other monitoring efforts. If ACF receives AFCARS data closer to the end of the report period than we do now, this data may be available sooner to support analysis, which can be used to develop change and/or improvement initiatives. Also, because Adoption and Legal Guardianship Incentive funds are tied to how well States perform in increasing their rate of adoptions and legal guardianships as seen in the AFCARS data (section 473A(c)(2) of the Act), receiving this information more quickly can help to prevent delays in the awarding of incentive funds to States. The vast improvements in automation in the field of child welfare strengthen our belief that a title IV–E agency can prepare data files within 30 days. Many title IV–E agencies now have the ability to record and verify data in a more timely fashion than when the original AFCARS regulation was issued in 1993 (58 FR 67924). Finally, we have provided significant technical assistance to title IV–E agencies to encourage ongoing quality assurance checks on the data recorded in their information

systems. We believe that title IV–E agencies will be able to meet this shorter time frame for submitting data with continued and routine use of our data quality utilities.

Finally, in paragraph (a) we require that title IV–E agencies submit their data to us in two separate data files: (1) Out-of-home care; (2) adoption and guardianship assistance. Currently, agencies must submit four data files (Appendices A and B to 45 CFR 1355): (1) A detailed foster care data file with information on all children in foster care during the report period; (2) a detailed adoption data file with information on all children adopted during the report period in whose adoption the title IV–E agency has some involvement; (3) a foster care summary data file in which the title IV–E agency indicates the total number of foster care records and the age distribution of children in those records; and, (4) an adoption summary data file in which the title IV–E agency indicates the total number of adoption records and the age distribution of the children adopted.

As in the 2008 NPRM, we propose to eliminate the existing foster care and adoption summary data files because they are no longer necessary. ACF originally intended to use the summary data files to verify the completeness of a title IV–E agencies' data submissions and to ensure that the data file was not corrupted during transmission. The summary data files also served as a quick count of the number of children in foster care and those being adopted. However, because the summary data files contain aggregate data, the number of children entering, discharged, adopted, served or in care on a specific day cannot be determined. Further, we are now able to use new technology that is better able to verify the completeness of a data submission without requiring the title IV–E agency to generate summary data files. Commenters to the 2008 NPRM were appreciative and supportive of the deletion of the summary data files.

Section 1355.42(b) Out-of-Home Care Data File

In paragraph (b), we provide instructions on how the title IV–E agency must report information required under the proposed section 1355.43 for each child in the out-of-home care reporting population, as defined in section 1355.41(a).

Specifically, in paragraph (b)(1), we propose that a title IV–E agency submit the most recent information for data elements in the General information and Child information sections of the out-of-home care data file (paragraphs

1355.43(a) and (b), respectively). We propose that the title IV–E agency report current, point-in-time data for these sections similar to the time frame for most existing AFCARS data elements. This information is largely demographic in nature, and tends to remain static over a six-month report period or even longer, and therefore we have no need for the title IV–E agency to report historical information for these data elements. For example, the child's date of birth does not change over the course of a report period. This proposal is unchanged from that included in the 2008 NPRM, and there were no comments specific to this proposal.

In paragraph (b)(2), we propose that a title IV–E agency submit the most recent and historical information for most data elements in the following sections of the out-of-home care data file Parent or legal guardian information, Removal information, Living arrangement and provider information, Permanency planning, General exit information and Exit to adoption and guardianship information (paragraphs 1355.43(c), (d), (e), (f), (g) and (h), respectively). This information is required unless the exception in paragraph (b)(3) applies. This means that for every data file submission, we seek information on the child's full range of experience while in out-of-home care under the title IV–E agency's placement and care responsibility as described through the reporting of these data elements. This will allow ACF to develop a comprehensive picture of a child's full range of experience with entries, living arrangements and permanency plans while in the title IV–E agency's placement and care responsibility, as well as exits from the out-of-home care population. This proposal, which is modified slightly from the 2008 NPRM to incorporate data collection on caseworker visits and transition plans, differs from how title IV–E agencies currently report foster care information under the existing AFCARS requirements; a title IV–E agency currently submits certain detailed information on the child's current foster care episode and current placement setting only as of the last day of the report period.

We propose that a title IV–E agency submit recent and historical information pertaining to termination of parental rights (TPR) petitions, TPRs, removals, permanency and transition plans, caseworker visits, living arrangements and exits from the out-of-home care reporting population every report period rather than requiring updates on children who were in out-of-home care previously or who remain in out-of-

home care from one report period to the next. Part of our goal in developing this proposed regulation is to eliminate features of the existing AFCARS that result in data collection that lacks detailed information about each foster care episode a child experiences. We propose to ask title IV–E agencies for historical information, rather than to report only on changes in the child's living arrangements, permanency plans and entry into or exit from out-of-home care so that we have a way to verify that the child's experiences have, in fact, remained the same across several report periods. Without longitudinal data collection, we are unable to have a comprehensive picture of a child's placement history within each out-of-home care episode. We also believe that this approach is less burdensome on title IV–E agencies. Although sending a child's full history involves submitting more data to us than providing an update as children exit and re-enter out-of-home care and their living arrangements and permanency plans change, we believe that submitting a child's history is less complicated and therefore requires fewer agency resources than the alternative. In other words, sending a child's full history requires the title IV–E agency to submit all the information it has on these data elements, rather than figure out a way to pull out only the information that has changed each report period.

We believe there will be many benefits to obtaining this longitudinal data, including the elimination of the information gaps that exist in the current AFCARS data, which raise questions about the child's experiences and make the data more difficult to analyze, the capability to build upon ACF's ability to conduct sophisticated analyses on what happens to a child or groups of children in foster care and the ability to better inform the current CFRs and other monitoring efforts, on outcome measures such as time in foster care, foster care re-entries and the stability of foster care placements. Commenters to the 2008 NPRM and the 2010 FR Notice were largely supportive of the shift in the data collection methodology to incorporate longitudinal reporting. Although some commenters expressed concerns about implementing a longitudinal methodology for AFCARS data with existing systems and increasingly limited resources, we believe that the potential to have improved data available for Federal monitoring efforts and other priorities provides a compelling reason for proposing these changes.

We decided to propose gathering comprehensive data on removals,

permanency and transition plans and caseworker visits, living arrangements and exits after considering whether a more limited approach to developing longitudinal data would meet our needs for data analysis, as well as those of title IV–E agencies. As described in the 2008 NPRM, the limited option(s) we considered would require a title IV–E agency to submit detailed removal, permanency plan, living arrangement and exit information on the child's four most recent out-of-home care episodes and four most recent living arrangements only. This would have captured almost all foster care episodes without requiring title IV–E agencies to submit extensive histories on children. Similarly, limiting the number of living arrangements that title IV–E agencies would report in AFCARS data would minimize the burden of this approach.

Ultimately, we decided that this more narrow approach was not sufficient. One problem with a limited longitudinal database was that we would have no information on the children who present some of the more significant challenges to the child welfare system. Children who experience high numbers of multiple living arrangements or frequently enter and exit out-of-home care are some of the nation's most vulnerable children. Furthermore, these children often require title IV–E agencies to expend more of their resources to address their problems.

In paragraph (b)(3), we propose an exception to the requirement for title IV–E agencies to report complete historical and current information on all out-of-home care episodes for children in the reporting population. The exception applies to those children who had an out-of-home care episode, as defined in 45 CFR 1355.41(a), prior to the effective date of the forthcoming final rule. Specifically, the exception applies to: (1) Children who are in out-of-home care on the effective date of the final rule who also had a prior out-of-home care episode before this date; and (2) children who enter out-of-home care after the effective date of the final rule who had a prior out-of-home care episode before this date. For such children, we propose that the title IV–E agency report the child's Removal dates, Exit dates and Exit reasons (paragraphs 1355.43(d)(1), (g)(1) and (g)(3) respectively) for each out-of-home care episode that occurred before the effective date of the final rule. The exception does not apply to a child's out-of-home care episode that is open on or begins after the effective date of the final rule; for such children we propose that a title IV–E agency report

all information described in paragraphs (b)(1) and (b)(2) during that ongoing out-of-home care episode. For example, if the effective date of the final rule was June 1, 2011, the title IV–E agency must report complete information for a child who was either in the out-of-home care reporting population on that date or entered subsequently, but only data elements in paragraphs 1355.43(d)(1), (g)(1) and (g)(3) for each previous out-of-home care episode that the child had. As time passes after the final rule goes into effect, this provision will apply to a diminishing number of children who are in the out-of-home care reporting population. This exception is the same as that proposed in the 2008 NPRM, and the comments in response to this proposal were generally supportive.

We propose this exception to the general rule to report complete information to strike a balance between our desire for recent and historical information on all children in out-of-home care under the proposed new AFCARS data elements and the challenge that some agencies may face in gathering this information for a child's previous contacts with the child welfare system before these new rules go into effect. We chose to have a title IV–E agency report at least the child's prior removal and exit dates and exit reasons, because we believe these data elements are most critical to our ability to construct certain cohorts of children for analysis in outcome-based monitoring activities. Further, a title IV–E agency currently collects this information in the normal course of casework activities for children in foster care and reports some of this information in existing AFCARS data elements.

While our proposal is to mandate that title IV–E agencies provide three specific data elements for the prior out-of-home care episode(s) of a child who is in out-of-home care on the effective date of the final AFCARS rule, or enters out-of-home care after the effective date of the final rule, we expect the title IV–E agency to report as much information as possible for these prior out-of-home care episodes, and at least as much information as it reports currently under the existing AFCARS. We know that many title IV–E agencies currently collect comprehensive information that pertains to the proposed new data elements. Therefore, we believe that it is reasonable to expect that agencies may be able to provide us with some additional information on the new data elements regarding prior episodes in the absence of a mandate. A title IV–E agency that does not provide this additional information will not be

penalized. A title IV–E agency that provides this information with errors also will not be penalized.

Section 1355.42(c) Adoption and Guardianship Assistance Data File

In paragraph (c), we propose that the title IV–E agency submit the most recent, point-in-time information for all data elements in the adoption and guardianship assistance data file that are applicable to the child during the report period. This information is needed only on the last day of the report period because while information may change over the course of years, many of the data elements in this data file are not likely to change during any given report period. For example, the amount of title IV–E adoption or guardianship assistance may remain static for the duration of the title IV–E assistance agreement or the amount may fluctuate over a number of years, depending on changes in foster care maintenance rates, whether the adoptive parent(s) or legal guardian(s) request a change in the amount of the title IV–E adoption or guardianship assistance amount, or changes in the child's circumstances. Regardless, capturing this information during each report period will allow ACF to better track and analyze the nature of title IV–E adoption and guardianship arrangements and assistance agreements and to make budget projections. This proposal was first introduced in the 2008 NPRM and received no substantive comments.

Section 1355.42(d) Reporting Missing Information

In paragraph (d), we propose how the title IV–E agency must report missing information. If the title IV–E agency fails to collect the information for a data element, the agency must report the data element as blank or missing. The title IV–E agency may not write the extraction code to default to a valid response option if caseworkers did not collect or enter those responses into the information system. This is the case even when there may be a response option for a data element that allows the title IV–E agency to indicate that the information is not yet determined or is unknown. This provision is consistent with ACF's longstanding practice; however, title IV–E agencies have pointed out that there is no official guidance on this issue. Therefore, we wish to state unequivocally that this practice of defaulting is not permitted.

This proposal was first introduced in the 2008 NPRM. Several commenters to the 2008 NPRM indicated that they felt it was not realistic to forbid a title IV–E agency to default or map

information that caseworkers did not collect or enter into the information system to a valid response option, and that this proposal would increase caseworker burden. Commenters suggested that this proposal would require the caseworker to not only document the work they completed in a child's case, but also enter data into the case management system to indicate "not yet determined" in order to meet the AFCARS requirement for missing data. Although we considered these comments, the statutory mandate in section 479(c)(2) of the Act requires ACF to assure that any AFCARS data that is collected must be reliable and consistent over time. Permitting the practice of defaulting decreases the reliability of the AFCARS data collected in that data reported may not truly reflect the case-specific information and circumstances for each child in the reporting population. For these reasons, we again propose to prohibit the practice of a title IV–E agency having an information system default to or generate automatic responses.

Section 1355.42(e) Electronic Submission

In paragraph (e), we propose to continue requiring a title IV–E agency to submit its data files to ACF electronically, consistent with ACF's specifications. We currently provide guidance on submission of technical requirements and specifications through official ACF policy and technical bulletins. This proposal is the same as that included in the 2008 NPRM, and we received several comments in response to the 2008 NPRM requesting that ACF provide clarification on the type of technologies it anticipates the title IV–E agencies will use in the report submission process. We considered these comments, but learned through our experience with the existing AFCARS that it is prudent not to regulate the technical specifications for transmitting data. As technology changes, we must keep pace with the most current, practical and efficient transmission methods that will meet title IV–E agency and Federal needs. As such, we will continue to provide guidance through policy and technical bulletins.

Section 1355.42(f) Record Retention

In paragraph (f), we propose that title IV–E agencies retain records necessary to comply with the AFCARS reporting requirements outlined in proposed sections 1355.42 through 1355.44. In particular, we propose that the title IV–E agency's retention of AFCARS records is not limited to the

Departmental record retention rules in 45 CFR 92.42(b) and (c). These Departmental record retention rules require title IV–E agencies to retain financial and programmatic records, supporting documents and statistical records related to Federal programs and requirements for a period of three years. Because we seek comprehensive data on children in out-of-home care, including information on their prior experiences with the child welfare system, we view the three-year retention period to serve as a minimum.

Practically, this means the title IV–E agency must keep applicable records until the child is no longer of an age to be in the reporting populations. Additionally, this means that the title IV–E agency must keep applicable records for a minimum of three years when a child exits the reporting population due to age. This is because we propose that a title IV–E agency keep a child's identification number consistent over time and indicates the child's entire history with the child welfare system. This proposal is the same as in the 2008 NPRM. We received several comments in response to this proposal in the 2008 NPRM that indicated concerns regarding the cost of retaining both electronic and paper records. We considered these comments; however, since a child's information is likely to be contained in an electronic format through the IV–E agency's automated information system and is relatively simple to archive and store, we believe the proposed record retention rules are reasonable. Also, based on our experience through SACWIS and AFCARS reviews, title IV–E agencies currently maintain the child's information in their systems until a child reaches the age of majority.

Section 1355.43 Out-of-Home Care Data File Elements

Section 1355.43(a) General Information

In paragraph (a), we propose that title IV–E agencies collect and report general information that identifies the reporting title IV–E agency as well as the child in out-of-home care.

Title IV–E agency. In paragraph (a)(1), we propose that the title IV–E agency indicate the name of the title IV–E agency responsible for submitting AFCARS data to ACF. A State title IV–E agency must indicate its State name for identification purposes. ACF will work with Tribal title IV–E agencies to provide further guidance, including a list of valid response options, during implementation. This proposal differs from the existing AFCARS regulation, which requires the title IV–E agency to

identify itself using the U.S. Postal Service two letter abbreviation for the State or the ACF-provided abbreviation for the title IV–E Tribal agency responsible for submitting the AFCARS data to ACF. This proposal also is different from the 2008 NPRM in which we proposed to use Federal Information Processing Standard (FIPS) codes for State identification. We did not receive comments on this data element in response to the 2008 NPRM but have opted not to proceed with the NPRM proposal to remove FIPS codes, which are no longer being updated and maintained.

Report date. In paragraph (a)(2), we propose that a title IV–E agency indicate the report period date. Specifically, a title IV–E agency will report to us the last month and year that corresponds with the end of the report period, which will always be either March or September of any given year. The information we propose to collect is the same as in the existing AFCARS regulations, and was proposed in the 2008 NPRM. We received no comments on this data element in response to the 2008 NPRM.

Local agency. In paragraph (a)(3), we propose that the title IV–E agency report to us the name of the local county, jurisdiction or equivalent unit that has responsibility for the child. This proposal differs from current AFCARS regulations, which instruct the title IV–E agency to identify the local agency using the five digit FIPS code of the county or ACF-provided abbreviation for the Indian Tribe local unit, and the 2008 NPRM which proposed that the title IV–E agency indicate the FIPS code for the local agency. We received several comments in response to the 2008 NPRM that indicated concern about continuing to use FIPS codes for jurisdictions below the State level. We agree with these comments, and since FIPS codes are no longer being updated and maintained, we propose revisions to this data element to remove FIPS codes. ACF will work with Tribal title IV–E agencies to provide further guidance, including a list of valid response options, for this element during implementation.

Child record number. In paragraph (a)(4), we propose that the title IV–E agency report the child's record number, which is a unique person identification number, as an encrypted number. The child record number must remain the same for the child no matter where the child lives while in the placement and care responsibility of the title IV–E agency and across all report periods and out-of-home care episodes. As discussed in section 1355.44, we also propose to

require the title IV–E agency to use this child record number for reporting if the child exits the out-of-home care data file and enters the reporting population for the adoption and guardianship assistance data file. The title IV–E agency must apply and retain the same encryption routine or method for the child record number across all report periods. The title IV–E agency's encryption methodology must meet all ACF standards prescribed through technical bulletins or policy.

The existing AFCARS requirement is for the title IV–E agency to report the sequential or unique number that follows the child as long as he or she is in foster care. We now propose, as we did in the 2008 NPRM, to revise the child record number data element to no longer allow agencies to use sequential numbers for AFCARS. Rather, title IV–E agencies are to use encryption and consistent numbers. The proposed changes to this data element are based on findings from AFCARS reviews, technical assistance, and public comments, described at length in the 2008 NPRM, which indicate that there are circumstances in which title IV–E agencies use different record numbers for the same child. We received a number of comments in response to the 2008 NPRM applauding the inclusion of this data element that meets a long standing need for data about a child's total experience in out-of-home care, as well as several comments seeking clarification and technical assistance around this data element. Through these proposed revisions, title IV–E agencies will keep a child's record number consistent through his or her out-of-home care experience, and utilize encryption to ensure that the child's identity will remain confidential. Ensuring that the child record number is consistent throughout placement changes also will assist in the analysis of NYTD data, which requires States to use a child's AFCARS child record number for identification.

This proposed data element, however, is different from the 2008 NPRM proposal in that we do not propose to retain the exception that a title IV–E agency may provide a new child record number if the child was previously adopted. Initially proposed in the 2008 NPRM, this exception applied to a child who re-enters out-of-home care following an adoption. In addition to the public comments received in response to the 2008 NPRM that support maintaining a consistent identification number throughout a child's out-of-home care experience, we are not retaining this exception so that we may collect information on the experience of

sibling groups in the child welfare system through out-of-home care placements. By ensuring that title IV–E agencies use consistent child record numbers, it may be possible to capture information over time on the total experience of sibling groups in the child welfare system.

Finally, we would like to note that we are not continuing our 2008 NPRM proposal to require title IV–E agencies to report a unique and encrypted Family Record Number that is associated with the child. We acknowledge that defining “family” for the purposes of this data element may be challenging for title IV–E agencies and understand from commenters to the 2008 NPRM that associating a family record number with each child may be technically difficult for State and Tribal agency systems. We instead propose to collect information in both paragraph (e) and proposed section 1355.44 to aid in the identification of sibling groups, and we discuss these proposals later in this NPRM.

Section 1355.43(b) Child Information

In paragraph (b), we propose that title IV–E agencies collect and report various characteristics of the child in the out-of-home care reporting population.

Child’s Birth Information. In paragraph (b)(1), we propose to collect information on the child’s date of birth and whether the child was born in the United States.

In paragraph (b)(1)(i), we propose to require title IV–E agencies to report the month, day and year of the child’s birth, which is what we proposed in the 2008 NPRM. This proposal differs slightly from the instruction included in existing AFCARS regulations regarding a child’s date of birth in that we do not require the title IV–E agency to report an abandoned child’s date of birth as the 15th of the month. As detailed in the 2008 NPRM, we are not retaining this requirement because AFCARS reviews revealed that many title IV–E agencies were not aware of this instruction or that workers were reluctant to enter an unknown birth date as the 15th of the month. Therefore, we are requiring that the title IV–E agency always provide the child’s actual or estimated date of birth. There were no substantive comments on this data element in response to the 2008 NPRM.

In paragraph (b)(1)(ii), we propose to require the title IV–E agency to report whether or not the child was born in the United States. If the child was born in the United States, indicate “yes.” If the child was born in a country other than the United States, indicate “no.” This is a newly proposed data element and will

give us a national picture of how many foreign-born children are in out-of-home care. We specifically request comments from State and Tribal title IV–E agencies on this data element.

Child’s sex. In paragraph (b)(2), we propose that the title IV–E agency report whether the child’s is male or female, as appropriate. This proposal mirrors both the 2008 NPRM proposal and the existing regulation. There were no substantive comments in response to this proposed data element in response to the 2008 NPRM.

Child’s race. In paragraph (b)(3), we propose to require the title IV–E agency to report information on the race of the child. Each racial category is a separate data element to represent the fact that the OMB standards require title IV–E agencies to allow an individual to identify with more than one race. Consistent with the OMB standards, self-reporting or self-identification is the preferred method for collecting data on race and ethnicity. This means that the title IV–E agency is to allow the child, if age appropriate, or the child’s parent(s) or legal guardian(s) to determine the child’s race.

The response options proposed are slightly different from those in the existing AFCARS, but are similar to the 2008 NPRM proposal and to those in the NYTD (see 45 CFR 1356.80). One difference in the current proposal is that we allow, in addition to the child and the child’s parent(s), legal guardians to determine the child’s race. We are including this option to acknowledge that a legal guardian, rather than the child’s parent(s), may be the appropriate person to determine the child’s race, if that child has been living with him or her. The racial categories of American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander and White listed in proposed paragraphs (b)(3)(i) through (b)(3)(v) are consistent with the OMB Revised Standards for the Classification of Federal Data on Race and Ethnicity, as described in the 2008 NPRM. There were several public commenters in response to both the 2008 NPRM and 2010 FR Notice that suggested aligning response options regarding a child’s race with other Federal data reporting efforts such as NCANDS or NYTD race categories. We agree, and the racial categories proposed both in the 2008 NPRM and the current proposal are aligned with those in NCANDS and NYTD, in addition to being consistent with OMB race and ethnicity standards as described above.

In the 2008 NPRM, we propose that if the child’s race is “unknown,” the title IV–E agency is to so indicate in

paragraph (b)(3)(vi). However, we now propose to clarify that “unknown” must also be selected if the child or his or her parent(s) or legal guardian(s) cannot communicate the child’s race. This response option serves to replace “unable to determine” currently included in AFCARS. A child’s race can be categorized as “unknown” only if a child or his or her parent(s) or legal guardian(s) does not actually know the child’s race, or the child or his or her parent(s) or legal guardian(s) is unable to communicate the child’s race. Using “unknown” to report the fact that the title IV–E agency has not asked the child or his or her parent(s) or legal guardian(s) for the child’s race is not an acceptable use of this response option. Further, it is acceptable for the child to identify that he or she is multi-racial, but does not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that a race is unknown.

In the 2008 NPRM we proposed to introduce two new response options, currently not in AFCARS, that we include in our proposal. We propose that if the child’s race cannot be determined because the child is “abandoned,” the title IV–E agency must so indicate in paragraph (b)(3)(vii). We provide a definition of abandoned so that we are clear that the term should be used in very restrictive circumstances and not any time a parent may be temporarily unavailable. If a child who was abandoned as an infant later identifies as being of a certain race or multiple races, the title IV–E agency must indicate the applicable race(s), rather than “abandoned.” Finally, we propose that in the situation in which the child or his or her parent(s) or legal guardian(s) “declines” to identify any race, the title IV–E agency must so indicate in paragraph (b)(3)(viii).

Child’s Hispanic or Latino ethnicity. In paragraph (b)(4), we propose to require that a title IV–E agency report the Hispanic or Latino ethnicity of the child. This proposed data element is similar to that proposed in the 2008 NPRM. The only difference in the current proposal is that, in addition to the child or the child’s parent(s), we allow the legal guardian(s) to determine the child’s ethnicity. We include this option to acknowledge that a legal guardian, rather than the child’s parent(s), may be the appropriate person to determine the child’s ethnicity, if that child has been living with him or her. This proposal differs from the existing AFCARS in that we propose here that the child’s ethnicity be self-determined by the child, or determined by his or her

parent(s) or legal guardian(s), consistent with OMB race and ethnicity standards. As in the 2008 NPRM proposal, we also propose that the title IV–E agency may report the following response options, not currently included in AFCARS whether the child’s ethnicity is “unknown” because the child or the child’s parent(s) or legal guardian(s) does not know or cannot communicate the information, whether the child is “abandoned” or the child or the child’s parent(s) or legal guardian(s) “declined” to provide this information.

In paragraphs (b)(5) and (b)(6), we propose for the first time that the title IV–E agency collect information on health assessment(s) that the child has received while in foster care. We specifically seek information on the date of the child’s most recent health assessment and whether the child has been receiving health assessments in a timely manner to ensure that the title IV–E agency is performing health assessments on each child in a foster care placement in accordance with their own established schedule, per the statutory requirements in section 422(b)(15)(A) of the Act. In paragraph (b)(6), if the child has missed a required health assessment in the past but has now received all required health assessments, the title IV–E agency must indicate “yes.” We have learned through technical assistance that many title IV–E agencies are already collecting information regarding the receipt of health assessments for each child in foster care, including the dates of each assessment, and therefore, the inclusion of this proposal should not place significant burden on the title IV–E agency.

ACF believes that it is important to ensure that the title IV–E agency is identifying and addressing the health needs of children in foster care. Proposing to require the title IV–E agency to report health assessment information provides ACF an opportunity to ensure that the title IV–E agency is identifying a child’s critical health needs through routine health assessments and that these needs are appropriately addressed and reviewed by a medical professional. For example, if a child is receiving health assessments according to the schedule established by the title IV–E agency per section 422(b)(15)(A) of the Act, we can assume that the medical professional(s) performing the screening will identify and address health needs such as immunization updates, need for services, and appropriate use of medications. We believe that this information will serve as a proxy for other indicators of well-being in

addition to providing health assessment information for each child in the out-of-home care reporting population. We welcome comments on this proposal.

Health, behavioral or mental health conditions. In paragraph (b)(7), we propose to require title IV–E agencies to report whether a child has been diagnosed by a qualified professional as having one or more health, behavioral or mental health conditions prior to or during the child’s current out-of-home care episode as of the last day of the report period. In the existing AFCARS the title IV–E agency is required to collect similar information on a child’s conditions in the data element “child disability.” In the 2008 NPRM we proposed to revise the data element name and require title IV–E agencies to collect information on an expanded list of health, behavioral or mental health conditions. Our current proposal utilizes the expanded list of condition types as proposed by the 2008 NPRM, but is modified as detailed below.

If a title IV–E agency indicates that the child has a diagnosed condition, we now propose to require the title IV–E agency to indicate “existing condition,” “previous condition” or “does not apply,” as applicable for each of the categories of conditions in paragraphs 1355.43(b)(7)(i) through (b)(7)(xii). A title IV–E agency must report a diagnosed condition known prior to or during the child’s current out-of-home care episode as of the last day of the report period. If the child was diagnosed with a condition prior to entry, and that condition is still applicable to the child when he or she enters foster care, the title IV–E agency must indicate this as an “existing condition.” If the title IV–E agency is aware and obtained a medical summary, then this information should be recorded and reported in AFCARS data as an “existing condition.” Consequently, if a child was diagnosed for a condition that is resolved, the title IV–E agency must report this diagnosis as a “previous condition.” For instance, a child may have been born with a congenital defect that fits in the physically disabled category and has undergone treatment for the condition such that the condition no longer impairs the child’s day-to-day motor functioning.

This proposal differs from the 2008 NPRM proposal and existing AFCARS regulations. In the 2008 NPRM we proposed to require a title IV–E agency to indicate “applies” or “does not apply” for each response option. We propose now to require a title IV–E agency to indicate “previous condition” versus “existing condition” specifically to collect ongoing information on

conditions that the child was previously diagnosed with, but do not currently apply to the child. We were unable to distinguish between current and prior diagnoses with our 2008 NPRM proposal. In addition, we were unable to capture comprehensive information in current AFCARS regulations and our 2008 NPRM proposal regarding a child’s diagnosed health, behavioral and mental health conditions beyond the current AFCARS report period, which this proposal will allow. Collecting additional information regarding conditions for which the child was previously diagnosed but do not exist as current diagnoses will provide increased opportunities for analysis regarding the health and service needs of children in out-of-home care. While this information will be updated in the AFCARS file each report period, the structure will permit ACYF to produce longitudinal files for research, and/or provide the information required to link records across report periods in the public use data sets. However, we seek public comment regarding the utility of collecting the health-related data elements such that the information provided for a child on a previous data submission is not overwritten, but instead is included in each data file with the new information (with dates indicating the date of data submission for each set of health-related data elements). We also seek comment on whether there are further steps that should be taken in this area to provide usable, accurate, and reliable longitudinal information about a child’s health conditions.

We proposed to modify the list of conditions in current AFCARS regulations in the 2008 NPRM that title IV–E agencies currently report, creating separate response options for visually and hearing impaired (combined in current regulation) and adding the following diagnosed conditions as response options anxiety disorder, childhood disorders, learning disability, substance use-related disorder and developmental disability. We propose to make a minor change to the list by renaming “mental retardation” as “intellectual disability,” but we intend to maintain the definition of “mental retardation” that was included in the 2008 NPRM. Our reasoning for making this name change is to conform with the proposed changes to the Diagnostic and Statistical Manual of Mental Disorders–V (DSM–V), the changes made by Public Law 111–256 that solidified the use of “intellectual disability” in Federal law and the increasing focus on cultural sensitivity to the term “mental

retardation.” In response to the requirements in Public Law 113–183 to include information in the annual Child Welfare Outcomes Report on children in foster care who are pregnant, we propose the addition of “pregnant” to the list of conditions. This information is required to be included in the annual report beginning in FY 2016. Other than the changes described above, we have chosen to continue the definitions for the proposed conditions without additional changes both to maintain consistency with currently reported conditions, and to limit burden placed on title IV–E agencies associated with making changes to this data element. We welcome comments on this proposal.

In response to the 2008 NPRM, several commenters expressed concern regarding the additional training that caseworkers would require to capture and categorize detailed clinical information, as well as concerns regarding the impact of the new data elements on the SACWIS system and programmatic data elements. However, as we described in the 2008 NPRM, we believe that collecting information pertaining to the health characteristics of a child is important in understanding the length of time children remain in care, their placement needs, number of placements, and, in general, the needs of children being served by the title IV–E agency. In addition, requiring this information is consistent with the provision in section 475(1)(C) of the Act for the title IV–E agency to have a case plan that includes the child’s health records and known medical problems. We have observed, through our AFCARS reviews and Technical Assistance provision, that many title IV–E agencies already collect comprehensive information from medical and health assessments for children in foster care, and this information is often incorporated as part of a child’s case record.

Finally, consistent with existing AFCARS and detailed in the 2008 NPRM, we propose to continue requiring that the title IV–E agency indicate diagnoses made by a qualified professional as determined by applicable laws and policies of the State or Tribal service area. A qualified professional may include a doctor, psychiatrist or, if applicable in the State or Tribal service area, a licensed clinical psychologist or social worker.

School enrollment. In paragraph (b)(8), we propose for the first time that the title IV–E agency report whether a child is currently a full-time student at and enrolled (or in the process of enrolling) in school as of the last day of

the report period or on the day of exit for a child exiting out of home care prior to the end of a report period. We propose that the title IV–E agency report the child’s school enrollment by indicating “elementary,” “secondary,” “post-secondary education or training” or “college.” We propose that a child who has not reached the age for compulsory school attendance must be identified as “not school-age” and a child who has reached the age for compulsory school attendance, but is not enrolled or in the process of enrolling in any school setting full-time must be identified as “not enrolled.”

For the purposes of AFCARS, we propose that for a child to be “enrolled” in school he or she must meet the statutory definition of “elementary or secondary school student” at section 471(a)(30) of the Act or participate full-time in college or post-secondary education/training activities. An “elementary or secondary school student” per section 471(a)(30) of the Act means that the child is (A) enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located; (B) instructed in an elementary or secondary education program in accordance with a home school law of the State or other jurisdiction in which the home is located; (C) in an independent study elementary or secondary education program, in accordance with the law of the State or other jurisdiction in which the program is located, that is administered by the local school or school district; or (D) incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child.

We propose that, for the purposes of AFCARS, enrollment in “post-secondary education or training” refers to full-time enrollment in any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Enrollment in “college” refers to a child that is enrolled full-time at a college or university.

We propose that the title IV–E agency collect and report information on the child’s school enrollment for the first time in an effort to learn more about the well-being and stability of children served by title IV–E agencies. ACF agrees with commenters in response to the 2010 FR Notice in the importance of addressing the educational needs of youth in foster care. In addition, some

title IV–E agencies already collect information on school enrollment, and consider this information to determine placements for a child entering foster care or to change foster care placements. We propose to collect information in AFCARS on school enrollment in particular to respond to this interest, and to address the new requirement in section 471(a)(30) of the Act (amended by Pub. L. 110–351) that title IV–E agencies must assure in their title IV–E plan that each child receiving a title IV–E payment who has attained the age for compulsory school attendance is a full-time elementary or secondary student, as defined above, or has completed secondary school as described in ACYF–CB–PI–10–11. This statutory requirement is designed to ensure that a child of appropriate age is enrolled full-time or is in the process of enrolling in an elementary or secondary school, if the child has not already completed secondary school.

Further, we propose to collect information on a child’s enrollment in college and/or post-secondary education/training for all children in the out-of-home care reporting population, which includes children receiving extended title IV–E assistance beyond age 18. Some commenters to the 2010 FR Notice were resistant to us requiring title IV–E agencies to report additional education data elements; however, the majority of commenters indicated interest in the collection of data in AFCARS that directly addresses a child’s educational experience, given the increasing emphasis on education in foster care. The data elements in paragraphs (b)(8) through (b)(12) of this section are proposed, in part, to address this identified need for information, as well as to collect information on children receiving extended title IV–E assistance per the option provided in section 475(8)(B) of the Act. We welcome comments on this proposal.

Educational level. In paragraph (b)(9), we propose for the first time that a title IV–E agency report the highest educational level, from Kindergarten to college or postsecondary education/training, completed by the child as of the last day of the report period. If a child has not yet reached the minimum age for compulsory school attendance, as determined by applicable State/Tribal law, the title IV–E agency must indicate that the child is “not school-age.” Title IV–E agencies are not currently required to report this information in AFCARS and this proposal replaces the *Educational performance* data element we proposed in the 2008 NPRM to require a title IV–E agency to report information on whether the child has

repeated a grade in school and the number of times a child has repeated a grade. Comments in response to the 2008 NPRM questioned the value of collecting information on whether a child has repeated grades in school. Commenters to the 2008 NPRM also suggested that reporting data on repeated grades was not useful, as this information provided an incomplete picture of a child's educational progress. We agree a revision is needed, given the passage of Public Law 110-351, and instead propose that a title IV-E agency collect information on a child's recently completed grade level, which measures educational progress and aligns with statutory changes made by Public Law 110-351.

Title IV-E agencies must report the highest educational level that the child has completed as of the last day of the report period, rather than the child's current educational level. For example, the title IV-E agency should indicate "Kindergarten" if the child has completed Kindergarten or is currently in or about to begin 1st grade. The title IV-E agency must indicate "college" if the child has completed at least one semester of study at a college or university, and indicate "post-secondary education or training" if the child has completed any amount of time in post-secondary education or training (e.g., vocational or job skills training) other than an education pursued at a college or university.

We seek this information in an effort to learn more about a child's well-being while in out-of-home care. We believe that collecting the highest educational level completed from Kindergarten to college or post-secondary education/training is an appropriate indicator of educational achievement because it is a measure that does not vary greatly among jurisdictions, and is appropriate for all school-age children. The highest level of education completed is relatively simple for a title IV-E agency to collect and report, and there is evidence from AFCARS reviews and technical assistance that at least a few title IV-E agencies already collect this information. Further, we believe that this data element is consistent with the statutory requirement for title IV-E agencies to compile information on health and education records of the child, including information on the child's grade level performance while in foster care (section 475(1)(C)(ii) of the Act) and we believe that it would be beneficial to collect this information in AFCARS so that we can analyze trends in the relationship between a child's age and his or her educational achievement. While this information will be updated

in the AFCARS file each report period, the structure will permit ACYF to produce longitudinal files for research, and/or provide the information required to link records across report periods in the public use data sets. However, we seek public comment regarding the utility of collecting data on a child's education level such that the information provided for a child on a previous data submission is not overwritten, but instead is included in each data file with the new information (with dates indicating the date of data submission associated with each grade level). We also seek comment on whether there are further steps that should be taken in this area to provide useable, accurate, and reliable longitudinal information about a child's educational level.

Educational stability. In paragraph (b)(10), we propose for the first time to require title IV-E agencies to collect and report whether the child is enrolled or is in the process of enrolling in a new elementary or secondary school prompted by an initial placement into foster care or a placement change that occurred within the report period if applicable. This information is not longitudinal and will be captured each report period. As described in paragraph (b)(8), for the purposes of AFCARS, a child is considered to be "enrolled" in an elementary or secondary school if the child meets the statutory definition of "elementary or secondary school student" at section 471(a)(30) of the Act.

New school enrollments, for the purposes of AFCARS, are indicated by any school change that occurs prompted by a child's initial placement after entering foster care or any subsequent living arrangement change, whether or not the child was ever previously enrolled in the "new" school. If there is a new enrollment in an elementary or secondary school for the child, we propose to require the title IV-E agency to provide additional information on the reason that prompted this new enrollment in paragraphs (b)(10)(i) through (b)(10)(vii), by indicating whether each condition "applies" or "does not apply." In paragraph (b)(10)(i), we propose that the title IV-E agency indicate "proximity" if the child enrolled in a new elementary or secondary school because the distance to his or her former school was too far from the child's out-of-home care placement, there was a lack of transportation to the child's former school or proximity was otherwise a factor in the decision for the child to change schools. In paragraph (b)(10)(ii), we propose that the title IV-E agency indicate "district/zoning rules" when

the child enrolled in a new school because State/Tribal or local policies, laws or regulations prohibit the child from attending his or her former school as a result of an initial placement into foster care or a subsequent change in living arrangements. In paragraph (b)(10)(iii), we propose that the title IV-E agency indicate "residential facility" when the child enrolled in a new school because he or she formerly attended school on the campus of a residential facility. Facilities of this type could include residential treatment centers, as well as child care institutions. In paragraph (b)(10)(iv), we propose that the title IV-E agency indicate "services/programs" when the child enrolled in a new school to participate in services or programs that are not offered at his or her former school. These services could include, but are not limited to, specialized academic support programs, behavior modification programs, residential education programs or other supportive services that would benefit the well-being of the child. In paragraph (b)(10)(v), we propose that the title IV-E agency indicate "child request" if the child enrolled in a new school because he or she requested to leave the previous school. In paragraph (b)(10)(vi), we propose that the title IV-E agency indicate "parent/legal guardian request" if the child enrolled in a new school because his or her parent(s) or legal guardian(s) requested for the child to leave the previous school. Finally, in paragraph (b)(10)(vii), we propose that the title IV-E agency indicate "other" if the child enrolled in a new elementary or secondary school due to a reason that was not included in paragraphs (b)(10)(i) through (b)(10)(vi).

We seek this information because we are interested in gathering information on the reasons that prompt a change in school enrollment for children upon an initial placement into foster care or as the result of a subsequent change in living arrangements. In addition, we propose the collection of information regarding educational stability to conform to changes introduced in Public Law 110-351 that added a case plan requirement to ensure the development of a plan for the educational stability of a child in foster care as established in section 475(1)(G) of the Act.

Although some commenters to the 2010 FR Notice indicated that collecting this data would increase the burden for caseworkers who have trouble obtaining this information, many commenters to the 2008 NPRM and 2010 FR Notice supported the collection of this

information in AFCARS. In addition, we have learned through AFCARS reviews and technical assistance that some title IV-E agencies already collect this information and utilize it when considering placements for children entering foster care. We considered the comments concerned about the increased burden, however, we believe that collecting information on the reasons title IV-E agencies determine that remaining in the school of origin or a previous school is not in the child's best interest will help to identify and address barriers to educational stability after an initial placement into foster care or a change in living arrangements.

While this information will be updated in the AFCARS file each report period, the structure will permit ACYF to produce longitudinal files for research, and/or provide the information required to link records across report periods in the public use data sets. However, we seek public comment regarding the utility of collecting information on educational stability such that information provided for a child on a previous data submission is not overwritten, but instead is included in each data file with the new information (with dates indicating the date of data submission for each change in school enrollment). We also seek comment on whether there are further steps that should be taken in this area to provide usable, accurate, and reliable longitudinal information about a child's educational stability.

Special education. In paragraph (b)(11), we propose to require the title IV-E agency to collect information about whether the child has an Individualized Education Program (IEP) or an Individualized Family Service Program (IFSP) as of the end of the report period. An IEP is a written statement for each child with a qualifying disability that requires special education services for that disability. The IEP is developed, reviewed and revised by the school in accordance with requirements in section 614(d)(1) of Title I, Part B of the Individuals with Disabilities Education Act (IDEA) and implementing regulations. An IFSP is a written individualized family service program for a child ages 0-3 with special needs. An IFSP must be developed by a multidisciplinary team, including the parent(s) and early intervention specialist(s), and meet requirements of section 636 of Title I, Part C of the IDEA and implementing regulations.

If the child does not have an IEP or IFSP, the title IV-E agency must indicate "not applicable." We believe that a current IEP or IFSP indicates that

a child has need for or is currently receiving special education instruction or early intervention services, respectively. Agencies are not required to report this information in the current AFCARS. This proposal modifies the "special education" data element proposed in the 2008 NPRM, in which we proposed to require title IV-E agencies to indicate whether the child received special education instruction during the report period. The term "special education" is defined in 20 U.S.C. 1401(29) and means specifically designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability.

Several commenters to both the 2008 NPRM and the 2010 FR Notice suggested collecting information specifically on whether a child has a current IEP or IFSP, rather than general receipt of special education. Other commenters to the 2008 NPRM indicated that there were significant potential data quality issues with reporting on the child's receipt of special education, as this information would require constant updating by caseworkers in title IV-E agencies. Commenters to the 2008 NPRM also were concerned that the needs of and services received by young children in foster care (ages 0-3) were excluded from the 2008 NPRM proposal. Our current proposal is responsive to some of these comments. Further, we propose collecting information on a child's IEP or IFSP as a proxy for receipt of special education because we believe that data on whether the child has an IEP or IFSP is a more reliable measure of determining if a child is receiving special education services. In addition, we believe that information regarding an IEP or IFSP is information often included in a child's case file and is thus easier for a title IV-E agency to obtain than information regarding eligibility for special education instruction.

As outlined in the 2008 NPRM, we propose to collect information on a child's receipt of special education because of our interest in monitoring the well-being of children in out-of-home care and our desire to provide a more comprehensive picture of the educational needs of children in out-of-home care. Further, gathering this information is consistent with the case plan requirements in section 475(1)(C) of the Act. We welcome comments on this proposal.

IDEA qualifying disability. In paragraph (b)(12), we propose for the first time to require title IV-E agencies to report the child's qualifying disability, if applicable, (*i.e.*, categories

of impairment indicated on the child's IEP or IFSP) if the title IV-E agency indicated that the child has either an IEP or IFSP in paragraph (b)(11); otherwise the title IV-E agency should leave this data element blank. The child has a "qualifying disability" if the child meets at least one category of impairment (as defined in the IDEA at 34 CFR 300.8(c)), and the child may need early intervention, special education and/or related services in order for the child to benefit from an educational program. The categories of impairment defined in IDEA (including developmental delay, autism, hearing or visual impairment, emotional disturbance, intellectual disability and traumatic brain injury) are included on the child's IEP or IFSP as part of the eligibility determination for special education services. The response options we propose are the same as the categories of impairment defined at 34 CFR 300.8(c).

The information we propose to be collected in this paragraph differs from the information collected in "health, behavioral or mental health conditions" as described in paragraph (b)(7). In paragraph (b)(12), we propose to require the title IV-E agency to indicate which categories of impairment serve as the basis for the child's qualification for early intervention services or special education instruction, which is information taken directly from the child's IEP or IFSP. The response options described in paragraphs (b)(12)(i) through (b)(12)(xii) are unique in that they are federally-defined under IDEA and may not always match the clinical definition(s) of a disability. Further, IDEA does not require conditions present on an IEP or IFSP to be diagnosed by a qualified professional; conditions may be determined through an assessment or other mechanism by various school personnel. In contrast, paragraph (b)(7) describes health, behavioral and mental health conditions that are aligned with clinical definitions and instructs title IV-E agencies to indicate only those conditions that have been diagnosed by a qualified professional (as defined by the title IV-E agency) for the purposes of AFCARS data collection.

We believe that collecting information pertaining to the needs of children receiving special education services is important to understanding the educational performance of children in out-of-home-care. Our proposal to collect information in paragraph (b)(12) on the categories of impairment defined in IDEA also is consistent with the suggestions of several public commenters to the 2008 NPRM who

believed that the previously proposed “special education” data element did not provide enough information on the child’s need for special education, particularly on children who are receiving special education services but do not have a clinical disability diagnosed by a qualified professional indicated in paragraph (b)(7) (e.g., children with Attention Deficit Disorder or other behavioral conditions). Further, requiring this information is consistent with the case plan requirements in section 475(1)(c) of the Act. We welcome comments on this proposal.

Prior adoption. In paragraph (b)(13), we propose to require a title IV–E agency to report whether the child has experienced one or more prior legal adoption(s), and the dates, types, and jurisdiction of each adoption. In the existing AFCARS, we require title IV–E agencies to indicate if the child was ever adopted and, if so, the child’s age at the time of the adoption finalization. In the 2008 NPRM, we proposed to revise the requirement to clarify that we are interested in whether the child has ever experienced a finalized adoption prior to the current out-of-home care episode, and proposed to require the title IV–E agency to collect the date, type, and location of the prior adoption, if one is so indicated. Our current proposal mirrors the 2008 NPRM proposal to require the title IV–E agency to collect information on whether a child had or had not experienced a prior adoption or report if information is unknown because the child has been abandoned. However, for the first time, we propose that title IV–E agencies submit adoption date, type, and jurisdiction information for each prior adoption that the child had experienced, providing an opportunity for data collection if the child has experienced one or more adoption(s) prior to entry into foster care.

As in the 2008 NPRM, we also clarify that the title IV–E agency is to include any type of prior adoption in this data element, regardless of whether the adoption was public, private or independent, or out of the United States. Although some commenters to the 2008 NPRM had concerns about the increased burden on caseworkers to collect this information, many commenters to both the 2008 NPRM and 2010 FR Notice supported the collection of this information, indicating that it provided greater detail on the stability of adoptions from foster care.

Prior adoption date(s). In paragraph (b)(13)(i), we propose to require a title IV–E agency to report the finalization date of each prior adoption(s) that the child has experienced if it was indicated

in paragraph (b)(13) that the child had at least one prior finalized adoption. This is a modification of the data element proposed in the 2008 NPRM, which did not provide the opportunity to report multiple adoption finalization date(s).

In the existing AFCARS, we require the title IV–E agency to report the child’s age range at the time of the prior finalized adoption. This information, however, was insufficient to determine accurately when the child was previously adopted. Thus, as in the 2008 NPRM, we propose that the title IV–E agency report the actual finalization date to allow us to determine how much time has elapsed between the child’s previous adoption(s) and his or her current out-of-home care episode. We did not receive comments on this proposal in the 2008 NPRM.

In the case of an intercountry adoption, the child’s parent(s) may have gone through a readoption process in the jurisdiction where they reside in the United States. While in many cases this process is optional for a child whose adoption was finalized in the originating country, we understand that there are some jurisdictions in the United States that require the child to be readopted in his or her jurisdiction of residence. In such cases, we are requiring that the title IV–E agency provide the date that the adoption is considered final in accordance with applicable State or Tribal laws.

Prior adoption type(s). In paragraph (b)(13)(ii), we seek information on the type of each prior adoption the child has experienced, as indicated in (b)(13)(i). We propose to require a title IV–E agency to indicate “foster care adoption within State or Tribal service area” if the child was in foster care in the reporting State or Tribal service area at the time the prior adoption was legalized. We propose to require a title IV–E agency to indicate “foster care adoption in another State or Tribal service area” if the child was in foster care in another State or Tribal service area at the time the prior adoption was legalized. We propose to require a title IV–E agency to indicate “intercountry adoption” if the child had a prior adoption that occurred in another country, or was finalized in the United States after the child was brought into the country for the purposes of the prior adoption. Finally, we propose to require a title IV–E agency to indicate “other private or independent adoption” if the child’s prior adoption was neither a foster care adoption nor an intercountry adoption as defined above. This proposal to require the title IV–E agency

to report each prior adoption type is necessary to accommodate our overall proposal to require title IV–E agencies to report multiple adoption type(s) if a child experienced more than one prior adoption.

For the purposes of AFCARS, “another country” in the definition of “intercountry adoption” means any country other than the United States. As described in the 2008 NPRM, we seek this information primarily in response to the requirements in section 422(b)(12) of the Act, which require the CFSP and Annual Progress and Services Report (APSR) to collect and report certain information on children who are adopted from other countries and who enter the custody of a title IV–E agency as a result of the disruption of an adoption placement or the dissolution of that adoption.

We seek this information to allow us to compile the number of children and jurisdiction(s) from where such children originated to inform permanency planning for children involved in disrupted or dissolved adoptions. We believe that collecting this information in AFCARS will provide more nuanced information on disrupted or dissolved adoptions because we will be able to collect information at the case level, rather than in aggregate per the current CFSP/APSR reporting method. Several commenters to the 2008 NPRM indicated concern regarding the time and burden for caseworkers involved in collecting data on prior adoptions, particularly for prior interstate and intercountry adoptions. However, we believe this information is collected as part of the case assessment of the child and family and that including this data element will provide critical information on international adoptees moving into foster care. Additionally, it will contribute to our knowledge surrounding disrupted or dissolved adoptions.

Prior adoption jurisdiction(s). In paragraph (b)(13)(iii), we propose to require a title IV–E agency to submit the name of the State, Tribal service area, Indian reservation, or country in which the child was previously adopted. A title IV–E agency must collect this information only for each prior adoption noted in paragraph (b)(13)(ii) that occurred outside of the reporting State or Tribal service area; otherwise the title IV–E agency must leave this data element blank. This data element is not in the current AFCARS and was first proposed in the 2008 NPRM. The current proposal differs from the 2008 NPRM, which required title IV–E agencies to submit the FIPS code that corresponded with the State or country

in which the child was previously adopted. We modified this data element to remove FIPS codes, which are no longer being maintained and updated. In addition, FIPS codes do not account for the breadth of jurisdictions that could be captured in this element, as they do not include non-Federal Tribes and other countries. ACF will work with Tribal title IV–E agencies to develop valid response options for this element.

We propose to collect the jurisdiction of each prior adoption so that we can calculate accurately the dissolution and disruption rates for each jurisdiction in which the child experienced a finalized adoption. Further, collecting information on the country in the case of a prior intercountry adoption will inform our understanding of disrupted or dissolved intercountry adoptions consistent with the requirements in section 422(b)(12) of the Act.

Prior guardianship. In paragraph (b)(14), we propose, for the first time, to require title IV–E agencies to collect and report information on whether or not the child experienced one or more prior legal guardianship(s). For the purposes of AFCARS, the definition of legal guardian is consistent with that provided in section 475(7) of the Act and means “a judicially created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control of the person, custody of the person, and decision making.” If the child experienced a prior legal guardianship, we propose to require the title IV–E agency to submit the legal guardianship date and type in paragraphs (i) and (ii) for each prior guardianship indicated in this paragraph and jurisdiction information in paragraph (iii) for each prior guardianship indicated in paragraph (b)(14)(ii) that occurred outside of the reporting State or Tribal service area; otherwise the title IV–E agency must leave those paragraphs blank. We propose to require the title IV–E agency to collect information on whether a child had or had not experienced a prior guardianship or if information is unknown because the child has been abandoned. We also are clarifying that the title IV–E agency is to report any type of prior legal guardianship in this element, regardless of whether the guardianship was public, private or independent.

We propose to collect this information because, similar to our proposal to collect information on prior adoption(s), it is important to determine the number

of children who have experienced one or more disrupted legal guardianship(s) before entering out-of-home care in order to better understand the potential impact of prior guardianships on permanency planning for these children. Further, because Public Law 110–351 established the option for title IV–E agencies to establish Guardianship Assistance Programs in section 473(d) of the Act, it is important to collect parallel information on both legal guardianships and adoptions.

Prior guardianship date(s). In paragraph (b)(14)(i), we propose that a title IV–E agency report the month and year that each prior legal guardianship the child experienced became legalized, if one or more prior legal guardianship was indicated in paragraph (b)(14). We seek this information to allow us to determine how much time has elapsed between the child’s previous legal guardianship(s) and his or her current out-of-home care stay.

Prior guardianship type(s). In paragraph (b)(14)(ii), we seek information on the type of legal guardianship for each legal guardianship the child experienced previously, as indicated in paragraph (b)(14). We propose to require a title IV–E agency to indicate “foster care guardianship within State or Tribal service area” if the child was in foster care in the reporting State or Tribal service area at the time the prior guardianship was legalized. This includes all legal guardianships for children formerly in foster care, including legal guardianships funded only by the State or Tribal service area, legal guardianships funded under title IV–E waivers, and legal guardianships funded under the title IV–E guardianship assistance program, per section 473(d) of the Act. We propose to require a title IV–E agency to indicate “foster care guardianship in another State or Tribal service area” if the child was in foster care in another State or Tribal service area at the time the prior legal guardianship was legalized. Finally, we propose to require a title IV–E agency to indicate “other private or independent guardianship” if the child’s prior legal guardianship was not a foster care guardianship as defined above.

We seek this information to allow us to compile the number of children and permanency plans for children involved in dissolved or disrupted legal guardianships and jurisdiction from where such children originated. We also believe it is important that title IV–E agencies collect parallel information on prior legal guardianship and adoption placements to inform our understanding

of permanency outcomes as title IV–E agencies begin to implement the title IV–E guardianship assistance program, established by Public Law 110–351, in section 473(d) of the Act.

Prior guardianship jurisdiction(s). In paragraph (b)(14)(iii), we propose that a title IV–E agency submit the name of the other State, Tribal service area or Indian reservation in which the child was previously in a guardianship, for each prior legal guardianship indicated in paragraph (ii) that occurred outside of the reporting State or Tribal service area. ACF will work with Tribal title IV–E agencies to develop valid response options for this element.

As previously mentioned, we seek this information to parallel information collected on prior adoption placements to inform our understanding of permanency outcomes as title IV–E agencies begin to implement the title IV–E guardianship assistance program established by Public Law 110–351, per section 473(d) of the Act.

Minor parent. In paragraph (b)(15), we propose that the title IV–E agency collect and report the number of children either fathered or borne by the child, if applicable. Title IV–E agencies must report the total of all biological children of the child, whether or not such children live with their parent. Title IV–E agencies are not currently required to report this information in AFCARS. We proposed this data element for the first time in the 2008 NPRM in response to public comments that requested a data element of this nature. Our current proposal is identical to that proposed in the 2008 NPRM. However, in our current proposal we clarify that title IV–E agencies must report a child older than age 18 in foster care as a “minor parent” if he or she has children.

Collecting information on minor parents in foster care will allow us to analyze the extent to which having children affects a child’s permanency plan. This data element also will be used in conjunction with a subsequent data element in proposed paragraph 1355.43(e)(14) to determine the population of children in out-of-home care who have children for whom they are responsible for and are living with. The combination of information in the two data elements will allow us to determine the number of children in out-of-home care who have children, and the extent to which those children are responsible for the care of their own children.

Public comments in response to the 2008 NPRM highlighted concerns about caseworker burden and the difficulties involved in collecting accurate and

reliable information about children fathered by children in out-of-home care. However, we continue to propose this data element because we feel it is critical to have improved data about the characteristics of children in out-of-home care.

Child financial and medical assistance. In paragraph (b)(16), we propose to require that the title IV–E agency report any type(s) of financial and medical assistance (other than title IV–E assistance) that the child received during the current six-month report period. We propose that title IV–E agencies indicate if the child is receiving any source of support described in paragraphs (i) through (vii), as applicable, or indicate “no support/assistance received” if none of the described supports are applicable to the child. Paragraphs (i) through (vii) describe the following sources of support/assistance: Benefits under title XVI of the Act (including Supplemental Security Income (SSI)), title XIX Medicaid, the State’s Children’s Health Insurance Program (CHIP) including under title XXI waivers or demonstrations a State/Tribal or locally financed adoption assistance payment, a State/Tribal or locally financed foster care payment, child support or other sources of financial assistance.

While the existing AFCARS data elements require title IV–E agencies to report the sources of Federal support for the child, this data element differs in that it focuses on both State/Tribal and Federal financial and medical assistance rather than just Federal support. This proposal is identical to the 2008 NPRM proposal, which details that the reason for modifying the existing AFCARS data element is section 479(c)(3)(D) of the Act, requiring us to collect national information on “the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs.”

There were several commenters that responded to both the 2008 NPRM and 2010 FR notice indicating concern about the burden and responsibility of caseworkers in obtaining information from other agencies, as well as the lack of staff and resources to collect this information. However, given the statutory requirement at section 479(c)(3)(D) of the Act, we believe that expanding the scope of the financial and medical assistance data elements to gather more information on sources of assistance received by the child is required under law. This proposed data element, in conjunction with the following data element on receipt of title IV–E foster care maintenance payments in each living arrangement

(paragraph(e)), will allow us to gather more comprehensive information on the kinds of financial and medical assistance that support children in out-of-home care. We also believe that most case management information systems currently collect this information.

Title IV–E foster care during report period. In paragraph (b)(17), we propose to require the title IV–E agency to report specifically whether the child received a title IV–E foster care maintenance payment during the current report period. This information is currently collected in AFCARS under the data element “sources of Federal support/assistance for child.” This data element is the same as that proposed in the 2008 NPRM. The title IV–E agency is to respond affirmatively that the child has received a title IV–E foster care maintenance payment only if one was paid on the child’s behalf during the current six-month report period, or the child is eligible for the program in accordance with section 472(a) of the Act and the title IV–E agency will claim Federal reimbursement under section 474 of the Act for a child’s title IV–E foster care maintenance payment during the current six-month report period.

As detailed in the 2008 NPRM, this data element is used primarily to extract the title IV–E foster care eligibility review samples. Currently, the title IV–E foster care eligibility review sample is drawn from an existing AFCARS data element that requires title IV–E agencies to identify title IV–E foster care maintenance payments as one of many Federal sources of support for the child. We have learned through technical assistance and AFCARS assessment reviews, however, that title IV–E agencies often report this data element incorrectly. A common mistake with the existing data element involves the title IV–E agency indicating that the child is receiving title IV–E foster care maintenance payments when the child has met some title IV–E eligibility requirements but not all (e.g., the child has met AFDC and legal requirements but is not placed in a licensed foster family home or child care institution.) We wish to isolate this data element so that we can clearly define the population of children in AFCARS data that are receiving title IV–E during the report period and improve the ability to select accurate samples for the title IV–E foster care eligibility reviews.

Victim of sex trafficking and victim of sex trafficking while in foster care. In paragraphs (b)(18) and (b)(19), we propose to require the title IV–E agency to report whether a child was a victim of sex trafficking prior to entering foster care and if while in foster care became

a victim of sex trafficking, as required by Public Law 113–183. The term “sex trafficking victim” is defined in the law and means a victim of sex trafficking as defined in section 103(10) of the Trafficking Victims Protection Act of 2000 or a severe form of trafficking in persons described in section 103(9)(A) of such Act. Section 105 of Public Law 113–183 requires HHS to report to Congress on information related to section 471(a)(35) of the Act. Thus, we propose to collect information regarding whether or not the title IV–E agency has made a report to law enforcement for entry into the National Crime Information Center (NCIC) database, as well as the date the agency made the report to law enforcement. We propose that this information be collected both for a child who was a victim of sex trafficking prior to coming into foster care and while in foster care.

We are not proposing to retain the following data elements included in the 2008 NPRM, due to further consideration of the value of these elements in relation to the burden these elements would impose on the title IV–E agency. There also was overwhelming opposition to each of these elements in public comments:

Child language. We proposed to require the title IV–E agency to report the child’s use of language. However, we are not retaining this proposal due to the burden associated with implementing this element given the subjective nature of the proposed response options “verbal, pre-verbal, and non-verbal” and the potential for variability in response options. In addition, public comments to the 2008 NPRM strongly opposed the addition of this element.

Current immunizations. We proposed to require a title IV–E agency to indicate whether the child’s immunizations are current as of the end of the report period. We are not retaining this proposal because we believe that the information collected in paragraph (b)(6) on whether the child is receiving timely health assessments will serve as a proxy for whether immunizations are being addressed in a timely manner for each child in foster care. There also was strong opposition to the inclusion of this element in the public comments to the 2008 NPRM.

Number of siblings living with the child at removal. We proposed to require the title IV–E agency to report the total number of siblings living with the child at the time of the child’s removal from home, if any. We are not retaining this proposal to include this element due to the burden imposed on the title IV–E agency in collecting

information on siblings in a variety of living situations that may not be involved with the title IV–E agency. There also was strong opposition to adding this element in the public comments to the NPRM. We still believe that it is critical to gain a better understanding of how title IV–E agencies are preserving sibling connections, and therefore propose to capture some sibling information in a different manner in newly proposed paragraphs (e)(8) through (e)(13).

Finally, ACF is committed to supporting and protecting lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in foster care. Research has shown that LGBTQ youth are often overrepresented in the population of youth served by the child welfare system and in the population of youth living on the streets, however there is little or no data on the experiences of these youth.

Despite the value in collecting data on LGBTQ youth in AFCARS there are practical issues associated with incorporating this information into AFCARS data collection. First, we did not receive comments requesting such data in the 2008 NPRM and States have not requested the insertion of such response options. Second, including data elements on LGBTQ youth would potentially mean that data would not be consistent across AFCARS and NYTD. NYTD serves as the only mechanism we have at the federal level to receive comprehensive data on the services a youth receives from the state IV–E agency, as well as the experiences of former foster youth. We included the requirement that the child's record number must be the same in NYTD and AFCARS so that we could link both datasets to have the necessary foundation to conduct case-level analysis on the foster care experiences of youth whose outcomes are reported in NYTD. If response options are not consistent for data elements (*i.e.*, child sex) in AFCARS and NYTD, it could mean that a youth would be identified as two different genders, which would complicate our ability to analyze the overall experience of child.

We seek public comment on whether to collect information on LGBTQ youth in AFCARS in light of these practical issues and strategies for identifying LGBTQ youth in the AFCARS reporting population in a manner that permits case-level data analysis between existing federal data collection efforts. Accordingly, we invite comments on the issues of whether we should collect data relating to LGBTQ statuses; what, if any, data should be collected relating to these statuses; what the utility of such

data collection might be; what issues would arise if there were inconsistent approaches between AFCARS and NYTD; and how to best address such inconsistencies if a decision is made for expanded data collection relating to LGBTQ statuses.

Section 1355.43(c) Parent or Legal Guardian Information

In paragraph (c), we seek information on the child's parent(s) or legal guardian(s).

Year of birth of parent(s) or legal guardian(s). In paragraphs (c)(1)(i) and (c)(2)(i), we propose that the title IV–E agency collect and report the birth year of the child's parent(s) or legal guardian(s). This can be a biological, legal or adoptive parent or legal guardian. We seek this information on the child's parent(s) or legal guardian(s) regardless of whether the child is living with a different or temporary caretaker or is in a facility/hospital at the time of removal. We are not seeking information on putative birth parent(s) in this paragraph. Further, to the extent that a child has both a parent and a legal guardian, the title IV–E agency must report on those who had legal responsibility for the child. If the title IV–E agency cannot obtain this information because the child is abandoned or left at a "safe haven," the title IV–E agency must indicate "abandoned." If there is only one parent or legal guardian, we propose that the title IV–E agency indicate "not applicable" in paragraph (c)(2)(i).

These data elements differ from the existing AFCARS in that we currently request the year of birth of the child's caretakers from whom the child was removed (see Appendix A to part 1355, section II, VII.B). The information collected under the existing regulation does not clearly indicate whether the child's caretaker(s) was the parent(s), legal guardian(s), or some other person who was temporarily taking care of the child at the time that the child was removed from home. Because of this lack of clarity, our ability to analyze the existing data is limited.

This proposal is the same as in the 2008 NPRM and we believe that focusing the proposed data elements on the child's parent(s) or legal guardian(s) is more consistent with the statutory mandate to collect demographic information on the biological and adoptive parent(s) of children in foster care (section 479(c)(3)(A) of the Act). By expanding our requirement to gather the year of birth of all parents (*e.g.*, inclusive of biological, legal or adoptive parents and stepparents) or legal guardians, we believe we are better

meeting the intent of the statute to understand the characteristics of persons who are legally responsible for children who enter foster care.

Parent(s) or legal guardian(s) born in the United States. In paragraphs (c)(1)(ii) and (c)(2)(ii), we propose to require the title IV–E agency to report whether or not the child's parent(s) or legal guardian(s) were born in the United States. This can be a biological, legal or adoptive parent or legal guardian. We seek this information on the child's parent(s) or legal guardian(s) regardless of whether the child is living with a different or temporary caretaker or is in a facility/hospital at the time of removal. If the title IV–E agency cannot obtain this information because the child is abandoned or left at a "safe haven," the title IV–E agency must indicate "abandoned." If there is only one parent or legal guardian, we propose that the title IV–E agency indicate "not applicable" in paragraph (c)(2)(ii).

This is a newly proposed element and will give us a national picture of how many parent(s) or legal guardian(s) of children in out-of-home care are foreign-born. We specifically request comments from State and Tribal title IV–E agencies on this data element.

Termination of parental rights petition. In paragraph (c)(3)(i), we propose to require the title IV–E agency to report each date the title IV–E agency filed a petition to terminate parental rights (TPR) regarding the child's biological, legal, and/or putative parent(s). If the parent is deceased, we propose that the title IV–E agency indicate "deceased." This information will provide us with data we can use to evaluate how title IV–E agencies are complying with the requirement in section 475(5)(E) of the Act to file a petition to terminate the parental rights of certain children in foster care, unless there is an exception. Further, this information, in conjunction with information collected on final dates of TPR in paragraphs 1355.43(c)(4) and (c)(6) and section 1355.44(c)(5), will help us determine how long it takes for permanency to be achieved for children who are adopted. The title IV–E agency must report each petition date in cases where there are multiple petitions that are filed. In order to be able to properly calculate the time lapse between the petition date and the TPR date in paragraph (c)(3)(ii), we must require that the title IV–E agency report each petition date. Our proposal to include the date of the TPR petition is similar to the proposal in the 2008 NPRM, where it was proposed for the first time; however, we did not propose that this

data element capture information longitudinally in the 2008 NPRM. We received no comments on this proposal in response to the 2008 NPRM.

As we stated in the 2008 NPRM, for all data elements related to the termination of parental rights, we propose to clarify that we are seeking information on a child's putative father, if applicable. A putative father is a person who is alleged to be the father of a child, or who claims to be the father of a child, at a time when there may not be enough evidence or information available to determine if that is correct. For the existing AFCARS we have fielded questions on whether title IV-E agencies should provide information on putative fathers. Since the parental rights of any putative fathers may need to be terminated before a child legally is free for adoption in some jurisdictions, we want to be clear that we are interested in collecting information on putative fathers as well.

Termination of parental rights. In paragraph (c)(3)(ii), we propose to modify the existing AFCARS requirement for the title IV-E agency to collect and report the date that parental rights are terminated for each biological, legal and/or putative parent, if applicable (see Appendix A to part 1355, section II, VIII). Currently, the title IV-E agency reports only the most recent TPR date(s). We are proposing to modify this existing AFCARS requirement to collect each TPR date so that we can properly calculate the time lapse between the petition date(s) reported in paragraph (c)(3) and the TPR date. ACF will include proper file format for the data elements in paragraph (c)(3)(i) and paragraph (c)(3)(ii) in subsequent guidance on technical submission requirements. Our proposal in the 2008 NPRM was unchanged from the existing AFCARS regulatory requirement and we received no comment. We propose to incorporate our current guidance for the existing AFCARS requirement to require that if there was no termination of parental rights because the parent(s) is deceased, the title IV-E agency must enter the date of death. If the parent(s) died after the TPR date, the title IV-E agency must enter the date of the TPR.

Date of judicial finding of abuse or neglect. In paragraph (c)(4) we propose that the title IV-E agency collect and report to AFCARS the date of the first judicial finding that the child has been subject to child abuse or neglect, if applicable. If there has been no judicial finding of child abuse or neglect by the end of the report period, the title IV-E agency must report "no date." Possible reasons no date would be available

include if there is a voluntary relinquishment, a voluntary placement agreement (VPA) between the title IV-E agency and the child or his or her parent(s) or legal guardian(s) or there is no abuse or neglect disposition by the end of the report period. We propose to add this data element to AFCARS for the first time in order to provide additional data that can be available for use in the current CFSRs and other monitoring of timely periodic reviews, permanency hearings and TPR petition filings per section 475(5) of the Act. Title IV-E agencies must comply with these case review requirements in section 475(5) of the Act within specific timeframes which begin with the earlier of the date of the first judicial finding that the child was subjected to child abuse or neglect, or, the date that is 60 calendar days after the date on which the child is removed from the home (see the definition for "date a child is considered to have entered foster care" in section 1355.20(a)). Collecting the date of the first judicial finding of abuse or neglect will aid us in calculating these timeframes with more accuracy.

Finally, we propose to eliminate the existing data element on the family structure of the child's caretakers from whom the child was removed (see Appendix A to part 1355, section II, VII.A) because, as we explained in the 2008 NPRM, we believe that the data element on the child's environment at removal in proposed paragraph (d)(3) will provide sufficient information. Additionally, we do not propose a data element to indicate whether the mother was married at time of the child's birth, as we proposed in the 2008 NPRM because many commenters to the 2008 NPRM, including States, members of the public and academics, were opposed to the collection of this data element for reasons including the limited interest, relevance and utility of the data, particularly for children entering foster care from adoptive homes. We found these reasons compelling and as a result we do not propose to collect this information.

Section 1355.43(d) Removal Information

In paragraph (d), we propose to require the title IV-E agency to report information related to the child's removal, regarding each occasion that the child experiences a removal. For each removal that a child experiences, we propose to require the title IV-E agency to report each removal date, the type of environment (household or facility) the child was living in at the time of each removal, the title IV-E agency's authority for placement and care responsibility for each removal and

the circumstances surrounding the child and family at the time of each removal.

Currently, title IV-E agencies are required to report AFCARS data only on the child's most recent removal in the report period (see Appendix A to part 1355, section II, III). For the reasons stated throughout this NPRM and in the 2008 NPRM, requiring title IV-E agencies to collect and report longitudinal data will allow us to analyze more accurately the circumstances surrounding a child's entry into and entire experience while in out-of-home care and will provide critical information for Federal efforts to measure outcomes.

Date of child's removal. In paragraphs (d)(1)(i) through (iii), we propose that the title IV-E agency collect and report the date(s) on which the child was removed for each removal of a child who enters the placement and care responsibility of the title IV-E agency. For a child who is removed and is placed initially in foster care (as defined in section 1355.20), we propose in paragraph (i) that the title IV-E agency indicate the date that the title IV-E agency received placement and care responsibility. For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV-E agency, we propose in paragraph (ii) that the title IV-E agency indicate the date that the title IV-E agency received placement and care responsibility. For a child who is removed, and is placed initially in a non-foster care setting, we propose in paragraph (iii) that the title IV-E agency indicate the date that the child enters foster care as the date of removal, rather than the date of the removal court order or VPA, because we are not proposing to include these children in the out-of-home care reporting population until they enter foster care (see section 1355.41(a)(1)(i)). In general, the date of removal should be consistent with the child's entry into the out-of-home care reporting population as described in section 1355.41(a).

In the existing AFCARS, the title IV-E agency is required to report the date of the child's first and latest removal from the child's home and placement into foster care (see Appendix A to part 1355, section II, III.A). The information collected in the existing AFCARS does not allow us to analyze accurately the child's repeat foster care re-entry rate or any associated length of time to re-entry, both of which are currently used for the CFSR. We also cannot analyze the child's entire removal history and we

are unable to identify trends that may assist title IV–E agencies in better understanding their data and making program improvements. To address these issues, we proposed in the 2008 NPRM that the title IV–E agency report the child’s removal date(s) for each removal that the child experiences. We did not receive comments in response to the 2008 NPRM specific to this data element, and a few commenters to the 2010 FR Notice supported the proposal in the 2008 NPRM. We believe that our current proposal will provide us with better data that we can use to analyze foster care re-entries for outcome measures and other Federal monitoring purposes.

Removal transaction date. In paragraph (d)(2), we propose to require the title IV–E agency to report the transaction date for each of the child’s removal dates reported in paragraph (d)(1). The transaction date is a non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) was entered into the information system. We propose that the transaction date must be no later than 30 days after the date of each removal as specified in paragraph (d)(1).

The existing AFCARS requirement is that the transaction date must be no later than 60 days after the child’s removal (see Appendix A to part 1355, section II, III.A). The worker has 60 days to enter the date of the child’s removal into the information system under the existing AFCARS requirement. In the 2008 NPRM, we proposed to shorten this timeframe, by proposing that the transaction date must be within 15 days of the child’s removal. As we stated in the 2008 NPRM, the removal date is one of the most critical data elements in AFCARS and we have found that higher quality and accurate data results when the removal transaction date is close in time to the date that it describes. Commenters to the 2008 NPRM expressed concern over the 15-day timeframe proposed in the 2008 NPRM, citing that it was a drastic change and could jeopardize casework activity, which the commenters felt should take precedence over data entry. Commenters to the 2008 NPRM also expressed concern that the 15-day timeframe would be difficult to meet for non-SACWIS county-administered agencies that may depend on a paper-based information system. Other commenters to the 2008 NPRM proposed a 30-day timeframe for the removal transaction date giving the worker 30 days to enter the date of the child’s removal into the information system. We considered the comments

from the 2008 NPRM and decided that a 30-day timeframe is acceptable and represents a balanced approach that meets our need to ensure that removal information is timely and also addresses concerns from the commenters.

Environment at removal. In paragraph (d)(3), we propose that the title IV–E agency report the type of environment (household or facility) the child was living in at the time of the child’s removal for each removal reported in paragraph (d)(1). Although we proposed in the 2008 NPRM to collect similar information, this is a new data element where we propose to require the title IV–E agency to report whether the child was living in a household with his or her parent(s), relative(s) or legal guardian(s), or if the child was living in a justice facility or a medical/mental health facility or in another situation not so described at the time of each removal reported in paragraph (d)(1).

We propose the response options to be mutually exclusive, consistent with commenter concerns in response to the 2008 NPRM. For example, we propose that if the child was living in a household that consisted of one of the child’s parents and a relative at the time of the child’s removal, the title IV–E agency must indicate the response option “parent household.” We propose that the title IV–E agency indicate “justice facility” if, at the time of the child’s removal, as indicated in paragraph (d)(1), the child was living in a juvenile justice or adult criminal justice facility where the child is detained. We propose that the title IV–E agency indicate “medical/mental health facility” if, at the time of the child’s removal as indicated in paragraph (d)(1), the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. We propose that the title IV–E agency select the response option “other” for environments that are not addressed by the other response options listed (e.g., living independently). The information collected in the existing AFCARS is insufficient for our analytical needs. We propose this new data element so that we may have a more accurate picture of the child’s life when the child is placed in foster care. The longitudinal information gleaned from this data element will enhance our analyses regarding a child’s entry into foster care and may assist title IV–E agencies in better understanding their foster care populations.

In the existing AFCARS, the title IV–E agency reports limited information about the child’s “principal caretakers,” reporting only the marital status and

year of birth of the principal caretaker(s) from whom the child was removed (see Appendix A to part 1355, section II, VII). In the 2008 NPRM, we proposed to broaden the information reported to AFCARS by proposing two new data elements, “environment at removal” and “household composition at removal”, in which the title IV–E agency would have had to report if the child was living in a household at the time of removal and if so, whether the child was living with one or more of a list of persons identified by their relationship to the child. If the child was not living in a household, we proposed to require the title IV–E agency to report whether the child was living in another environment/facility or was abandoned. We now propose to combine the previously proposed data elements “environment at removal” and “household composition at removal” from the 2008 NPRM and modify the response options.

We received many comments on the data elements “environment at removal” and “household composition at removal” as proposed in the 2008 NPRM. Some commenters to the 2008 NPRM supported collecting more detailed information on family composition while other commenters felt that the information gathered in the existing AFCARS was sufficient. Some commenters to the 2008 NPRM expressed confusion over whom to report as present in the household because the proposed response options were not mutually exclusive which could lead to an interpretation that multiple people were living in a household which may not be accurate. Other commenters to the 2008 NPRM said that reprogramming their SACWIS systems to capture this information was burdensome and questioned the value of such detailed information at the Federal level.

In the 2010 FR Notice, we solicited feedback, and received many comments, on what data, if any, should be collected from child welfare agencies to provide insight into what environment a child is removed from before entering foster care. Some commenters to the 2010 FR Notice objected to collecting and reporting more detail on a child’s household or environment at removal for various reasons, such as that such household or environmental characteristics are better captured in the case plan and aligning the AFCARS data elements with the NCANDS data elements. Other commenters to the 2010 FR Notice expressed support for collecting more information on a child’s household or environment at removal, stating that it would be beneficial to

know more details about a child's family structure. Some commenters suggested collecting general information on a child's environment at removal, stating that it would be problematic to collect overly detailed information given the wide variety of households or environments from which a child could be removed.

We revisited the previously proposed data elements "environment at removal" and "household composition at removal" from the 2008 NPRM in light of the comments we received to the 2008 NPRM, the 2010 FR Notice and the changes to section 475(8) of the Act, made by Pub. L. 110-351, which allows for the inclusion of children age 18 and older in title IV-E funded foster care. We understand the issues raised by the commenters and decided that combining the data elements will be simpler and less confusing. We believe that this streamlined approach achieves our goal of obtaining greater detail than exists currently in order to support more sophisticated analysis and also addresses commenters concerns about burden and clarity.

Authority for placement and care responsibility. In paragraph (d)(4), we propose to require the title IV-E agency to indicate, for each removal reported in paragraph (d)(1), whether the title IV-E agency's authority for placement and care responsibility of the child was based on a court order or a VPA or to indicate if the type of authority has not yet been determined. If the title IV-E agency indicates that the authority is not yet determined, such information must be provided in a subsequent report period when it is available, if the child remains in out-of-home care. In addition, we modified the definitions of the response options to clarify that a VPA includes voluntary agreements entered into by a child age 18 or older with the title IV-E agency, allowing the title IV-E agency to have placement and care responsibility of the older child. We are proposing that the title IV-E agency report the initial authority for placement and care responsibility, which remains the same even if the authority subsequently changes.

Our proposal is generally unchanged from the existing AFCARS requirement (see Appendix A to part 1355, section II, IV.A), and the 2008 NPRM proposal, wherein the title IV-E agency must collect and report its authority for the child's removal from home. We also propose to modify the name of the data element and the definitions for the response options to clarify that the title IV-E agency must report its authority for placement and care responsibility of the child, instead of the "manner of

removal from home" as in the existing AFCARS requirement (see Appendix A to part 1355, section II, IV.A).

Child and family circumstances at removal. In paragraph (d)(5), we propose to require the title IV-E agency to report the circumstances surrounding the child and family for each removal reported in paragraph (d)(1). We propose that the title IV-E agency indicate whether each circumstance listed in paragraphs (d)(5)(i) through (d)(5)(xxvii) "applies" or "does not apply" for each removal reported in paragraph (d)(1).

Our proposal in paragraph (d)(5) is largely the same as the current AFCARS requirement and the 2008 NPRM. In the existing AFCARS, the title IV-E agency is required to report all of the "actions or conditions" associated with the child's most recent removal from a short list of response options (see Appendix A to part 1355, section II, IV.B). Similar to the 2008 NPRM, we propose to retain the current feature of AFCARS to require the title IV-E agency to indicate all of the circumstances that are associated with each removal; however, we propose an expanded list of circumstances which we have modified from the 2008 NPRM proposal. We propose the term "associated with removal" to mean all circumstances that are present at the time of each removal, in addition to the circumstances related to the child being placed into foster care.

We propose that the title IV-E agency report an expanded list of child and family circumstances from the list in the existing AFCARS; however, we modify the circumstances that were proposed in the 2008 NPRM based on the comments in response to the 2008 NPRM and 2010 FR Notice and the changes to section 475(8) of the Act allowing children age 18 or older to receive title IV-E foster care maintenance payments. The definition for each circumstance is described in paragraphs (d)(5)(i) through (d)(5)(xxvii). Commenters to both the 2008 NPRM and 2010 FR Notice suggested additional circumstances and some of the suggestions from the 2010 FR Notice are included in this proposal (e.g., domestic violence is proposed as a circumstance). We believe that we needed to balance concerns over burden with suggestions for additional data so we chose to revise the circumstances proposed previously in the 2008 NPRM as needed instead of adding all of the circumstances suggested by commenters. Each response option is explained in detail below.

(i) *Runaway.* In paragraph (d)(5)(i), we propose that the title IV-E agency collect and report whether the child has

left, without authorization, the home or facility in which the child was residing at the time of each removal reported in paragraph (d)(1). We modified our proposal from the existing AFCARS requirement and the 2008 NPRM. The title IV-E agency currently reports running away in the "child's behavior problem" response option in the existing AFCARS (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed to require the title IV-E agency to collect and report running away as a separate child and family circumstance. Commenters in response to the 2008 NPRM expressed concern with data quality, stating that title IV-E agencies may differ in how they define "runaway." We understand from commenters to the 2008 NPRM that there may be confusion with the definition proposed in the 2008 NPRM so we clarified the definition to address commenter concerns and to conform to the proposed changes to the reporting population in section 1355.41(a) that includes children age 18 or older who are in foster care (as defined in section 1355.20).

(ii) *Whereabouts unknown.* In paragraph (d)(5)(ii), we propose that the title IV-E agency collect and report whether, as a circumstance at removal, the child's whereabouts are unknown and the title IV-E agency does not consider the child to have run away at the time of each removal reported in paragraph (d)(1). This is a new response option not proposed in the 2008 NPRM or required to be reported in the existing AFCARS regulation. We propose it now based on stakeholder feedback we received in response to the 2008 NPRM asking to add a separate response option for a child whose whereabouts are unknown at the time of removal. This new response option will enable ACF to provide information and conduct analysis on children who are in the title IV-E agency's placement and care responsibility but whose whereabouts are unknown. We believe that the quality of the data will be better if we collect this as a separate circumstance from running away because not all children whose whereabouts are unknown at the time of removal have run away. We believe that collecting this information as a separate circumstance at removal is a reasonable way to begin collecting quantifiable data on these children.

(iii) *Physical abuse.* In paragraph (d)(5)(iii), we propose that the title IV-E agency continue to collect and report whether alleged or substantiated physical abuse, injury or maltreatment by a person responsible for the child's welfare was a circumstance associated

with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition which captures both substantiated and alleged child physical maltreatment (see Appendix A to part 1355, section II, IV.B). Commenters in response to the 2008 NPRM asked us to consider making the definitions of physical abuse the same for NCANDS and AFCARS. As we explained in the 2008 NPRM, the NCANDS definition does not capture alleged physical abuse, which is necessary for AFCARS because it is unlikely that physical abuse will have been substantiated in all cases when the child is removed.

(iv) *Sexual abuse*. In paragraph (d)(5)(iv), we propose that the title IV–E agency continue to collect and report whether alleged or substantiated sexual abuse or exploitation by a person responsible for the child's welfare was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition which captures both substantiated and alleged child sexual maltreatment (see Appendix A to part 1355, section II, IV.B). As we explained in the 2008 NPRM, sexual abuse remains a significant condition associated with the child's removal. It is important to capture alleged sexual abuse in AFCARS because it is unlikely that sexual abuse will have been substantiated in all cases when the child is removed. We did not receive comments on this response option in response to the 2008 NPRM.

(v) *Psychological or emotional abuse*. In paragraph (d)(5)(v), we propose that the title IV–E agency collect and report whether alleged or substantiated psychological or emotional abuse, including verbal abuse, by a person who is responsible for the child's welfare was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the 2008 NPRM, which is for psychological or emotional abuse to be reported as a separate circumstance, rather than part of the definition of "neglect," as instructed in current AFCARS policy (see section 1.2B.3 of the Child Welfare Policy Manual (CWPM), Question and Answer #3). As we explained in the 2008 NPRM, we believe that it is useful to make a distinction between circumstances of neglect and psychological or emotional abuse at removal. We did not receive comments on this response option in response to the 2008 NPRM.

(vi) *Neglect*. In paragraph (d)(5)(vi), we propose that the title IV–E agency continue to collect and report whether neglect was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM we proposed to differentiate between "failure to provide supervision" and "neglect" by proposing them as separate response options. Commenters in response to the 2008 NPRM stated that separating "failure to provide supervision" from the definition of "neglect" would be confusing for workers and did not add analytical value because not providing supervision is one of the key elements for a circumstance of neglect. To address the comments, we now propose to keep a failure to provide supervision as part of the definition of "neglect" as in the existing AFCARS requirement.

(vii) *Medical neglect*. In paragraph (d)(5)(vii), we propose that the title IV–E agency collect and report whether medical neglect was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the 2008 NPRM where we proposed the definition of "medical neglect" to be "alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child's welfare, although the person was financially able to do so, or was offered financial or other means to do so." The title IV–E agency is not required to report information on medical neglect separately from a circumstance of "neglect" in the existing AFCARS definition (see Appendix A to part 1355, section II, IV.B). We believe that it is useful to make a distinction between a circumstance of neglect and medical neglect at removal. We received supportive comments for adding this response option and the proposed definition in response to the 2008 NPRM.

(viii) *Domestic violence*. In paragraph (d)(5)(viii), we propose that the title IV–E agency collect and report whether domestic violence was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). We propose to define domestic violence as alleged or substantiated physical or emotional abuse between one adult member of the child's home and a partner or the child and his or her partner if the child is age 18 or older. The title IV–E agency is not required to report this information in the existing

AFCARS. As we explained in the 2008 NPRM, we do not want to limit the definition of domestic violence, for example, to violence occurring between spouses or parent figures, as in NCANDS. Additionally, we want to capture allegations of domestic violence, which the NCANDS definition does not address, because at the time of removal, workers are likely to have allegations of conduct to report to AFCARS, and not always substantiations. Similar to our proposal in the 2008 NPRM, we consider "domestic violence" broadly to mean any person who is or was a partner to an adult living in the home and now including the child if the child is age 18 or older. We believe that this broad definition accurately reflects the reality of many domestic violence circumstances. Commenters to the 2008 NPRM and 2010 FR Notice were supportive of including "domestic violence" as a circumstance at removal; however, we had to modify the definition from the 2008 NPRM to include children age 18 or older who enter foster care.

(ix) *Abandonment*. In paragraph (d)(5)(ix), we propose that the title IV–E agency continue to report if abandonment was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the 2008 NPRM, which is for the title IV–E agency to report a circumstance of abandonment if the child was left alone or with others and the identity of the child's parent(s) or legal guardian(s) is unknown and cannot be ascertained, including if the child was left at a "safe haven." Also unchanged from our proposal in the 2008 NPRM is that this response option does not apply when the identity of the parent(s) or legal guardian(s) is known. The title IV–E agency must report those situations as a failure for the parent(s) or legal guardian(s) to return for the child in paragraph (d)(5)(x).

In the existing AFCARS, abandonment is defined as leaving a child alone or with others and the caretaker does not return or make his or her whereabouts known (see Appendix A to part 1355, section II, IV.B). The major difference between the proposed definition and the existing AFCARS definition is that this proposal only includes as abandonment the circumstance where the identity of the parent(s) or legal guardian(s) is unknown. That is not always the case under the current AFCARS, since the definition of abandonment is broader and encompasses both the situations in which the title IV–E agency knows the

identity of the parent(s) or legal guardian(s), and when it does not. As explained in the 2008 NPRM, we propose this change so that we can identify the truly abandoned child from a child who is left with others and the title IV–E agency knows the identity of the parent(s) or legal guardian(s). With this change, ACF will be able to identify the number of cases of abandoned children in which the parent(s) has left the child alone, with someone, or somewhere, but have not made their identity known. Further, the permanency planning needs of these children are different from those of a child whose parent(s) are known because both under the Child Abuse Protection and Treatment Act (CAPTA) program and the title IV–E program, title IV–E agencies are required to expedite permanency for an abandoned child since there is not an identified parent with whom the title IV–E agency can work toward reunification. Commenters in response to the 2008 NPRM felt that the circumstance of abandonment was redundant if the title IV–E agency selected “abandoned” in data element “environment at removal” as proposed in the 2008 NPRM. We believe that we addressed this comment through our proposed revisions to paragraph (d)(3) because we propose in paragraph (d)(3) to collect the type of household or facility in which the child was living at removal, which does not include an “abandoned” response option. Other commenters to the 2008 NPRM suggested that we collect information on whether the child was abandoned in safe or unsafe circumstances; however, we did not make that change as we do not have a specific reason or purpose to collect this level of detail.

(x) *Failure to return.* In paragraph (d)(5)(x), we propose that the title IV–E agency report if the child’s parent(s), legal guardian(s) or caretaker(s) leaves the child alone or with others and does not return for the child or make his or her location known to the title IV–E agency for each removal reported in paragraph (d)(1). As stated in paragraph (d)(5)(ix), the title IV–E agency must report that this circumstance “applies” if the identity of the parent(s), legal guardian(s) or caretaker(s) is known. Our proposal is unchanged from the 2008 NPRM, in which we propose to require that the title IV–E agency report the circumstance “failure to return” as a separate response option from “abandonment” so that we can identify a truly abandoned child from one where the identity of the parent(s), legal guardian(s) or caretaker(s) is known but he or she does not make him or herself

available to the child. In the existing AFCARS, “failure to return” is included in the definition for the “abandonment” circumstance (see Appendix A to part 1355, section II, IV.B). Commenters to the 2008 NPRM felt that it was unnecessary to separate “failure to return” from the definition of “abandonment.” We considered the comment but we still feel that this distinction is important to make for analytical purposes and for collecting expanded information on a child’s life at removal.

(xi) *Caretaker’s alcohol abuse.* In paragraph (d)(5)(xi), we propose that the title IV–E agency continue to collect and report whether the compulsive use of alcohol, that is not of a temporary nature, by the child’s parent(s), legal guardian(s) or caretaker(s) who is responsible for the child was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS requirement (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed that title IV–E agencies report any form of compulsive alcohol use by the child’s caretaker, including short-term alcohol abuse, which many commenters to the 2008 NPRM objected to for various reasons. Many commenters to the 2008 NPRM expressed concern that the definition proposed in the 2008 NPRM differed from the NCANDS definition and questioned the overall value of the change. Other commenters to the 2008 NPRM expressed concerns over a worker’s ability to distinguish short-term compulsive alcohol abuse from long-term compulsive alcohol abuse which may lead to data quality issues for AFCARS data. The comments we received in response to the 2008 NPRM convinced us to keep the existing AFCARS definition, as it is critical that we have accurate data and this definition is sufficient for data analyses at a Federal level.

(xii) *Caretaker’s drug abuse.* In paragraph (d)(5)(xii), we propose that the title IV–E agency continue to collect and report whether the compulsive use of drugs that is not of a temporary nature, by the child’s parent(s), legal guardian(s) or caretaker(s) who is responsible for the child was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from the existing AFCARS definition (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed that title IV–E agencies report any form of compulsive drug use by the child’s caretaker, including short-term

drug abuse, which many commenters to the 2008 NPRM objected to for various reasons. We received the same comments in response to the 2008 NPRM for this response option as we received for the response option “caretaker’s alcohol abuse.” Based on the comments and the reasons described in paragraph (d)(5)(xi), we now propose to keep the current AFCARS definition.

(xiii) *Child alcohol use.* In paragraph (d)(5)(xiii), we propose that the title IV–E agency report whether the child’s alcohol use was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). This response option encompasses a child’s alcohol use at any age except it does not include infants who are addicted to alcohol at birth or who may be diagnosed with fetal alcohol spectrum disorders. We believe that an infant who is exposed to alcohol in utero is different from a child who uses alcohol of his or her own accord. Our proposal is similar to the 2008 NPRM, however our current proposal removes the word “compulsive” from the definition of this response option because we wish to collect information on whether a child’s alcohol use was a circumstance at removal regardless of whether the use was compulsive. In the existing AFCARS, the title IV–E agency is required to indicate if the child’s compulsive use of or need for alcohol was a circumstance at removal, inclusive of infants who are addicted to alcohol at birth (see Appendix A to part 1355, section II, IV.B). We did not receive comments on this response option in response to the 2008 NPRM.

(xiv) *Child drug use.* In paragraph (d)(5)(xiv), we propose that the title IV–E agency report whether the child’s drug use was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). This response option encompasses a child’s drug use at any age except it does not include infants who are addicted to drugs at birth. We believe that an infant who is exposed to drugs in utero is different from a child who uses drugs of his or her own accord. Our proposal is similar to the 2008 NPRM, however our current proposal removes the word “compulsive” from the definition of this response option because we wish to collect information on whether a child’s drug use was a circumstance at removal regardless of whether the use was compulsive. In the existing AFCARS, the title IV–E agency is required to indicate if the child’s compulsive use of or need for drugs was a circumstance at removal, inclusive of infants who are addicted to drugs at

birth (see Appendix A to part 1355, section II, IV.B). We did not receive comments on this response option in response to the 2008 NPRM.

(xv) *Prenatal alcohol exposure.* In paragraph (d)(5)(xv), we propose that the title IV–E agency collect and report, for each removal reported in paragraph (d)(1), whether a child has been prenatally exposed to alcohol that has resulted in a fetal alcohol spectrum disorder, such as fetal alcohol exposure, fetal alcohol effects or fetal alcohol syndrome. Our proposal is unchanged from the 2008 NPRM. We believe that a child whose removal circumstances involve prenatal alcohol exposure differs from a child who has his or her own alcohol use issues. In the existing AFCARS, the title IV–E agency is required to report a child’s prenatal alcohol exposure as part of the child’s own alcohol abuse (see Appendix A to part 1355, section II, IV.B). We received supportive comments in response to both the 2008 NPRM and 2010 FR Notice on this proposal.

(xvi) *Prenatal drug exposure.* In paragraph (d)(5)(xvi), we propose that the title IV–E agency collect and report whether, for each removal reported in paragraph (d)(1), a child has been prenatally exposed to drugs. Our proposal is unchanged from the 2008 NPRM. We believe that a child whose removal circumstances involve prenatal drug exposure is different from a child who has his or her own drug use issues. In the existing AFCARS, the title IV–E agency is required to report the child’s prenatal drug exposure as part of the child’s own drug abuse (see Appendix A to part 1355, section II, IV.B). We received supportive comments in response to both the 2008 NPRM and 2010 FR Notice on this proposal. A few commenters to the 2008 NPRM expressed an interest in having more detailed information on the type of drug to which the child was exposed. We did not make the change in response to the comment because we do not have a specific purpose to collect that level of detail.

(xvii) *Diagnosed Condition.* In paragraph (d)(5)(xvii), we propose that the title IV–E agency continue to report whether, for each removal reported in paragraph (d)(1), the presence of a child’s diagnosed health, behavioral or mental health condition was a circumstance associated with the child’s removal, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical disability or other clinically diagnosed condition. In the existing AFCARS, the title IV–E agency

is required to report similar information at removal as part of the “child disability” response option (see Appendix A to part 1355, section II, IV.B). Our proposal is unchanged from the 2008 NPRM, where we proposed modifications to the name of this circumstance, “diagnosed condition,” and the language of the response option (change from the use of the term “disability” to “condition”) to align with the changes proposed in data element “health, behavioral or mental health condition” in paragraph (b)(5) of this section. However we are modifying one of the examples of a diagnosed condition from “mental retardation” to “intellectual disability,” which is a minor change and is consistent with the modifications in the data element “health, behavioral or mental health condition” in paragraph (b)(5) of this section. The changes made by Public Law 111–256 solidified the use of “intellectual disability” in Federal law and the increasing focus on sensitivity to the term mental retardation.

(xviii) *Inadequate access to mental health services.* In paragraph (d)(5)(xviii), we propose that the title IV–E agency collect and report whether inadequate access to mental health services was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). This information is not collected in the existing AFCARS. We proposed a new circumstance of “inadequate access to mental health services” in the 2008 NPRM that would have captured instances where the parent(s) or legal guardian(s) relinquished his or her placement and care responsibility of a child to a title IV–E agency in order for the child to access mental health services. As stated in the 2008 NPRM, we proposed this response option to help us determine when a child needing mental health services is placed in out-of-home care so that the title IV–E agency can ensure that the child can access mental health services. We received supportive comments in response to the 2008 NPRM for adding this response option; however, we modified the response option to include the child or the child’s family having inadequate resources to access mental health services as a circumstance at removal to be consistent with the proposed reporting population in section 1355.41(a) to include children age 18 or older who enter foster care.

(xix) *Inadequate access to medical services.* In paragraph (d)(5)(xix), we propose that the title IV–E agency collect and report whether inadequate access to medical services, not including instances of withholding

medical services or treatment or medical neglect, was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). This information is not collected in the existing AFCARS. We proposed a new circumstance of “inadequate access to medical services” in the 2008 NPRM that would have captured instances where the parent(s) or legal guardian(s) relinquished his or her placement and care responsibility of a child, while retaining custody, to a title IV–E agency in order for the child to access medical services. In the 2008 NPRM we proposed this as a separate response option because we understand that the child may have specific medical needs that are separate from the child’s mental health needs; therefore we are adding this circumstance at removal so that title IV–E agencies can indicate all of the possible situations that exist when a child is removed. We received supportive comments in response to the 2008 NPRM for adding this response option; however, we modified the response option to include the child or the child’s family having inadequate resources to access medical services as a circumstance at removal to be consistent with the proposed reporting population in section 1355.41(a) to include children age 18 or older who enter foster care.

(xx) *Child behavior problem.* In paragraph (d)(5)(xx), we propose that the title IV–E agency continue to collect and report information about whether a child’s behavior problem(s) in his or her school and or community was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). This circumstance applies to all child behavior problems that adversely affect his or her socialization, learning, growth and/or moral development, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

In the existing AFCARS, the title IV–E agency is required to report running away and other child behavior problems resulting in adjudication together in the response option “child behavior problem” (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed to require that title IV–E agencies report as a separate circumstance at removal whether the child was alleged or found to be a status offender or whether the child was alleged or found to be an adjudicated delinquent so that we can categorize clearly a behavioral problem that has already been identified. Commenters in response to the 2008 NPRM objected to our proposal to report juvenile justice

involvement separate from a child behavior problem as a circumstance at removal. Commenters to the 2008 NPRM asked how title IV–E agencies should coordinate with the juvenile justice system to get information on alleged status offenses or alleged delinquencies and felt that reporting alleged status offenders was inappropriate and misleading. Commenters to the 2008 NPRM also felt that separately collecting information on the child’s juvenile justice involvement was redundant to the juvenile justice information we proposed in the 2008 NPRM to collect in paragraph (f). The comments we received in response to the 2008 NPRM convinced us to not propose the child’s involvement with the juvenile justice system as a separate circumstance at removal and to modify our proposal for the child behavior problem as a circumstance at removal. We propose to modify the definition of the child behavior problem circumstance at removal that is in the existing AFCARS requirement to include behavior that results in adult criminal convictions, in addition to behavior resulting in adjudicated or non-adjudicated status or delinquency offenses. We propose to add behavior that results in convictions to the definition of the “child behavior problem” circumstance at removal to be consistent with the proposed reporting population in section 1355.41(a) to include children age 18 or older.

(xxi) *Death of caretaker.* In paragraph (d)(5)(xxi), we propose that the title IV–E agency continue to collect and report information on whether the death of the child’s parent(s), legal guardian(s) or caretaker(s) was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from that proposed in the 2008 NPRM where we intended to expand the existing AFCARS requirement, which captures the death of a child’s parent(s) or caretaker(s) as a circumstance associated with the child’s removal (see Appendix A to part 1355, section II, IV.B), to include the death of the child’s legal guardian. We did not receive comments in response to the 2008 NPRM on this response option.

(xxii) *Incarceration of caretaker.* In paragraph (d)(5)(xxii), we propose to require the title IV–E agency to continue to collect and report whether the temporary or permanent incarceration of the child’s parent(s), legal guardian(s) or caretaker(s) in jail or prison was a circumstance associated with the child’s removal for each removal reported in paragraph (d)(1). Our proposal is unchanged from that proposed in the

2008 NPRM where we intended to expand the existing AFCARS requirement, which only captures the temporary or permanent placement of the child’s parent(s) in jail as a circumstance associated with the child’s removal, to include the incarceration of the child’s legal guardian(s). Our proposal to modify the response option to include incarceration in jail or prison is unchanged from the 2008 NPRM because we understand jails and prisons to be two different types of facilities; jails being local facilities used to incarcerate a person for less than a year and prisons being State or Federal facilities that can confine a person for a longer time. We received supportive comments in response to the 2008 NPRM on this response option.

(xxiii) *Caretaker’s significant impairment—physical/emotional.* In paragraph (d)(5)(xxiii), we propose that the title IV–E agency continue to collect and report, for each removal reported in paragraph (d)(1), whether the child’s parent(s), legal guardian(s) or caretaker(s) has a physical or emotional illness or disabling condition that adversely affects his or her ability to care for the child. We propose “physical impairment” to mean the parent(s), legal guardian(s) or caretaker(s) has physical limitations that impact his or her ability to function in areas of daily life, such as a condition that may adversely affect the caretaker’s day to day motor functioning. We propose “emotional impairment” to mean the parent(s), legal guardian(s) or caretaker(s) has an emotional condition that impact his or her ability to function in areas of daily life such as exhibiting one or more characteristics over a long period of time and to a marked degree, including the inability to build or maintain personal relationships, inappropriate behavior/feelings under normal circumstances, and/or tendency to develop symptoms or fears associated with personal problems. This circumstance could also apply to situations where a caretaker cannot care for a child temporarily due to his or her own medical needs. We have revised our proposal from the existing AFCARS requirement and the 2008 NPRM by updating the language and providing additional explanation to describe physical and emotional impairments. However, we intend to capture the same information as the “caretaker’s inability to cope” circumstance as proposed in the 2008 NPRM. We did not receive comments in response to the 2008 NPRM on this response option.

(xxiv) *Caretaker’s significant impairment—cognitive.* In paragraph (d)(5)(xxiv), we propose that the title

IV–E agency collect and report, for each removal reported in paragraph (d)(1), whether the limited cognitive ability of the child’s parent(s), legal guardian(s) or caretaker(s) adversely affects his or her ability to care for the child. We propose “limited cognitive ability” to mean that the parent(s), legal guardian(s) or caretaker(s) has cognitive limitations that impact his or her ability to function in areas of daily life, such as basic self-care tasks, communication and other tasks necessary to care for the child including shopping, housekeeping, accounting, ability to prepare food, manage medication and navigate transportation. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence. This proposal includes updated language but is intended to capture the same information as the “limited mental capacity” circumstance proposed in the 2008 NPRM.

In the existing AFCARS, the title IV–E agency is required to report the caretaker’s limited mental capacity as part of the response option “caretaker’s inability to cope” (see Appendix A to part 1355, section II, IV.B). In the 2008 NPRM, we proposed to collect information on the caretaker’s limited mental capacity as a separate circumstance associated with the child’s removal because we believe low cognitive functioning to be distinct from low emotional functioning. Commenters in response to the 2008 NPRM questioned how the limited mental capacity of a caretaker should be diagnosed and expressed concern that collecting and reporting this information would shift the attention of workers away from child protective services. Commenters in response to the 2010 FR Notice supported collecting a wide range of circumstances that may be present at removal, including a caretaker’s limited mental capacity as a separate circumstance associated with the child’s removal. As we considered the comments to both the 2008 NPRM and the 2010 FR Notice, we further examined the need for a separate response option. The Office of Planning, Research and Evaluation within ACF reported data on caregiver risk factors at the time of investigation in the April 2005 *National Survey of Child and Adolescent Well-Being: CPS Sample Component, Wave 1 Data Analysis Report*. According to this report, about 15 percent of caregivers were identified by child welfare workers at the time of a child abuse and neglect investigation as having a serious mental health problem; of those, almost seven percent of caregivers were considered to have an

intellectual or cognitive impairment (page 4–8). We believe that the information in this report demonstrates the importance of collecting as much information as possible on a child's life at removal, but recognize that the mental health community is more frequently using the term "cognitive ability" instead of "mental capacity." Thus, we have updated the language in this proposal but intend for the information collected to be consistent with that proposed in the 2008 NPRM, based on the supportive comments we received to the 2010 FR Notice and the further research we conducted that demonstrates the need to collect this information in a separate and distinguishable manner.

(xxv) *Inadequate housing.* In paragraph (d)(5)(xxv), we propose that the title IV–E agency continue to collect and report whether inadequate housing was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). We propose to define "inadequate housing" to include housing that is "substandard, overcrowded, unsafe or otherwise inadequate, which results in it being inappropriate for the child to reside," including homelessness. The existing AFCARS requirement and the 2008 NPRM proposal limits "inadequate housing" to situations where the child and parent(s) reside together. We modified the existing AFCARS definition and the 2008 NPRM proposal, to include situations where the child is not living with the child's parent or legal guardian and child's housing is inadequate for children age 18 or older who enter foster care. Commenters to the 2008 NPRM suggested separating "homelessness" from the definition of "inadequate housing" and making it a separate response option. We did not make this change because we do not have a purpose for collecting this level of detail.

(xxvi) *Voluntary relinquishment for adoption.* In paragraph (d)(5)(xxvi), we propose that the title IV–E agency continue to collect and report whether a voluntary relinquishment was a circumstance associated with the child's removal for each removal reported in paragraph (d)(1). We propose to define "voluntary relinquishment" as the child's parent(s) assigning, in writing, physical and legal custody of the child to the title IV–E agency, for the purpose of having the child adopted. Any analogous legal process, such as surrendering the child for adoption, is included in this response option. Our proposal is unchanged from that proposed in the 2008 NPRM and is an existing AFCARS requirement (see

Appendix A to part 1355, section II, IV.B). We did not receive comments in response to the 2008 NPRM on this response option.

(xxvii) *Child requested placement.* In paragraph (d)(5)(xxvii), we propose that the title IV–E agency collect and report whether, for each removal reported in paragraph (d)(1), the child, age 18 or older, has requested placement into foster care. This is a new response option that we are proposing in order to have a comprehensive list of circumstances that would relate to a child who enters foster care at or after the age of 18. Since 2008, Public Law 110–351 provides title IV–E funds for extended title IV–E foster care as an option for title IV–E agencies. This means that children over age 18 may enter or re-enter the placement and care responsibility of the title IV–E agency. This child and family circumstance, "child placement", is unique to a child age 18 or older who may request to enter the placement and care responsibility of the title IV–E agency.

We would like to note that we are not continuing our proposal to include the data element for "biological parents' marital status" and two child and family circumstances, "juvenile justice" and "disrupted intercountry adoption," that were proposed in the 2008 NPRM due to the overwhelming opposition to the proposals from commenters. In general, commenters to the 2008 NPRM questioned the value of collecting this information in AFCARS; therefore we do not propose to collect this information.

Finally, the plight of children who enter foster care because a parent is detained for immigration or deported has recently come to our attention and we are considering whether to expand the list of child and family circumstances associated with removal to include this information. We seek public comment on this issue, specifically regarding the extent to which this is an issue in States and Tribes, to help us determine the utility and appropriateness of including this information in AFCARS data collection, as well as suggestions for specific language for the circumstance.

Section 1355.43(e) Living Arrangement and Provider Information

In paragraph (e), we propose that the title IV–E agency collect and report information on each of the child's living arrangements for each out-of-home care episode, including information about the providers who are caring for the child, demographics on the child's foster parent(s), information on the child's sibling(s) and the sources of

Federal assistance that support the child's room and board in each living arrangement.

In general, we propose to expand the information that we collect in the existing AFCARS by requiring that the title IV–E agency report longitudinal information for most of the data elements in paragraph (e) of this section. We propose, as we did in the 2008 NPRM, to require the title IV–E agency to report the date and type of each of the child's living arrangements for each out-of-home care episode and to report demographics on each of the child's foster parent(s), such as year of birth, race, ethnicity and the child's relationship to his or her foster parent(s). We also propose, as we did in the 2008 NPRM, to expand the types of living arrangements in which the child may be placed to include a variety of placement settings, such as therapeutic foster family homes, group homes that may provide shelter care or be operated by staff or a family, supervised independent living and juvenile justice facilities. In the existing AFCARS, the title IV–E agency is required to report four data elements on the child's current placement setting as of the end of the report period, including the date that the child was placed into the current placement setting, the type of placement setting and whether the placement is out of the State, and provide the number of the child's placement settings during the child's current foster care episode (see Appendix A to part 1355, section II, III.B and V). The information that the title IV–E agency is currently required to report to AFCARS does not provide any detailed information on the type of foster home or facility in which the child is currently living or previously lived. Many stakeholders have long urged us to consider amending the AFCARS regulations with the goal of gathering longitudinal information for children who are in out-of-home care, such as where the child lives for the duration of his or her stay in out-of-home care. We also understand that many title IV–E agencies already have the capability and actively track each of the child's living arrangements. We believe that collecting longitudinal information on each of the child's living arrangements will enhance our analysis of the child's entire experience in out-of-home care and will allow for improved tracking and analysis related to the stability of the child's placements and whether children are moving from one living arrangement to another in support of their permanency plans and overall well-being. We also believe that collecting this expanded information

will enhance our data analysis ability for the CFRs or other Federal monitoring efforts. Commenters to both the 2008 NPRM and the 2010 FR Notice were supportive of expanding and collecting longitudinal information on each of the child's living arrangements and foster parent(s).

We propose that the title IV-E agency collect and report the information in paragraph (e) for each child in the out-of-home care reporting population regardless of the type of setting in which the child lives, including if the child is placed into a non-foster care setting, such as a hospital or juvenile justice facility, after entering the out-of-home care reporting population. Commenters in response to the 2008 NPRM and the 2010 FR Notice expressed a concern with reporting information on children who are in non-foster care settings, such as juvenile justice facilities. We considered these comments, but did not make changes in paragraph (e) based on those comments because we believe that the title IV-E agency will have placement information for the children who are in their placement and care responsibility.

Date of living arrangement. In paragraph (e)(1), we propose to require the title IV-E agency to collect and report the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. Our proposal is different from the existing AFCARS regulation in which the title IV-E agency must report the date that the child was placed in the current placement setting, or on a trial home visit and a count of how many times the child changed placement settings (see Appendix A to part 1355, section II, III.B). In the 2008 NPRM we did not propose to collect the date that the child is placed at home because we proposed in that NPRM to consider the child to exit the out-of-home care reporting population when the child is placed at home. Our current proposal modifies the 2008 NPRM. We now propose to require the title IV-E agency to report the date that the child is placed at home in paragraph (e)(1) until the title IV-E agency placement and care responsibility ends, which is consistent with the revised out-of-home care reporting population.

We propose that the title IV-E agency report the date that the child is placed by the title IV-E agency in each living arrangement. For a child who ran away, the title IV-E agency must report the date that the title IV-E agency considers the child to have run away. For a child whose whereabouts are unknown by the title IV-E agency, the title IV-E agency

must report the date the child's whereabouts became unknown to the title IV-E agency. For a child who is placed at home with his or her parent(s) or legal guardian(s) under the placement and care responsibility of the title IV-E agency, the title IV-E agency must report the date that the child returned home. We are interested in collecting runaway and whereabouts unknown dates in order to calculate the actual time the child is absent from the provider or facility without permission and the title IV-E agency must continue to report on each child in the out-of-home care reporting population until the title IV-E agency's placement and care responsibility ends (see section 1355.41). In the case of a child who is already living in a living arrangement and remains there when the title IV-E agency receives placement and care responsibility of the child, the title IV-E agency must report the date of the VPA or court order providing the title IV-E agency with placement and care responsibility for the child, rather than the date the child began living in the arrangement. An example of this might be a child who was living with a relative prior to a constructive removal who continues to reside in the relative's house after entering foster care.

In paragraphs (e)(2) through (e)(4), we propose that the title IV-E agency indicate the type of living arrangement for the child, for each living arrangement reported in paragraph (e)(1) of this section. In the existing AFCARS regulations, the title IV-E agency is required to report the child's current placement setting from eight options: Pre-adoptive home, relative or non-relative foster family home, group home, institution, supervised independent living, runaway and trial home visit (see Appendix A to part 1355, section II, V.A). We have found that these options, which were intended to be mutually exclusive, do not capture fully the range of living arrangements in which the child may be placed. We believe that more detailed information is needed to better understand the specific types of homes and facilities where children live while in out-of-home care. We essentially propose, as we did in the 2008 NPRM, to split the existing AFCARS data element (see Appendix A to part 1355, section II, V.A) into three data elements and to expand the data that is collected. We propose in paragraph (e)(2) to require the title IV-E agency to report whether each of the child's living arrangements is a foster family home. If the title IV-E agency reports that the child is living in a foster family home, then we propose

in paragraph (e)(3) that the title IV-E agency report the type of foster family home by indicating whether each of the six types "applies" or "does not apply." If the title IV-E agency reports in paragraph (e)(2) that the child is not living in a foster family home, then we propose in paragraph (e)(4) that the title IV-E agency report one type of other living arrangement from thirteen options. We believe that this new approach to capturing information on each of the child's living arrangements will provide us with a more complete view of the child's actual placements. Commenters in response to the 2008 NPRM were generally supportive of our approach.

We clarified the definitions of the living arrangement options from the 2008 NPRM in response to commenters requesting clearer definitions and to conform to the revised out-of-home care reporting population which includes children who are placed in foster care who subsequently are placed into non-foster care settings. Although in the 2008 NPRM we proposed additional types of living arrangements not currently in AFCARS, our proposal has gone further to include additional types not proposed in the 2008 NPRM to account for the proposed reporting population definition. Each data element is described below in paragraphs (e)(2) through (e)(4).

Foster family home. In paragraph (e)(2), we propose, as we did in the 2008 NPRM, to require the title IV-E agency to report whether each of the child's living arrangements is a foster family home, by indicating "yes" or "no" as appropriate. In the existing AFCARS, the title IV-E agency is required to report whether the child is living in either a relative or non-relative foster family home as two of seven living arrangement options, however, we propose to obtain more thorough information on foster family homes than relative and non-relative as in the current AFCARS. If the title IV-E agency indicates "yes," then the title IV-E agency must complete the data element in paragraph (e)(3). If the title IV-E agency indicates "no," then the title IV-E agency must report another type of living arrangement in which the child is living in paragraph (e)(4). If the child ran away or the child's whereabouts are unknown, then the title IV-E agency must indicate "no."

Foster family home type. In paragraph (e)(3), we propose to require the title IV-E agency to report whether each of the following six types of foster family homes listed in paragraphs (e)(3)(i) through (e)(3)(vi) "applies" or "does not apply" for each foster family home

reported in paragraph (e)(2): Licensed, therapeutic, provides shelter care, is that of a relative, pre-adoptive home and/or kin family.

This data element is the same as the one proposed in the 2008 NPRM, however, based on comments to the 2008 NPRM, we now propose to add “kin family foster home” as an option. In the “current placement setting” data element in the existing AFCARS, the title IV–E agency can choose among three options related to foster family homes which were designed to be mutually exclusive: pre-adoptive home, relative foster family home (which could be licensed or not) and a licensed non-relative foster family home (see Appendix A to part 1355, section II, V.A). The options and definitions in the existing AFCARS provided us with limited analytical possibilities and did not adequately capture the specific foster family home in which the child is living. For example, we could not determine whether children were placed in pre-adoptive homes that were also relative homes. Further, we did not know the extent to which children were placed in licensed foster family homes. We believe that requiring the title IV–E agency to indicate separately all possible characteristics of a foster family home will allow us and title IV–E agencies to see the trends that may exist among foster homes, particularly now that we have added “kin family foster care” as an option. Commenters in response to the 2008 NPRM were generally supportive of the expanded list of proposed foster family home types. Each response option is discussed below.

(i) *Licensed home.* In paragraph (e)(3)(i), we propose that the title IV–E agency report whether each foster family home is licensed. We propose that “licensed home” be a separate response option so that we can clearly identify when a child is placed in any type of foster family home that is licensed or approved by the State or Tribal licensing/approval authority.

(ii) *Therapeutic foster family home.* In paragraph (e)(3)(ii), we propose that the title IV–E agency report whether the child is placed in a therapeutic foster family home. We propose to define “therapeutic foster home” as a foster family home that provides specialized care and services and is intended for children with more challenging behaviors or needs. Therapeutic foster homes are more prevalent today than when AFCARS was originally developed. Including this option is in line with our goal to more accurately reflect a child’s living arrangements. Further, this option, along with the

detailed information we will receive on the circumstances of the child’s removal (in section 1355.43(d)(5)) and the child’s health, behavioral or mental health conditions (in section 1355.43(b)(5)), will allow us to get a richer picture of the needs of children who are in out-of-home care.

(iii) *Shelter care foster family home.* In paragraph (e)(3)(iii), we propose that the title IV–E agency report whether the child is placed in a shelter care foster family home so that we can track the use of shelter care. We propose to define a “shelter care foster family home” as one that is designated or approved as a shelter care home by the State or Tribal licensing/approval authority, and is short-term or transitional in nature. We understand that shelter care is used to provide title IV–E agencies with an opportunity to assess a child’s needs and future placements while providing care and protection for the child.

(iv) *Relative foster family home.* In paragraph (e)(3)(iv), we propose that the title IV–E agency report whether the child is placed in a relative foster family home where the relative foster parent(s) lives as his or her primary residence. We propose to retain the option of “relative foster family home,” currently included in the AFCARS regulation, to allow us to determine whether or not there is a familial relationship between the child and the foster parent(s). This option is consistent with our goal to better understand the relationship between a child in foster care and the child’s caregivers. The option is limited to persons related by a biological, legal or marital connection and does not include kin (e.g., individuals who have a pre-existing psychological, cultural or emotional relationship with the child), which is now proposed as a separate option.

(v) *Pre-adoptive home.* In paragraph (e)(3)(v), we propose that the title IV–E agency report whether the child is placed in a pre-adoptive home, defined as a home in which the family and the title IV–E agency have agreed on a plan to adopt the child. We believe that this definition is more precise than the current AFCARS definition of “pre-adoptive home,” which indicates that the family “intends” to adopt the child (see Appendix A to part 1355, section II.V). We believe that changing the definition to include title IV–E agency participation will convey concrete circumstances where the title IV–E agency and the foster family are working in concert to achieve permanency for the child through the foster family adopting the child.

(vi) *Kin foster family home.* In paragraph (e)(3)(vi), we propose that the

title IV–E agency report whether the child is placed in a kin foster family home, defined as a home in which there is a kin relationship as defined by the title IV–E agency, such as one where a psychological, cultural or emotional relationship exists between the child or the child’s family and the foster parent(s). This is a new response option. We understand that kin families have become important placement options for title IV–E agencies and we want to have a better understanding of how often this type of placement is used. We also added this option in response to comments to the 2008 NRPM requesting the inclusion of kin throughout the data elements, where applicable.

Other living arrangement type. In paragraph (e)(4), we propose to require the title IV–E agency to report whether a child is placed in one of thirteen living arrangements for a child who is not placed in a foster family home, as indicated in paragraph (e)(2) of this section. The proposed living arrangement types are mutually exclusive and are as follows: Group home-family-operated, group home-staff-operated, group home-shelter care, residential treatment center, child care institution, child care institution-shelter care, supervised independent living, juvenile justice facility, medical or rehabilitative facility, psychiatric hospital, runaway, whereabouts unknown and placed at home. We modified the proposed list of options from a similar list proposed in the 2008 NPRM. Our proposal expands the options that are in the existing AFCARS regulation and is modified from the 2008 NPRM proposed list of living arrangements. In the current placement setting data element in the existing AFCARS, the title IV–E agency can choose among five options related to placement settings other than foster family homes, which were designed to be mutually exclusive: Group home, institution (inclusive of child care institutions, residential treatment facilities, maternity homes, etc.), supervised independent living, runaway and trial home visit (see Appendix A to part 1355, section II, V.A). We have found that the current AFCARS living arrangement options do not represent adequately the various types of living arrangements in which a child may be living. Commenters in response to the 2008 NPRM were generally supportive of the expanded list of proposed other living arrangement types. Each response option is explained in detail below.

We propose to continue to include group homes as a type of living arrangement; however, as proposed in the 2008 NPRM, we propose to require

that the title IV–E agency report whether the group home is family operated or staff operated, or, regardless of who operates it, a shelter care group home. We propose to define “group home-family operated” as a group home setting that provides 24-hour care in a private family home where the family members are the primary caregivers. We propose to define “group home-staff operated” as one in which staff provides 24-hour care for children through shifts or rotating staff and is licensed or approved to provide shelter care by the State or Tribal licensing/approval authority. We propose to define a “group home-shelter care” as a group home that also provides 24-hour care for children, is short-term or transitional in nature and is licensed or approved to provide shelter care by the State or Tribal licensing/approval authority.

Determining whether a child is placed into a family operated or a staff operated group home will provide us with further insight into the child’s living arrangement. In the existing AFCARS regulation, “group home” is defined as a small, licensed or approved home providing care in a group setting that generally has from seven to twelve children (see Appendix A to part 1355, section II, V.A). We have found that this definition is too limiting and does not reflect the actual group home living arrangements available to children. Therefore, our proposed definitions do not include a specific number of children who reside in the group setting. We do not believe it is necessary to determine whether shelter care group homes are operated by a staff or family.

We propose, as we did in the 2008 NPRM, to add “residential treatment center” as a type of living arrangement and define it as a facility that is for the purpose of treating children with mental health or behavioral conditions, including psychiatric residential treatment centers. In the existing AFCARS regulation, we direct agencies to report residential treatment facilities within the larger category of “institutions,” rather than as a separate option (see Appendix A to part 1355, section II, V.A). We propose to make this a separate and distinct option so that we may identify a child’s living arrangement with more specificity and detail.

We propose, as we did in the 2008 NPRM, to identify “child care institution” as a separate living arrangement type. In the existing AFCARS, a living arrangement of a child care institution is included in the current AFCARS definition of “institution,” which is specific enough to depict accurately the type of living

arrangements in which children reside (see Appendix A to part 1355, section II, V.A). We propose to define a “child care institution” as a private facility, or a public child care facility for no more than 25 children, which is licensed by the State or Tribal licensing/approval authority. We propose to exclude other institutions whose primary purpose is to secure children who are determined to be delinquent from the definition of a “child care institution,” such as detention facilities, forestry camps and training schools, consistent with section 472(c)(2) of the Act.

We propose to identify separately a child care institution that is designated by the State or Tribal licensing/approval authority as a shelter care facility. As in the 2008 NPRM, we propose this as a distinct option so that we can examine the use of shelter care as discussed previously.

We propose to retain the existing “supervised independent living” option in AFCARS but modify the definition to be consistent with the revised reporting population definition proposed in section 1355.41. In the existing AFCARS regulation, the definition of “supervised independent living” is an alternative transitional living arrangement where the child is under the supervision of the title IV–E agency, is receiving financial support from the child welfare agency and is in a setting which provides the opportunity for increased self care (see Appendix A to part 1355, section II, V.A). We propose to modify the definition for the “supervised independent living” option to require the title IV–E agency to report living arrangements where a child of any age is under the placement and care responsibility of the title IV–E agency and living independently in a supervised setting.

We propose, as we did in the 2008 NPRM, that the title IV–E agency indicate whether a child’s living arrangement is a juvenile justice facility. We propose to define “juvenile justice facility” as a secure facility or institution where alleged or adjudicated juvenile delinquents are housed while under the title IV–E agency’s placement and care responsibility. This definition is broad enough to include all types of juvenile facilities, whether they are locked or employ some type of treatment component.

We also propose, as we did in the 2008 NPRM, to add “medical or rehabilitative facility” as a new living arrangement type in AFCARS. We propose to define a “medical or rehabilitative facility” as one where a child receives medical or physical health care. This could include a

hospital or facility where a child receives intensive physical therapy, but not primarily psychiatric care.

We propose that the title IV–E agency report whether a child is in a “psychiatric hospital.” We propose to define “psychiatric hospital” as one where the child receives emotional or psychological health care and is licensed or accredited as a hospital. This option is not currently included in the existing AFCARS regulation, and replaces the “psychiatric facility” option we proposed in the 2008 NPRM that included both psychiatric hospitals and residential treatment centers. We received comments to the 2008 NPRM seeking clarification on the definition of psychiatric facility and in response we modified the option to only include psychiatric hospitals that are licensed or accredited as a hospital. Psychiatric residential treatment centers should not be reported under this option. A child in a psychiatric residential treatment center should be included under the residential treatment center option.

We propose, as we did in the 2008 NPRM, to define the option of “runaway” as when the child has left, without authorization, the home or facility where the child was placed. The current living arrangement definition of runaway that is in the existing AFCARS refers to a child who has “run away from the foster care setting” (Appendix A to part 1355, section II.V). We propose to broaden the definition so that it is clear that this runaway option must be indicated any time a child has left a living arrangement without authorization.

We propose to add for the first time a new option of “whereabouts unknown.” We propose to define “whereabouts unknown” as when the child is under the title IV–E agency’s placement and care responsibility, but is not in the physical custody of the title IV–E agency or person or institution with whom the child has been placed, the whereabouts of the child are unknown and the title IV–E agency does not consider the child to have run away. This is a new option not proposed in the 2008 NPRM or required to be reported in the existing AFCARS regulation. We propose it now based on stakeholder feedback we received in response to the 2008 NPRM asking to add a separate option for a child whose whereabouts are unknown. With this new response option, ACF will be able to provide information on children who are in the title IV–E agency’s placement and care responsibility but whose whereabouts are unknown.

Finally, we propose to add for the first time a new option of “placed at home.”

We propose that the title IV–E agency indicate “placed at home” if the child is living at home with his or her parent(s) or legal guardian(s) while under the placement and care responsibility of the title IV–E agency in preparation for the title IV–E agency to return the child home permanently. This is a new option not proposed in the 2008 NPRM or required to be reported in the existing AFCARS regulation. This option was added in response to comments to the 2008 NPRM expressing confusion between when a child is placed at home as defined above, a trial home visit and a visit home for a weekend or holiday. “Placed at home” should only be used in preparation for the child’s permanent return home and should not be used if the child is at home for a weekend or holiday visit.

Private agency living arrangement. In paragraph (e)(5), we propose, as we did in the 2008 NPRM, to require the title IV–E agency to collect and report whether or not each of the child’s living arrangements, reported in paragraph (e)(1), is licensed, managed or run by a private agency. This is the same proposal that we proposed for the first time in the 2008 NPRM. As title IV–E agencies increasingly use private agencies to perform a variety of child welfare services, there are important implications for the oversight of their responsibilities to children who are in out-of-home care. We have learned from the CFRs and our National Quality Improvement Center on the Privatization of Child Welfare Services that title IV–E agencies have had varied levels of success with contracting out child welfare services to private agencies. We believe that by tracking the use of private agency involvement in a child’s living arrangements, we may be able to analyze its impact on child outcomes. We received comments in support of this proposal in response to the 2008 NPRM.

Location of living arrangement. In paragraph (e)(6), we propose that the title IV–E agency report the general location of the child’s living arrangement, specifically whether the child is placed within or outside of the reporting State or Tribal service area or outside of the country. If the child ran away or his or her whereabouts are unknown, the title IV–E agency must so indicate. This proposal is generally the same as that in the 2008 NPRM, which modified the current AFCARS requirement (see Appendix A to part 1355, section II, V.B) in which the title IV–E agency must indicate whether the child is placed outside of the State making the report. However we modified the proposal to include a child

whose whereabouts are unknown in order to be consistent with the proposed out-of-home care reporting population and other data elements in paragraph (e) of this section. We also modified the options to include Tribal title IV–E agencies, in accordance with section 479B of the Act. We are required by statute at section 479(c)(3)(C)(iii) of the Act to collect the number and characteristics of children placed in foster care outside the State which has placement and care responsibility, and we hope to be able to explore the extent to which these placements occur, the reasons for these placements and to what extent they affect timely permanency for children. If the title IV–E agency indicates either “out-of-State or out-of-Tribal service area” or “out-of-country” for the child’s living arrangement, the title IV–E agency must complete the data element in paragraph (e)(7); otherwise the title IV–E agency must leave it blank. We did not receive comments on this data element as proposed in the 2008 NPRM.

Jurisdiction or country where the child is living. In paragraph (e)(7), we propose to require the title IV–E agency to report the name of the State, Tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for each living arrangement, if the title IV–E agency indicated either “out-of-State or out-of-Tribal service area” or “out-of-country” in paragraph (e)(6). This is a new data element not required to be reported in the existing AFCARS regulation and we first proposed it in the 2008 NPRM. In the 2008 NPRM, we proposed to require the title IV–E agency to report the two-digit FIPS code for the State or country. Commenters to the 2008 NPRM expressed concern with keeping up with ever-changing FIPS codes. We now modify the 2008 NPRM to remove FIPS codes, which are no longer being maintained and updated, and instead require that the title IV–E agency indicate the jurisdiction’s or country’s name for identification purposes which we believe will address commenter concerns. In addition, FIPS codes do not account for the breadth of jurisdictions that could be captured in this element, as it does not include non-Federal Tribes or other countries. ACF will work with Tribal title IV–E agencies to develop valid response options for this element.

We also believe that the information reported in this data element, in combination with the information reported in paragraph (e)(6), will provide information on the extent to which title IV–E agencies are maximizing all potential placement

resources for children who are in out-of-home care. Our modified proposal also includes Tribal title IV–E agencies in accordance with section 479B of the Act.

Federal law is clear that delays in adoptive interjurisdictional placements are prohibited (section 471(a)(23) of the Act). Our analysis of existing AFCARS data demonstrates that it takes much longer to achieve permanency for children who are placed out-of-State compared to children whose placements are intrastate. We hope that expanding our collection of this information will support more sophisticated analyses of placements that are out of the State, Tribal service area or country. We also believe that requiring title IV–E agencies to identify the specific location of the child’s placement that is out of the State, Tribal service area or country is consistent with the statutory requirement that a title IV–E agency have a State or Tribal wide information system from which the title IV–E agency can readily identify the location of a child in foster care, or who has been in foster care in the preceding 12 months (section 422(b)(8)(A)(i) of the Act).

In paragraphs (e)(8) through (e)(13), we propose to collect information on the child’s siblings who are in out-of-home care under the placement and care responsibility of the title IV–E agency or who exit the placement and care responsibility of the title IV–E agency to a finalized adoption or legal guardianship. We propose two new data elements designed to obtain the total number of the child’s siblings who are in out-of-home care under the placement and care responsibility of the title IV–E agency or who exit the placement and care responsibility of the title IV–E agency to a finalized adoption or legal guardianship and four new data elements where the title IV–E agency must report which siblings the child is placed with within the same living arrangement.

In the existing AFCARS, we do not have a way to know which children who are in out-of-home care are siblings and we do not have the ability to track whether siblings are placed together. We propose that the title IV–E agency report on a child’s siblings in paragraphs (e)(8) through (e)(13) of this section in order to learn more about sibling group placement in out-of-home care, adoption and legal guardianship homes and to comply with the mandate in section 471(a)(31)(A) of the Act. Under this statutory provision, the title IV–E agency must make reasonable efforts to place siblings removed from their home in the same foster care, kinship guardianship or adoptive placement,

unless such a placement is contrary to the safety or well-being of any of the siblings. We propose paragraphs (e)(8) and (e)(11) specifically to determine the total number of siblings which ACF will use to ensure correct data entry in paragraphs (e)(9), (e)(10), (e)(12) and (e)(13).

In the 2008 NPRM, we proposed to require title IV–E agencies to indicate the total number of siblings who are also in the title IV–E agency’s placement and care responsibility and are placed with the child in the same living arrangement as of the last day of each of the child’s living arrangements. Our 2008 NPRM proposal did not include reporting the child’s siblings who exited the reporting title IV–E agency’s placement and care responsibility to a finalized adoption or legal guardianship. Commenters to the 2008 NPRM supported our proposal to collect the total number of the child’s siblings who are themselves in out-of-home care, but suggested that we also collect the child record numbers of the child’s siblings, stating that it would be more useful to accurately track which children are siblings and whether they are placed together. We agreed with the commenters and revised our proposal accordingly. We also revised our proposal to include reporting whether the child has and lives with any siblings who exited the reporting title IV–E agency’s placement and care responsibility to a finalized adoption or legal guardianship. We propose the new data elements in paragraphs (e)(8) through (e)(13) in order to learn more about sibling group placement.

Number of siblings in out-of-home care. In paragraph (e)(8), we propose to require the title IV–E agency to report the total number of siblings, if applicable, that a child has who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not include the child who is the subject of this record in the total number. If the child does not have siblings who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency during the report period, we propose that the title IV–E agency indicate “0.” If the child does not have any siblings, we propose that the title IV–E agency indicate “not applicable.” If the title IV–E agency indicates either “0” or “not applicable,” the title IV–E agency must leave the data elements in paragraphs (e)(9) and (e)(10) blank.

Siblings placed together in out-of-home care. In paragraph (e)(9), we propose to require the title IV–E agency to report the child record number(s) of each sibling(s) who is in out-of-home care under the placement and care responsibility of the reporting title IV–E agency and who is placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not report the record number of the child who is the subject of this record. The title IV–E agency must report this information whether the child’s living arrangement is in or out of the State or Tribal service area.

Siblings in out-of-home care not living with child. In paragraph (e)(10), we propose to require the title IV–E agency to report the child record number(s) of each sibling(s) who is in out-of-home care under the reporting title IV–E agency’s placement and care responsibility and who is not placed with the child in the same living arrangement at any point during the report period. The title IV–E agency must not report the record number of the child who is the subject of this record. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must report this information whether the child’s living arrangement is in or out of the State or Tribal service area.

Number of siblings in an adoption or legal guardianship. In paragraph (e)(11), we propose to require the title IV–E agency to report the total number of siblings, if applicable, that a child has who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not include the child who is the subject of this record in the total number. If the child does not have siblings who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship, we propose that the title IV–E agency indicate “0.” If the child does not have any siblings, we propose that the title IV–E agency indicate “not applicable.” If the title IV–E agency indicated either “0” or “not applicable,” the title IV–E agency must leave the data elements in paragraphs (e)(12) and (e)(13) blank.

Siblings in adoptive/guardianship placements living with child. In paragraph (e)(12), we propose to require

the title IV–E agency to report the child record number(s) of each sibling(s) who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship and who is placed with the child in the same living arrangement at any point during the report period. For AFCARS purposes, a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not report the record number of the child who is the subject of this record. The title IV–E agency must report this information whether the child’s living arrangement is in or out of the State or Tribal service area.

Siblings in adoptive/guardianship placements not living with child. In paragraph (e)(13), we propose to require the title IV–E agency to report the child record number(s) of each sibling who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or a legal guardianship and who is not living with the child in the same living arrangement at any point during the report period. This is a new element. As in previous sibling elements, for AFCARS purposes a sibling to the child is his or her brother or sister by biological, legal or marital connection. The title IV–E agency must not report the record number of the child who is the subject of this record. The title IV–E agency must report this information whether the child’s living arrangement is in or out of the State or Tribal service area.

Number of children living with the minor parent. In paragraph (e)(14), we propose to require the title IV–E agency to report the total number of children who are living with their minor parent in the same living arrangement, for each living arrangement if the title IV–E agency reported that the minor parent (*i.e.*, the child who is the subject of this record) has children in section 1355.43(b)(15). As in section 1355.43(b)(15), we propose to consider a child older than age 18 in foster care a “minor parent” if he or she has children. If the title IV–E agency reported “0” in section 1355.43(b)(15), the title IV–E agency must leave this data element blank. This data element is not in the existing AFCARS regulation and was first proposed in the 2008 NPRM. We propose that a title IV–E agency include in this count only those children of the minor parent who are not under the title IV–E agency’s placement and care responsibility, for whom the minor parent is responsible and who are in the same living arrangement. The title IV–E agency must

not report those children of the minor parent who are in the out-of-home care reporting population as a result of a separate action removing the child from the minor parent and placing with the title IV–E agency. For example, if the minor parent is placed in a child care institution and the minor parent's infant child was removed from his or her care, the title IV–E agency has placement and care responsibility of the infant child and the title IV–E agency placed the infant child into a foster family home, then the title IV–E agency must report “0” for this data element. This is also the case if the minor parent is also placed in the same foster family home. The minor parent's child who is also in the placement and care responsibility of the title IV–E agency would have his or her own child record number.

We received comments in response to the 2008 NPRM recommending that title IV–E agencies report the child of a minor parent only if the minor parent's child is also in foster care. We considered the comments but did not make changes to this proposal because we want to know when a minor parent who is in out-of-home care is responsible for the care of his or her own child(ren) who is living with him or her. Minor parents and their children may differ from other children who are in out-of-home care and may require enhanced resources from the child welfare system, *e.g.*, possibly different permanency plans, living arrangements, lengths of stay in foster care, exit reasons and/or patterns of re-entry than other children in out-of-home care. We believe that it is necessary to examine the trends in these patterns so that policy is better informed and that the necessary resources can be made available to meet the needs of these families.

Marital status of the foster parents. In paragraph (e)(15), we propose to require the title IV–E agency continue to report information regarding the marital status of the foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. This is basic demographic information about the child's provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act. Our proposal is unchanged from the 2008 NPRM. In the existing AFCARS, this data element is titled “Foster Family Structure” and the title IV–E agency must report one of four options married couple, unmarried couple, single male or single female (see Appendix A to part 1355, section II, IX.A). We propose, as we did in the 2008 NPRM, to include these same four marital status options, as well as one

other category of marital status—separated. Additionally, we specify that the title IV–E agency must report this information for each foster family home in which the child is placed.

We propose to require the title IV–E agency to indicate “married couple” if the foster parents are considered to be united in matrimony according to applicable laws, including common law marriage where provided by applicable laws. We propose to require the title IV–E agency to indicate “unmarried couple” if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. We propose to require the title IV–E agency to indicate “separated” if the foster parent is legally separated, or living apart from his or her spouse, but remains legally married. We propose to require the title IV–E agency to indicate “single female” if the foster parent is a female who is not married (including common law marriage) and is not living with another individual as part of a couple. We propose to require the title IV–E agency to indicate “single male” if the foster parent is a male who is not married (including common law marriage) and is not living with another individual as part of a couple. If the title IV–E agency indicates the option “married couple” or “unmarried couple,” the title IV–E agency must complete the data elements for the second foster parent in paragraphs (e)(20) through (e)(22) of this section; otherwise the title IV–E agency must leave these data elements blank. Consistent with the existing AFCARS requirement and the 2008 NPRM proposal, we do not propose a separate category for a foster parent who is a widow or widower. Such individuals must continue to be reported according to his or her current marital/living situation.

Child's relationship to the foster parent(s). In paragraph (e)(16), we propose to require the title IV–E agency to report the type of relationship between the child and the foster parent(s) from one of seven options, for each foster family home in which the child is placed, as indicated in paragraph (e)(3) of this section. We propose to include the following relationship options, which we also proposed in the 2008 NPRM siblings, maternal and paternal grandparents, other maternal or paternal relatives or non-relatives. In addition to the options in the 2008 NPRM, we propose to add one additional option—kin. We agree with commenters to the 2008 NPRM who identified the importance of including this option in order to better understand the true nature of the child's

out-of-home care experience. For AFCARS purposes, a kin relationship is defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s).

Title IV–E agencies are not currently required to report the specific type of relationship between the child and his or her foster parent(s). Through the information reported in the existing AFCARS, we only know whether a child is placed in a relative foster home, but we do not know the specific relative with whom the child is placed. We believe that it is essential to obtain this information, primarily so we can understand the trends surrounding relative, and particularly grandparent and paternal relative, care of children who enter foster care.

Year of birth of foster parent(s). In paragraphs (e)(17) and (e)(20), we propose to require the title IV–E agency to report the year of birth of each foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. A foster parent must be at least 18 years old. If the title IV–E agency indicated “married couple” or “unmarried couple” in paragraph (e)(15), the title IV–E agency must indicate the year of birth for the first foster parent in paragraph (e)(17) and the year of birth for the second foster parent in paragraph (e)(20). If the title IV–E agency indicated “single female” or “single male” in paragraph (e)(15), the title IV–E agency must indicate that person's year of birth in paragraph (e)(17) and leave paragraph (e)(20) blank. Our proposal is unchanged from the 2008 NPRM.

In the existing AFCARS regulation, the title IV–E agency is required to estimate a year of birth if the foster parent(s) exact birth date is unknown (see Appendix A to part 1355, section II, IX.B). We propose, as we did in the 2008 NPRM, to remove this instruction because we expect that the title IV–E agency will always have the exact year of birth for a foster parent. This is basic demographic information about the child's provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act.

Race of foster parent(s). In paragraphs (e)(18)(i) through (e)(18)(vii) and (e)(21)(i) through (e)(21)(vii), we propose to require the title IV–E agency to report the race of each foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. If the title IV–E agency indicated “married couple” or

“unmarried couple” in paragraph (e)(15), the title IV–E agency must indicate the race for the first foster parent in paragraph (e)(18) and the race for the second foster parent in paragraph (e)(21). If the title IV–E agency indicated “single female” or “single male” in paragraph (e)(15), the title IV–E agency must indicate that person’s race in paragraph (e)(18) and leave paragraph (e)(21) blank. This is basic demographic information about the child’s provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act.

Our proposal is unchanged from the 2008 NPRM where we proposed to modify the existing AFCARS requirement (see Appendix A to part 1355, section II, IX.C) in order to be consistent with the OMB standards for collecting information on race. Currently in AFCARS, we explain that an individual’s race is determined by how he or she defines him or herself or by how others define him or her. Consistent with the 2008 NPRM proposal, the title IV–E agency must allow the foster parent(s) to determine his or her own race. If the foster parent(s) does not know his or her race, the title IV–E agency must indicate that this information is not known (see paragraphs (e)(18)(vi) and (e)(21)(vi)). It is acceptable for the foster parent(s) to identify with more than one race, but not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that one of the races is not known. If the foster parent(s) declines to identify his or her race, the title IV–E agency must indicate that this information was declined (see paragraphs (e)(18)(vii) and (e)(21)(vii)).

Hispanic or Latino ethnicity of foster parent(s). In paragraphs (e)(19) and (e)(22), we propose that the title IV–E agency report the Hispanic or Latino ethnicity of the foster parent(s) by indicating “yes” or “no.” This is basic demographic information about the child’s provider that is required to be collected in AFCARS per section 479(c)(3)(A) of the Act. If the title IV–E agency indicated “married couple” or “unmarried couple” in paragraph (e)(15), the title IV–E agency must complete paragraph (e)(19) for the first foster parent and paragraph (e)(22) for the second foster parent. If the title IV–E agency indicated “single female” or “single male” in paragraph (e)(15), the title IV–E agency must complete paragraph (e)(19) for that person and leave paragraph (e)(22) blank.

Our proposal is the same as the existing AFCARS requirement (see Appendix B to part 1355, section II,

VI.C), the 2008 NPRM and other sections of this proposed rule where demographic information on ethnicity is collected. The proposed data element is similar to one in the existing AFCARS requirements (see Appendix A to part 1355, section II, IX.C) and unchanged from the 2008 NPRM. Similar to the data elements on race in paragraphs (e)(18) and (e)(21), the definitions in paragraphs (e)(19) and (e)(22) also are consistent with the OMB race and ethnicity standards. Consistent with the 2008 NPRM proposal, the title IV–E agency must allow the foster parent(s) to determine his or her own ethnicity. If the foster parent(s) does not know his or her ethnicity, the title IV–E agency must indicate the option “unknown.” If the foster parent(s) refuses to identify his or her ethnicity, the title IV–E agency must indicate that the information was declined.

Sources of Federal assistance in living arrangement. In paragraph (e)(23), we propose to require the title IV–E agency to report the Federal assistance that supports the child’s maintenance payments (*i.e.*, room and board) on the last day of the child’s placement in each living arrangement or on the last day of the report period if the child’s living arrangement is ongoing, for each living arrangement as indicated in paragraph (e)(1) of this section. Our proposal is a significant change from the existing AFCARS data element on financial assistance, which requires the title IV–E agency to report both Federal and non-Federal sources of assistance in each report period (see Appendix A to part 1355, section II, XI). Information similar to the existing AFCARS requirement is proposed to be collected in both paragraphs (b)(16) and (e)(23); however, we modified the options from the existing AFCARS requirement and we propose that the title IV–E agency report in paragraph (e)(23) only the sources of Federal assistance that support the child’s maintenance. We propose, as we did in the 2008 NPRM, to require the title IV–E agency to report in paragraphs (e)(23)(i) through (e)(23)(viii) the types of Federal funds that are supporting the child’s maintenance in each out-of-home care living arrangement from the following options title IV–E foster care maintenance payments, title IV–E adoption assistance subsidy, title IV–E guardianship assistance subsidy, title IV–A Temporary Assistance for Needy Families (TANF), title IV–B Child Welfare Services, title XX Social Services Block Grant (SSBG), the Chafee Foster Care Independence Program and/or other Federal funds.

We specified in paragraphs (e)(23)(i) through (e)(23)(iii) that the title IV–E agency must report a funding source of title IV–E foster care, title IV–E adoption subsidy, or a title IV–E guardianship subsidy when the child is eligible for such funds. “Eligible” means that the child satisfies fully all of the criteria for the title IV–E foster care maintenance payments program in section 472 of the Act (including requirements for a placement in a licensed or approved foster family home or child care institution or supervised independent living), for the adoption assistance program in section 473 of the Act (including requirements for the child to be placed in a pre-adoptive home with an adoption assistance agreement signed by all parties in effect), or for the guardianship assistance program in section 473 of the Act. We chose to specify that the child be eligible for such funds, rather than funds paid on behalf of the child because title IV–E agencies are reimbursed by the Federal government for allowable title IV–E foster care maintenance, adoption assistance, and guardianship assistance payments. Title IV–E agencies submit claims for their allowable costs after they have made payments on behalf of eligible children, sometimes months after the fact. The timing of reimbursement for title IV–E payments and submitting AFCARS data may be such that a child may not have actually received a Federal payment at the time that we are requesting such information but the child is eligible for a title IV–E foster care maintenance, adoption assistance, or guardianship assistance payment.

As in the 2008 NPRM, we tied the reporting of this information to a particular day within each living arrangement. If the child is placed in two different living arrangements within the same AFCARS report period, the title IV–E agency must report the Federal funds supporting the child’s maintenance on the last day that the child was in the first living arrangement and, if the second living arrangement continues past the last date of the report period, the title IV–E agency must report the Federal funding sources on the last day of the report period. We propose to focus on the Federal funds provided on a particular day within a living arrangement so that we can better analyze the sources of Federal funds supporting children’s maintenance. Finally, although some commenters to the 2008 NPRM suggested that collecting financial information was not necessary, we propose to collect this information because section 479(c)(3)(D)

of the Act requires that we collect the nature of Federal assistance.

Amount of payment. In paragraph (e)(24), we propose to require the title IV–E agency to report the total (title IV–E agency and Federal share) per diem amount of the title IV–E foster care maintenance payment, title IV–E adoption assistance subsidy or title IV–E guardianship assistance subsidy that the child is eligible for or is paid on behalf of a title IV–E eligible child on the last day of the living arrangement or the last day of the report period if the living arrangement is ongoing. We propose to require the title IV–E agency to report this information for each living arrangement in which the title IV–E agency indicated that paragraphs (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) “applies.” If the title IV–E agency indicated “applies” in paragraphs (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) and no payment was made, the title IV–E agency must indicate “0” for this data element.

Our proposal is unchanged from the 2008 NPRM but modifies the existing AFCARS regulation which requires title IV–E agencies to report the total amount of the monthly foster care payment, regardless of the source (*e.g.*, Federal, State, Tribal or another source of funds) in the existing AFCARS foster care data file and the total amount of the monthly adoption subsidy in the existing AFCARS adoption data file (see Appendix A to part 1355, section II, XII and Appendix B to part 1355, section II, VIII). As we proposed in the 2008 NPRM, we will no longer require the title IV–E agency to report the monthly amount of assistance, but rather the daily amount, as we will calculate the monthly amount based on the per diem rate that the title IV–E agency reports to us. This is the same proposal as in the 2008 NPRM, and we did not receive any comments critical of the change.

As we understand it, information systems are designed such that the daily rate is readily available for reporting. Therefore, this aspect of the proposal should be less of a burden on title IV–E agencies and in line with how their information systems are structured. We also propose to remove the requirement that is in the existing AFCARS for the title IV–E agency to report the amount of the payment only when a title IV–E payment is made on behalf of a child regardless of the source. We propose this change because we primarily are interested in knowing about the amount of funds under the title IV–E foster care and adoption assistance programs, since these are the two largest programs for which we have fiscal oversight responsibility.

Services provided in other living arrangements. In paragraph (e)(25), we propose to require the title IV–E agency to report the type of services a child is receiving if placed in a living arrangement other than a foster family home as indicated in paragraph (e)(4). Pub. L. 113–183 requires this information be reported as part of the annual Child Welfare Outcomes Report per section 479A of the Act. Specifically, the law requires the reporting of information in areas such as specialized education, treatment, and counseling, as well as other services that do not fit into these categories, *e.g.*, independent living skills or other services towards adult preparedness. If the title IV–E agency indicated in paragraph (e)(2) that the child is living in a foster family home, leave this data element blank. If there are services provided, the title IV–E agency must indicate “yes” in paragraph (e)(25) and then indicate whether each paragraphs (e)(25)(i) through (e)(25)(iv) “applies” or does not apply.” If there are no services provided by the agency setting, the title IV–E agency must indicate “no.”

Finally, we would like to note that we are not continuing our proposal from the 2008 NPRM to include the data elements “language of foster parent(s)” and “language preference of foster parent” due to strong opposition in public comments to the 2008 NPRM.

Section 1355.43(f) Permanency Planning

In paragraph (f), we propose that the title IV–E agency collect and report information related to permanency planning for children in foster care. In general, we propose to expand the information that we collect by requiring title IV–E agencies to report longitudinal information for most of the data elements in paragraph (f). We also propose to modify the permanency plan options and request new information on the reasons for changing the child’s permanency plan; the child’s concurrent permanency plan; the child’s juvenile justice involvement; caseworker visits with the child and the child’s transition plan. In the existing AFCARS, the title IV–E agency is required to report one data element on the child’s most recent case plan goal, which does not provide any detailed information about permanency planning for children in foster care. We propose eleven additional data elements that will enhance our analysis of the child’s entire out-of-home care experience and will better inform the title IV–E agency’s performance in permanency planning and achieving positive outcomes for children in foster care. We also believe that collecting this additional

information will enhance our data analysis for the CFSTRs or other Federal monitoring efforts. We propose to update the language from the existing AFCARS regulation to use the term “permanency plan” instead of the term “case plan,” which is primarily a name change consistent with the terminology used throughout titles IV–B and IV–E of the Act. We used the term “permanency plan” in the 2008 NPRM and 2010 FR Notice and did not receive any comments.

Some aspects of our proposal are different from the 2008 NPRM and the existing AFCARS regulation. One difference is that we do not propose to collect ongoing child and family circumstances at the development of the initial permanency plan and at the time of each permanency hearing, or annually. In the 2008 NPRM, we proposed a list of ongoing child and family circumstances identical to the expanded list of circumstances proposed in paragraph (d). Commenters to the 2008 NPRM and 2010 FR Notice were overwhelmingly opposed to our proposal to collect child and family circumstances at any point after the child’s removal (see section 1355.43(d)). Primarily, the commenters questioned the value of collecting such information after the time of the child’s removal and strongly felt that the burden associated with making such vast programmatic changes and the time for workers to input such data would not positively impact the outcomes for children in foster care. Thus, based on such opposition in the comments, we decided against a proposal to collect ongoing information on child and family circumstances after the time of the child’s removal. We propose instead to collect information on the reasons the child’s permanency plan may change, which we explain further in paragraph (f)(4).

Permanency plan. In paragraph (f)(1), we propose to require the title IV–E agency to report the type of permanency plan established for the child, for each permanency plan that is established for the child in every out-of-home care episode. This is a longitudinal element. In the existing AFCARS, the title IV–E agency is required to report the child’s “most recent case plan goal” from a list of seven options, reunify with parents or principal caretaker; live with other relatives; adoption; long-term foster care; emancipation; guardianship; and not yet established (see Appendix A to part 1355, section II, VI). The options in the existing AFCARS are similar to the response options we proposed in the 2008 NPRM, which were reunify with parents or legal guardians; live with

other relatives; adoption; planned permanent living arrangement; independent living; relative guardianship; non-relative guardianship; and if the child's permanency plan is not established. Based on the comments we received in response to the 2008 NPRM and the 2010 FR Notice we propose to modify the 2008 NPRM proposal on permanency plan options. Although Federal regulations (45 CFR 1356.21(g)) require title IV-E agencies to develop permanency plans for children in foster care consistent with the program definition, we understand that most title IV-E agencies regularly develop and update permanency plans consistent with good practice. We propose that the title IV-E agency report this information for all children in the out-of-home care reporting population if that information has been collected in accordance with best practices procedures. In paragraph (f)(1), we propose to require the title IV-E agency to report one of six permanency plan options for the child or indicate that the permanency plan is not established. A description of each permanency plan option follows.

We propose that the title IV-E agency indicate "reunify with parent(s) or legal guardian(s)" if the plan is to keep the child in out-of-home care for a limited time and the title IV-E agency is working with the child's family to reunify the child with the parent(s) or legal guardian(s) in a stable family environment. Our proposed definition for this permanency plan option is the same as the 2008 NPRM, wherein we explained that we modified the existing AFCARS definition to replace the term "principal caretaker" with "legal guardian." We are expanding the "reunify with parent(s) or legal guardian(s)" option to include situations when the child reunifies with a non-custodial parent or legal guardian, rather than the parent or legal guardian from whom the child was removed.

We propose to require the title IV-E agency to indicate "live with other relatives" if the title IV-E agency is working towards the child living permanently with a relative(s), other than the child's parent(s) or legal guardian(s). Our proposal differs from the existing AFCARS definition in that we propose to exclude relative guardianship from the definition and remove the instruction that the relatives are "other than the ones from whom the child was removed." This instruction is unnecessary given the changes to the "reunify with parent(s) or legal guardian(s)" option because we are no longer limiting the "reunify with parent(s) or legal guardian(s)" option to

the person(s) from whom the child was removed. Our current proposal is the same as in the 2008 NPRM and we did not receive comments on this permanency plan option.

We propose to require the title IV-E agency to indicate "adoption" if the plan is to facilitate the child's adoption by the child's relatives, foster parent(s), kin or other unrelated individuals. Our proposal differs from the existing AFCARS requirement and the 2008 NPRM in that we propose to modify the adoption permanency plan option definition to specifically include adoption by kin. Commenters to the 2008 NPRM requested the addition of kin in a number of data elements in AFCARS and therefore we include it here.

We propose to require the title IV-E agency to indicate "guardianship" if the plan is for the title IV-E agency to establish a new legal guardianship arrangement for the child. This includes legal guardianships established with a relative or a non-relative. We propose to modify the existing AFCARS definition and the 2008 NPRM proposal based on the 2008 NPRM comments. In the existing AFCARS, the permanency plan option of "guardianship" applies to non-relatives whereas relative guardianship is included in the definition of "live with other relatives." In the 2008 NPRM, we proposed separate response options for relative and non-relative guardianship permanency plans. Commenters to the 2008 NPRM requested that we combine the "relative guardianship" and "non-relative guardianship" permanency plan options because they stated that it would be burdensome to reprogram information systems to comply with this and did not see the value of making such a distinction in AFCARS. We agreed and now propose one response option to capture the child's permanency plan of legal guardianship.

We propose to require the title IV-E agency to indicate "planned permanent living arrangement" if the plan is for the child to remain in foster care until the title IV-E agency's placement and care responsibility ends. The title IV-E agency must only select "planned permanent living arrangement" consistent with the requirements in section 475(5)(C)(i) of the Act. This response option is not in the existing AFCARS and we are modifying our 2008 NPRM proposal. In the 2008 NPRM, we proposed two response options, "planned permanent living arrangement" and "independent living" to replace the response options in the existing AFCARS "long term foster care" and "emancipation", respectively.

Both "long term foster care" and "emancipation" in the existing regulations encompass children with a plan to remain in foster care until emancipation.

Over the years, States have sought out technical assistance and guidance on how to distinguish between the two response options. In the 2008 NPRM, we attempted to rectify this issue by renaming the existing AFCARS response option "long term foster care" as "planned permanent living arrangement" and replacing "emancipation" with a new response option of "independent living" defined as situations when the plan was for the child to live independently and the child was receiving or eligible to receive independent living services. Commenters to the 2008 NPRM and 2010 FR Notice supported our proposal to include a response option for "planned permanent living arrangement" but felt that this was more than a name change and requested that we modify the definition to be more consistent with practice in the field. Commenters to the 2008 NPRM were overwhelmingly opposed to our proposal to include "independent living" as a permanency plan, stating that in practice, "independent living" refers to services that are provided to children who may emancipate from foster care and that these services should be provided no matter what the child's permanency plan is. We reexamined the existing response options in AFCARS and those proposed in the 2008 NPRM in the context of these comments, practice in the field and the statutory requirement at section 475(5)(C)(i) of the Act. Section 475(5)(C)(i) requires that the title IV-E agency rule out reunification, adoption and legal guardianship before selecting a permanency plan for a planned permanent living arrangement. We understand that in practice, when a child's plan is not to return to his or her family, or achieve guardianship or adoption, the title IV-E agency attempts to place a child with a committed foster care provider and provide the child with the skills needed for independence. The child may be placed with someone who has made a formal commitment to the child and may receive the services or not based on a variety of factors. Therefore, we believe that other monitoring efforts that examine casework, such as the current CFSR, are better tools in which to measure title IV-E agency performance in permanency planning for children who may emancipate from foster care. We believe that our current proposal

addresses the comments to the 2008 NPRM and the 2010 FR Notice and overall better reflect current practice. We welcome comments on this response option.

Finally, we propose to require the title IV–E agency to report if the child’s permanency plan is not yet established. Our proposal is the same as in the 2008 NPRM, which is only a name-change modification from the existing AFCARS response option titled “case plan goal not yet established.” We did not receive comments in response to the 2008 NPRM on this response option.

Date of permanency plan. In paragraph (f)(2), we propose to require the title IV–E agency to report the month, day and year that each permanency plan for the child was established, for each permanency plan established in paragraph (f)(1). This was a new proposed data element in the 2008 NPRM and we did not change it in our proposal here. We received very few comments on this data element in response to the 2008 NPRM and the ones we received stated that the additional workload may outweigh the value of the data element. As we stated in the 2008 NPRM, we continue to believe that collecting the date each permanency plan was established will allow us to know all the permanency plans that were established for the child and when they were established.

Concurrent permanency planning. In paragraph (f)(3), we propose to require the title IV–E agency to indicate whether the title IV–E agency identified a concurrent permanency plan for the child. Our proposal is unchanged from the 2008 NPRM. We propose that the title IV–E agency indicate “concurrent permanency plan” if a concurrent permanency plan exists for the child; “no concurrent permanency plan” if the title IV–E agency engages in concurrent permanency planning but a plan does not exist for the child; or “not applicable” if the title IV–E agency does not engage in concurrent permanency planning. If the title IV–E agency indicates “concurrent permanency plan,” the title IV–E agency must complete the data elements in paragraphs (f)(3)(i) and (f)(3)(ii) to indicate the type of concurrent permanency plan; otherwise the title IV–E agency must leave these data elements blank.

The title IV–E agency is not required to report information on concurrent permanency planning in the existing AFCARS. Requiring information on concurrent permanency planning was a new proposal in the 2008 NPRM and we received many comments in response to this proposal and the 2010 FR Notice.

Some commenters to both the 2008 NPRM and 2010 FR Notice supported our proposal stating that it would help to comprehensively understand the permanency planning that is done for a child. Other commenters to both the 2008 NPRM and 2010 FR Notice questioned the value of the information and objected to requiring this information citing worker burden and noting that CFSR results indicate concurrent permanency planning was linked to positive results in only a few States. We considered the comments, but we did not make changes.

Concurrent permanency planning has been encouraged since the passage of the Adoption and Safe Families Act (ASFA) in 1997 and we understand from the CFSRs that many States engage in concurrent permanency planning although we also recognize that it is not implemented on a consistent basis. We note that there are different ways to view and utilize concurrent permanency planning and we believe that it is important to capture the extent to which children have concurrent permanency plans so that we can better understand if, when and how concurrent permanency planning is used.

Concurrent permanency plan. In paragraph (f)(3)(i), we propose to require the title IV–E agency to identify the concurrent permanency plan that is established for the child, if applicable. We propose that the concurrent permanency plan options include: “Live with other relatives,” “adoption,” “guardianship,” and “planned permanent living arrangement,” and use the same definitions as in paragraph (f)(1). We do not propose including the option “reunify with parent(s) or legal guardian(s)” because a concurrent plan is usually associated with a permanency plan for reunification, so we do not see the value in including it here. We did not receive comments on this data element in response to the 2008 NPRM. We modified the 2008 NPRM proposal on concurrent permanency plan options to match paragraph (f)(3)(i) and (f)(1). No other changes were made to this data element from the 2008 NPRM.

Date of concurrent permanency plan. In paragraph (f)(3)(ii), we propose that the title IV–E agency report the month, day and year that each concurrent permanency plan, if any as indicated in paragraph (f)(3), was established for the child. This was a new proposed data element in the 2008 NPRM, which we did not change in this proposal. We did not receive comments on this data element in response to the 2008 NPRM.

Reason for permanency plan change. In paragraph (f)(4), we propose to require that the title IV–E agency

indicate whether the child’s permanency plan changed during the report period and if so, the reason(s) for the child’s permanency plan change from a list of eight options. This is a new data element. We propose that the title IV–E agency indicate “yes” if the child’s permanency plan changed during the report period and “no” if the child’s permanency plan did not change. If the title IV–E agency indicates “yes,” the title IV–E agency must indicate in paragraphs (f)(4)(i) through (f)(4)(viii) whether each reason “applies” or “does not apply” for the change in the child’s permanency plan as indicated in paragraph (f)(1).

We propose this data element instead of continuing our proposal from the 2008 NPRM to collect additional information on ongoing child and family circumstances, which was overwhelmingly opposed in the comments to the 2008 NPRM and 2010 FR Notice. Permanency plans may or may not change throughout a child’s duration in foster care; however, knowing the reasons for changes in the child’s permanency plan will give us a more comprehensive understanding of the permanency planning that is done for a child in out-of-home care. We explain the response options for this data element in paragraphs (f)(4)(i) through (f)(4)(viii). Stakeholders provided suggestions for reasons that a child’s permanency plan may change which we incorporated into the response options below. We welcome comments on these reasons for a permanency plan change.

(i) *Not engaged in services.* In paragraph (f)(4)(i), we propose that the title IV–E agency indicate if the child’s parent(s) or legal guardian(s) has not engaged in services or otherwise taken the steps necessary to reunify with the child as the reason for the permanency plan change. This may include a determination by the title IV–E agency or the court that the parent(s) or legal guardian(s) is not following the steps of the case plan or that the parent(s) or legal guardian(s) are not making efforts to reunify with the child.

(ii) *Lack of progress in reunification plan.* In paragraph (f)(4)(ii), we propose that the title IV–E agency indicate if the child’s parent(s) or legal guardian(s) is not meeting the requirements of the case plan for reunification consistently by demonstrating needed changes to provide a safe family home for the child or otherwise taking the steps necessary to reunify with the child. This may also mean that the parent(s) or legal guardian(s) is making only minimal efforts toward reunification. We propose this response option to distinguish

between instances where the title IV–E agency changes the child’s permanency plan because the parent(s) or legal guardian(s) is making some efforts to reunify with the child from instances when the parent(s) or legal guardian(s) has not made any efforts to reunify with the child. Comments in response to the 2010 FR Notice were supportive of collecting whether the child’s permanency plan changes were due to the lack of progress by child’s parent(s) or legal guardian(s) in meeting the requirements of the case plan.

(iii) *Unable/incapable of caring for child permanently.* In paragraph (f)(4)(iii), we propose that the title IV–E agency indicate if the change in the child’s permanency plan is due to the fact that the child’s parent(s) or legal guardian(s) is unable or incapable of caring for the child due to a permanent, long-term or other extenuating circumstance. This includes situations where the parent(s) or legal guardian(s) abandoned the child; died; is incarcerated for an amount of time for which the title IV–E agency determines that the child remaining in foster care is not in the child’s best interests; has had his or her parental rights terminated or legal guardianship dissolved; or there is another extenuating circumstance as defined by the title IV–E agency. These reasons are not finite; however, we expect that the title IV–E agency will indicate this response option when there is truly an extenuating circumstance that is the reason for the change in the child’s permanency plan. We propose this response option to distinguish between when the child’s parent(s) or legal guardian(s) is not consistently engaging in services to reunify with the child (described previously in paragraphs (i) and (ii)) from instances when the child’s parent(s) or legal guardian(s) is unable or incapable of caring permanently for the child.

(iv) *Reunification appropriate.* In paragraph (f)(4)(iv), we propose that the title IV–E agency indicate if the reason for the change in the child’s permanency plan is due to a decision that the child’s parent(s) or legal guardian(s) is able to care permanently and safely for the child and the title IV–E agency is planning on pursuing reunification as a permanency option. This includes instances where reunification with a non-custodial parent is determined appropriate for the child. This decision may be made by the title IV–E agency or ordered by the court. We propose this response option to account for instances where the title IV–E agency changes the child’s permanency plan to reunification

because a non-custodial parent or legal guardian comes forward or instances where the change is made because the parent(s) or legal guardian(s) make significant strides in meeting the requirements of the case plan, if he or she previously did not do so.

(v) *Child preference.* In paragraph (f)(4)(v), we propose that the title IV–E agency indicate if an older child stated his or her preference for the change in the permanency plan. We propose this response option to account for instances where the title IV–E agency considers the child’s preference when changing the permanency plan, rather than inaction or inability on the part of the parent(s) or legal guardian(s) to meet the case plan requirements.

(vi) *Adoption/guardianship appropriate.* In paragraph (f)(4)(vi), we propose that the title IV–E agency indicate if the reason for the change in the permanency plan is due to a decision that adoption or legal guardianship is a more appropriate plan. This decision may be made by the title IV–E agency or ordered by the court. We propose this response option because it indicates a specific plan change.

(vii) *Current foster care provider committed to permanency.* In paragraph (f)(4)(vii), we propose that the title IV–E agency indicate if the reason for changing the permanency plan is because the current foster care provider of the child expressed a commitment to care permanently for the child and the permanency plan of adoption, legal guardianship or a planned permanent living arrangement has been ruled out by the title IV–E agency.

(viii) *Emancipation likely.* In paragraph (f)(4)(viii), we propose that the title IV–E agency indicate if the reason for the change in the permanency plan is due to a decision that reunification, adoption or guardianship are not an appropriate permanency plans and have been ruled out. We propose this response option in order to analyze the frequency with which permanency plans are changed for this reason.

Date of periodic review. In paragraph (f)(5), we propose to require the title IV–E agency to report the month, day and year of each of the child’s periodic reviews, as required by section 475(5)(B) of the Act. The periodic review may be completed by either a court or administrative review, as permitted in section 475(6) of the Act. Our proposal is similar to the existing AFCARS requirement and the 2008 NPRM proposal. In the existing AFCARS, the title IV–E agency is required to report the child’s most recent periodic review

conducted by an administrative body or a court (see Appendix A to part 1355, section II, I.E). In the 2008 NPRM, we proposed to require the title IV–E agency to report the dates of each periodic review or permanency hearing. We did not receive comments in response to the 2008 NPRM proposal. We propose to modify the 2008 NPRM proposal to collect separately the dates of the child’s periodic reviews in paragraph (f)(5) and the dates of the child’s permanency hearings in paragraph (f)(6) to improve the information that we have available for the CFRs or other monitoring efforts.

Date of permanency hearing. In paragraph (f)(6), we propose to require the title IV–E agency to report the month, day and year of each of the child’s permanency hearings held by a court or an administrative body appointed or approved by the court, as required by section 475(5)(C) of the Act. This is a new data element. Currently the title IV–E agency reports this information in the existing AFCARS in the same data element as the date for the periodic reviews (see Appendix A to part 1355, section II, I.E). As indicated above, in order to enhance the data available to understand compliance with Federal requirements for the case review system in section 475(5)(C) of the Act, we propose to separately collect the dates of each periodic review in paragraph (f)(5) and each permanency hearing in paragraph (f)(6) for a child.

Juvenile justice. In paragraph (f)(7), we propose to require the title IV–E agency to indicate if the child was found by a juvenile judge or court to be a status offender or adjudicated delinquent at any time during the report period. We propose that the title IV–E agency indicate “not applicable” if the child was not found to be a status offender or adjudicated delinquent at any time during the report period. We propose that the title IV–E agency indicate “status offender” if the child is found to be a status offender during the report period. A status offense is specific to juveniles and may include truancy, running away or underage alcohol violations. We propose that the title IV–E agency indicate “adjudicated delinquent” if the child is adjudicated to be delinquent during the report period. We propose that the title IV–E agency indicate “both status offender and delinquent” if the child is found to be both a status offender and adjudicated delinquent at any time during the report period.

This information is not currently collected and reported in AFCARS; therefore we currently do not have a way of identifying children who are

involved in the juvenile justice system. In the 2008 NPRM we proposed new data elements in the removal information section and in the permanency planning section, in order to begin capturing this information. As discussed in paragraph (d), in the 2008 NPRM we proposed to require the title IV–E agency to report whether the child was involved in the juvenile justice system at the time of the child’s removal. We also proposed in the 2008 NPRM to collect information in paragraph (f) on the child’s juvenile justice involvement, including the child’s alleged offenses and delinquencies. We believe that it is important to understand more about children in foster care who are also involved in the juvenile justice system and we would also like to have the ability to analyze the overlap between the juvenile justice and child welfare systems. We received many supportive comments to the 2008 NPRM to require reporting information on a child’s juvenile justice involvement, but commenters expressed concern in reporting alleged offenses and delinquencies stating that it could provide misleading data. We understand the concern and have modified our proposal to require that the title IV–E agency report the child’s involvement with the juvenile justice system only if a judge or court found the child to be a status offender or delinquent.

In paragraphs (f)(8) through (f)(11), we propose for the first time to require the title IV–E agency to collect and report in AFCARS information on visits between the child and the child’s caseworker. We propose to require the title IV–E agency to collect and report the date, location and purpose of each visit by the caseworker and whether or not the caseworker visited the child alone during each visit, for each visit during each out-of-home care episode. Currently, States and Indian Tribes, Tribal organizations or consortia that operate title IV–B, subpart 1 programs are required under section 422(b)(17) of the Act to describe their standards for ensuring monthly caseworker visits with children in foster care. Section 422(b)(17) of the Act requires caseworker visits to occur monthly and the visits to be well-planned and focus on issues pertaining to case planning and service delivery. In addition, section 424(f) of the Act requires States to submit information on the number of visits made by caseworkers on a monthly basis to children in foster care and the number of the visits that occurred in the residence of the child.

This information is reported in the APSR.

While States report information on caseworker visits, this information is not available in a quantitative database format nor do States report on the purpose or specific location of the visits. We believe that it is important to capture information on caseworker visits in a systematic way so that we may improve the quality of data analyses and we believe that AFCARS is an appropriate vehicle through which to collect this information. We propose to require the title IV–E agency to report the date and location of each visit, so that we will be able to measure with more accuracy whether the title IV–E agency is meeting the monthly caseworker visit requirement of sections 422(b)(17) and 424(f) of the Act (see paragraphs (f)(8) and (f)(9) respectively). We propose to require the title IV–E agency to report the purpose of each caseworker visit to distinguish true caseworker visits from other visits with the child. Further, we propose to require the title IV–E agency report separately whether the caseworker visited the child alone at any time during the visit as one avenue to assess the safety of the child (see paragraphs (f)(10) and (f)(11) respectively). We believe that collecting caseworker visit information in AFCARS will better inform the data that we could use in the CFSRs or other Federal monitoring efforts because we will be able to collect information at the case level, rather than in aggregate per the current CFSP/APSR reporting method. However, we believe that reporting caseworker visit information in AFCARS will be less of a burden on title IV–E agencies because many title IV–E agencies will be able to pull the information directly from their SACWIS or other information systems. Each data element is described below in paragraphs (f)(8) through (f)(11).

Caseworker visit dates. In paragraph (f)(8), we propose to require the title IV–E agency to indicate the month, day and year of each in-person, face-to-face visit between the child and the caseworker, for each visit. The caseworker may be any caseworker to whom the title IV–E agency has assigned or contracted case management or visitation responsibilities (see section 7.3 of the CWPM, Question and Answer #5). This proposal will allow us to measure the frequency of caseworker visits and whether the visits occur on a monthly basis, as required by section 422(b)(17) of the Act.

Caseworker visit location. In paragraph (f)(9), we propose to require the title IV–E agency to indicate one of two options regarding the location of

each in-person, face-to-face visit between the caseworker and the child, for each visit. We propose that the title IV–E agency indicate “child’s residence” if the visit occurred at the location where the child is currently residing, such as the current foster care provider’s home, child care institution or facility. We propose that the title IV–E agency indicate “other location” if the visit occurred at any location other than where the child currently resides, such as the child’s school, a court, a child welfare office or in the larger community. This proposal will allow us to determine how many of the visits occur in the residence of the child, per section 424(f)(2) of the Act.

Caseworker visit purpose. In paragraph (f)(10), we propose to require the title IV–E agency to indicate the primary purpose of each in-person, face-to-face visit between the caseworker and the child, for each visit, from four options. We propose that the title IV–E agency indicate “assessment or case planning” if the purpose of the visit was to assess the child’s situation, whether or not through a formal assessment, or if the purpose was to conduct other case planning activities for the child’s safety, permanency or well-being. We propose that the title IV–E agency indicate “placement of the child” if the purpose of the visit was to place the child in foster care or another setting. We propose that the title IV–E agency indicate “transportation” if the purpose of the visit was to transport the child to a visit or appointment. We propose that the title IV–E agency indicate “court hearing” if the purpose of the visit was to attend a court hearing related to the child’s case.

We propose that these response options be mutually exclusive. If the caseworker visits with the child are for more than one purpose, the title IV–E agency must indicate the primary purpose of the visit, as determined by the title IV–E agency. Title IV–E agencies are not required currently to report for the CFSP/APSR on the purpose of the visits or the activities that are carried out during the visits. We propose to require the title IV–E agency to report in paragraph (f)(10) the primary purpose of the visit between the caseworker and the child to measure whether the visits are focused on issues pertinent to case planning and service delivery, per section 422(b)(17) of the Act.

Caseworker visit alone with child. In paragraph (f)(11), we propose to require the title IV–E agency to indicate if the caseworker visited the child alone at any time during each in-person, face-to-face visit with the child. The caseworker

does not have to visit alone with the child for the entire visit. If the caseworker visited alone with the child at any point during the visit, we propose that the title IV–E agency indicate “yes.” If the caseworker did not visit with the child alone at all, we propose the title IV–E agency indicate “no.” We propose to require the title IV–E agency to report this information to provide a fuller picture of the visits and this data will help support the information that can be used for the CFSR.

Transition plan. In paragraph (f)(12), we propose for the first time to require the title IV–E agency to indicate whether or not the child has a transition plan that meets the requirements of section 475(5)(H) of the Act, by indicating “yes,” “no” or “not applicable” as appropriate. The title IV–E agency must indicate “not applicable” for a child who does not have a transition plan because he or she has not yet reached the 90-day timeframe for transition plan development prescribed in section 475(5)(H) of the Act. If the title IV–E agency indicates “yes,” the title IV–E agency must indicate whether each provision in paragraphs (f)(12)(i) through (f)(12)(vi) is included in the transition plan, by indicating that the provision either “applies” or “does not apply.” The information in paragraphs (f)(12)(i) through (f)(12)(vi) is based on the information that statutorily is required to be in the child’s transition plan in section 475(5)(H) of the Act.

Section 475(5)(H) of the Act requires that the transition plan be personalized at the direction of the child and be developed during the 90-day period prior to the date on which the child attains age 18, or if applicable, during the 90-day period before the later age for a child in extended foster care elected by the title IV–E agency per section 475(8)(B) of the Act. We propose that the title IV–E agency indicate in paragraphs (f)(12)(i) through (f)(12)(vi) whether each option of “Housing,” “Health insurance,” “Health care treatment decisions,” “Education,” “Mentoring and continuing support” and “Work force support and employment services” is included in the child’s transition plan, as required in section 475(5)(H) of the Act. We propose this data element so that we can discern the planning that takes place for older children who are in foster care and the impact transition planning has on a child’s stay in foster care. We welcome comments on this proposal.

Date of transition plan. In paragraph (f)(13), we propose for the first time to require the title IV–E agency to indicate the date of the child’s transition plan, if

the title IV–E agency indicated that the child had a transition plan that meets the requirements of section 475(5)(H) of the Act in paragraph (f)(12). We seek this information so that we will be able to measure whether the title IV–E agency is meeting the requirement in section 475(5)(H) of the Act to develop a transition plan for a child during the 90-day period prior to the date on which the child attains age 18. We welcome comments on this proposal.

Section 1355.43(g) General Exit Information

In paragraph (g), we propose to require the title IV–E agency to report information that describes when and why a child exits the out-of-home care reporting population. The title IV–E agency is currently required to report the child’s most recent date of discharge and discharge reason in the existing AFCARS (see Appendix A to part 1355, section II, X). We retain the current AFCARS requirements, with some modifications. First, we propose to modify the language from the existing AFCARS regulation to refer to the child’s “exit” from out-of-home care, instead of referring to the child’s “discharge.” We believe that “exit” is a more accurate description when referring to a child’s out-of-home care episode and understand that this term is consistent with current practice in the field. We used the term “exit” in the 2008 NPRM and 2010 FR Notice and did not receive comments on this. Second, as in the 2008 NPRM, we propose to require the title IV–E agency to report longitudinal information for all of the data elements in paragraph (g). Our current proposal in paragraph (g) is similar to our proposal in the 2008 NPRM; however, we made some modifications based on comments to the 2008 NPRM and 2010 FR Notice. We explain the changes in greater detail below.

Date of exit. In paragraph (g)(1), we propose to require the title IV–E agency to report the month, day and year for each of the child’s exits from out-of-home care, if applicable. An exit occurs when the title IV–E agency’s placement and care responsibility for the child ends. If the child has not exited the out-of-home care reporting population, the title IV–E agency must leave this data element blank. If this data element is applicable, the data elements in paragraphs (g)(2) and (g)(3) of this section must have a response.

This proposal differs from the existing AFCARS regulation in which we require that the title IV–E agency report only the child’s most recent “date of discharge from foster care” (see Appendix A to

part 1355, section II, X.A). We are continuing our 2008 NPRM proposal to require that the title IV–E agency collect and report each of the child’s exit dates, if the child has multiple out-of-home care episodes.

An important aspect of our proposal that is different from existing AFCARS regulations and 2008 NPRM is the point at which we consider the child to have exited the out-of-home care reporting population. Existing AFCARS regulation and policy guidance is that if there is no specified period of time related to how long the child can remain home under the agency’s responsibility for placement and care, then the agency reports the child as discharged if the length of stay is six months. In the 2008 NPRM, we proposed that an exit occurs when the title IV–E agency’s placement and care responsibility for the child ends, the title IV–E agency has returned the child home, or the child reaches the age of majority and is not receiving title IV–E foster care maintenance payments. Commenters to the 2008 NPRM believed that the child should not exit the out-of-home care reporting population while the title IV–E agency has placement and care responsibility of the child. We were convinced by the overwhelming comments to simplify the definition of exit. We also explained in section 1355.41(a) that we are not continuing our proposal from the 2008 NPRM to report instances where the child is placed at home while still under the title IV–E agency’s placement and care responsibility as an exit because commenters to the 2008 NPRM were overwhelmingly opposed to this proposal.

Exit transaction date. In paragraph (g)(2), we propose to continue to require the title IV–E agency to report the transaction date for each of the child’s exit dates reported in paragraph (g)(1). The transaction date is a non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) was entered into the information system. We propose that the transaction date must be no later than 30 days after the date of each exit.

The existing AFCARS requirement is that the transaction date must be no later than 60 days after the child’s exit (see Appendix A to part 1355, section II, X.A). In the 2008 NPRM, we proposed that the transaction date must be within 15 days of the child’s exit. As we stated in the 2008 NPRM, we have found that data is higher in quality and accuracy when the transaction date is close in time to the date that it describes. Commenters to the 2008 NPRM expressed the same concerns with the

15-day timeframe here as they expressed in the data element “removal transaction date” in paragraph (d)(2) of this section. Consistent with paragraph (d)(2), we believe that a 30-day timeframe is acceptable and represents a balanced approach that meets our need to ensure that exit information is timely and also addresses concerns from the commenters.

Exit reason. In paragraph (g)(3), we propose to require the title IV–E agency to collect and report information on the reason for the child’s exit from out-of-home care. The title IV–E agency must indicate “not applicable” if the child has not exited out-of-home care. An exit occurs when the title IV–E agency’s placement and care responsibility for the child ends. The response options we propose here are similar to the response options in the existing AFCARS and the response options that we proposed in the 2008 NPRM; however, we propose some modifications, which we explain in detail with each response option. We propose that the response options for paragraph (g)(3) be mutually exclusive, meaning the title IV–E agency must indicate only one reason for the child’s exit from out-of-home care. For example, if the child exits out-of-home care due to adoption by a relative, the title IV–E agency must indicate “adoption” as the exit reason.

We propose that the title IV–E agency indicate the exit reason of “reunify with parent(s) or legal guardian(s)” if the child was returned to his or her parent(s) or legal guardian(s) and the title IV–E agency’s placement and care responsibility ends. This includes reunifying with a parent(s) or legal guardian(s) even if the child was not removed from that parent(s) or legal guardian(s). The existing AFCARS requirement defines this exit reason differently to include when the child was returned to the child’s parent or principal caretaker’s home (see Appendix A to part 1355, section II, X.B). We propose to revise the reunification exit reason to remove the term caretaker, as we believe it is too vague.

We propose that the title IV–E agency indicate “live with other relatives” if the child exited out-of-home care to live permanently with a relative, related by a biological, legal or marital connection, other than the child’s parent(s) or legal guardian(s) and the title IV–E agency’s placement and care responsibility ends. Our proposal is unchanged from the 2008 NPRM and is a slight modification of the current AFCARS exit reason. The current AFCARS exit reason of “living with other relatives” refers only to relatives other than the one from whose

home the child was removed (see Appendix A to part 1355, section II, X.B). We are modifying this exit reason to remove the instruction from the existing AFCARS definition that such relatives are “other than the ones from whom the child was removed” because it is not necessary with the changes made to the exit reason “reunify with parent(s) or legal guardian(s)” that now includes reunification with the parent(s) or legal guardian(s) from whom the child was not removed. We did not receive comments on this in response to the 2008 NPRM.

We propose that the title IV–E agency indicate “adoption” if the child was legally adopted. Our proposal is unchanged from the existing AFCARS response option and the 2008 NPRM. We did not receive comments on this in response to the 2008 NPRM.

We propose that the title IV–E agency indicate “emancipation” if the child exits out-of-home care due to age. Our proposal differs from the existing AFCARS response option and the 2008 NPRM where this exit reason captures when a child leaves the title IV–E agency’s placement and care responsibility because the child ages out of foster care, gets married or is confined to jail or prison (see Appendix A to part 1355, section II, X.B). Commenters in response to the 2008 NPRM suggested that we should define the exit reason “emancipation” to refer to a child reaching the “age of majority” only. We agree and have created a new response option of “other” to include children who exit out-of-home care for reasons not described in previous response options, including exit due to marriage, or confinement to jail or prison.

We propose that the title IV–E agency indicate “guardianship” if the child exited out-of-home care when a relative or other unrelated individual obtained legal guardianship of the child. This does not include instances where the child is returned to the legal guardian(s) from whom the child was removed because that exit reason would be “reunify with parent(s) or legal guardian(s).” Our proposal is similar to the existing AFCARS exit reason but differs from the 2008 NPRM. In the existing AFCARS, the guardianship exit reason is when permanent custody of the child was awarded to an individual (see Appendix A to part 1355, section II, X.B). In the 2008 NPRM, we proposed separate exit reasons of relative and non-relative legal guardianship. Commenters to the 2008 NPRM requested that we combine the “relative guardianship” and “non-relative guardianship” response options because

they stated that it would be burdensome to reprogram the title IV–E agency’s information system to make this distinction and did not see the value of making such a distinction in AFCARS. We understand the concerns and we are now proposing one exit reason to include both relative and non-relative legal guardianships.

We propose that the title IV–E agency indicate “runaway or whereabouts unknown” if the child ran away or the child’s whereabouts are unknown at the time that the title IV–E agency’s placement and care responsibility of the child ends. This exit reason in the existing AFCARS and the 2008 NPRM focus on the child running away as the reason for the child’s exit (see Appendix A to part 1355, section II, X.B). Commenters to the 2008 NPRM suggested adding an exit reason of “other” in place of the proposed response option of “runaway.” We considered the comment, but concluded that having a response option of “other” would not yield better information for our analyses. We instead propose that the title IV–E agency select the exit reason “runaway or whereabouts unknown” when the child ran away or the child’s whereabouts are unknown and the title IV–E agency’s placement and care responsibility ends. Including children whose whereabouts are unknown in this exit reason is necessary since the title IV–E agency must report in AFCARS information on children who are in their placement and care responsibility, even if the child’s whereabouts are unknown.

We propose that the title IV–E agency indicate “death of child” if the child died while in out-of-home care. Our proposal is unchanged from the existing AFCARS requirement and the 2008 NPRM. We did not receive comments on this exit reason.

We propose that the title IV–E agency indicate “transfer to another agency” if the exit reason was because placement and care responsibility of the child was transferred to another agency, either within or outside of the reporting State or Tribal service area, and the title IV–E agency’s placement and care responsibility of the child ends. This does not include public agencies, Indian Tribes, Tribal organizations or consortia that have an agreement with a title IV–E agency under section 472(a)(2)(B) of the Act. Title IV–E agencies are to report this exit reason when the title IV–E agency transfers its placement and care responsibility to an agency outside of the title IV–E agency. These transfers often are made to a juvenile justice or disability agency, if these agencies are external to the title IV–E agency.

However, if such agencies reside within a single agency, such internal transfers of responsibility must not be included in this exit reason. If the title IV–E agency indicates that the child exited out-of-home care due to the child being transferred to another agency’s placement and care responsibility, the title IV–E agency must complete the data element in paragraph (g)(4) of this section. Our proposal is essentially the same concept as the existing AFCARS definition of “transfer to another agency” (see Appendix A to part 1355, section II, X.B) and the 2008 NPRM proposal. We proposed in the 2008 NPRM and now to use the term “placement and care responsibility” rather than simply “care” as is used in the existing AFCARS so that it is clear that the title IV–E agency must report an exit when the actual “placement and care responsibility” for the child has changed. We did not receive comments on this response option in response to the 2008 NPRM; however, we made minor wording revisions in our proposed definition to be clear that it is not just another agency outside of the State, but also the Tribal service area, to accommodate Tribal title IV–E agencies (see section 479B of the Act).

We propose that the title IV–E agency indicate “other” if the child exited due to a reason not described in the above response options, such as marriage or confinement to jail or prison. This is a new proposal and is not required in the existing AFCARS regulation. We welcome comments on this proposal.

Transfer to another agency. In paragraph (g)(4), we propose to require the title IV–E agency to indicate the type of agency that received placement and care responsibility of the child, if the title IV–E agency indicated the exit reason “transfer to another agency” in paragraph (g)(3). This was a new proposed data element in the 2008 NPRM as title IV–E agencies are not required currently to report this information in the existing AFCARS. We are continuing our proposal because, as we stated in the 2008 NPRM, this will enhance our ability to know more about what happens to children who leave the title IV–E agency’s placement and care responsibility. Further, this information can be used to meet the requirements of CAPTA for annual State data on the number of children transferred from the child welfare system into the custody of the juvenile justice system (section 106(d)(14) of CAPTA). The response options we propose here are similar to the response options that we proposed in the 2008 NPRM but are modified slightly to provide a comprehensive list

of potential agencies that may receive placement and care responsibility of the child. Each proposed response option is explained below.

We propose that the title IV–E agency indicate “State title IV–E agency” if the reporting title IV–E agency transferred placement and care responsibility of the child to a State title IV–E agency. This is a new proposed response option that was not proposed in the 2008 NPRM. We propose it now to clearly know when a child is transferred to a State title IV–E agency, as opposed to a different State agency.

We propose that the title IV–E agency indicate “Tribal title IV–E agency” if the reporting title IV–E agency transferred placement and care responsibility of the child to a Tribal title IV–E agency. This is a new proposed response option that was not proposed in the 2008 NPRM. We propose it now to clearly know when a child is transferred to a Tribal title IV–E agency and to distinguish between transferring placement and care responsibility for the child to a Tribal title IV–E agency or an Indian Tribe, Tribal agency, Tribal organization or consortium that is not operating a title IV–E program directly per section 479B of the Act.

We propose that the title IV–E agency indicate “Indian Tribe or Tribal agency (non-IV–E)” if the reporting title IV–E agency transferred placement and care responsibility of the child to an Indian Tribe, Tribal agency, Tribal organization or consortium that is not operating a title IV–E program directly, per section 479B of the Act. We proposed this response option in the 2008 NPRM; however, we modified the title of the response option from “Tribe or Tribal agency” to “Indian Tribe or Tribal agency” and clarified the definition to distinguish between transferring placement and care responsibility for the child to a Tribal title IV–E agency or an Indian Tribe, Tribal agency, Tribal organization or consortium that is not operating a title IV–E program directly, per section 479B of the Act.

We propose that the title IV–E agency indicate “juvenile justice agency” if the reporting title IV–E agency transferred placement and care responsibility of the child to a juvenile justice agency. We proposed this response option in the 2008 NPRM and we did not make changes from the 2008 NPRM proposal.

We propose that the title IV–E agency indicate “mental health agency” if the reporting title IV–E agency transferred placement and care responsibility of the child to a mental health agency. We proposed this response option in the 2008 NPRM and we did not make changes from the 2008 NPRM proposal.

We propose that the title IV–E agency indicate “other public agency” if the reporting title IV–E agency transferred placement and care responsibility of the child to another public agency other than a State or Tribal title IV–E agency, juvenile justice or mental health agency. We proposed a similar response option in the 2008 NPRM that was titled “other State agency.” We modified the title and definition from the 2008 NPRM proposal to provide a comprehensive list of agencies to which the reporting title IV–E agency may transfer placement and care responsibility for the child.

We propose that the title IV–E agency indicate “private agency” if the reporting title IV–E agency transferred placement and care responsibility of the child to a private agency. We proposed this response option in the 2008 NPRM and we did not make changes from the 2008 NPRM proposal.

Finally, we would like to note that we are not continuing to propose the data elements “death due to child abuse/neglect in care” and “circumstances at exit from out-of-home care” that were proposed in the 2008 NPRM. Several commenters to the 2008 NPRM expressed that the previously proposed data element “death due to child abuse/neglect in care” was redundant with the information collected in NCANDS and that collecting this information in AFCARS could lead to misinformation and under or over-reporting of deaths of children in care due to abuse or neglect. Commenters to the 2008 NPRM also pointed out that a final decision regarding a child’s fatality could take extensive time to resolve which could cause issues for timely data submissions. Additionally, commenters to the 2008 NPRM were overwhelmingly opposed to our proposal to collect information on child and family circumstances at any point in time other than at removal, consistent with the comments made regarding paragraph (f) of this section. Commenters in response to the 2008 NPRM expressed strong opposition to reporting child and family circumstances at exit citing worker burden to enter the data and questioned the value of collecting such information after the time of removal. Commenters to the 2008 NPRM also felt that the proposed list of circumstances would not capture the progress that is made in a case and would not properly illustrate the issues surrounding a family. Thus, based on the comments in response to the 2008 NPRM, we decided not to propose these data elements.

Section 1355.43(h) Exit to Adoption and Guardianship Information

In paragraph (h), we propose that the title IV–E agency collect and report information on the child’s exit from out-of-home care to a finalized adoption or legal guardianship. This information must be reported if the title IV–E agency reported the child’s exit reason in paragraph (g)(3) as “adoption” or “guardianship.” Otherwise the title IV–E agency must leave the data elements described in paragraph (h) of this section blank.

We propose to require the title IV–E agency to collect and report data elements in paragraph (h) of this section which are similar to those currently collected in the AFCARS adoption data file, and proposed in the 2008 NPRM. Title IV–E agencies are required to collect and report demographic characteristics of children in foster care and adopted children and their biological and adoptive or foster parents (section 479(c)(3)(A) of the Act). We proposed in the 2008 NPRM to collect information on finalized adoptions and adoptive parents in the out-of-home care data file, instead of in a separate adoption data file as is the structure of the current AFCARS. We continue our proposal from the 2008 NPRM to collect information on finalized adoptions and adoptive parents in the out-of-home care data file and we are modifying it to require the title IV–E agency to collect and report information in paragraph (h) on legal guardianships and legal guardians. Section 473(d) of the Act authorizes a title IV–E guardianship assistance program that provides Federal assistance and subsidies to eligible children who exit foster care to a relative legal guardianship. Title IV–E agencies report in the existing AFCARS whether children discharge from foster care to guardianship, but no other information is reported on the legal guardians. ACF is very interested in collecting data in AFCARS on legal guardianships so that we may analyze the use of legal guardianship as a permanency option for children in foster care. We also received many supportive comments in response to the 2010 FR Notice to collecting the same information for children in legal guardianships and adoptions stating that collecting more information on guardianships would provide an important look at the children who exit out-of-home care to legal guardianship.

Marital status of the adoptive parent(s) or guardian(s). In paragraph (h)(1), we propose to require the title IV–E agency to report the marital status of the adoptive parent(s) or legal

guardian(s). We propose to require the title IV–E agency to indicate “married couple” if the adoptive parents or legal guardians are considered to be united in matrimony according to applicable laws, including common law marriage where provided by applicable laws. We propose to require the title IV–E agency to indicate “unmarried couple” if the adoptive parents or legal guardians are living together as a couple, but are not united in matrimony according to applicable laws. The response options “married couple” and “unmarried couple” include instances where only one person in the couple is adopting or obtaining legal guardianship of the child. We propose to require the title IV–E agency to indicate “single female” if the adoptive parent or legal guardian is a female who is not married (including common law marriage) and is not living with another individual as part of a couple. We propose to require the title IV–E agency to indicate “single male” if the adoptive parent or legal guardian is a male who is not married (including common law marriage) and is not living with another individual as part of a couple. If the title IV–E agency indicates the response option “married couple” or “unmarried couple,” the title IV–E agency must complete the data elements for the second adoptive parent or second legal guardian in paragraphs (h)(6) through (h)(8) of this section; otherwise the title IV–E agency must leave these data elements blank. Consistent with the existing AFCARS requirement and the 2008 NPRM proposal, we are not proposing a separate category for an adoptive parent or legal guardian who is a widow or widower. Such individuals must continue to be reported according to his or her current marital/living situation.

Our proposed response options are similar to those in the existing AFCARS regulation (see Appendix B to part 1355, section II, VI.A) and the 2008 NPRM. We modified our proposal to include collecting the marital status of the child’s legal guardian(s) and clarified the directions in this data element in response to commenters to the 2008 NPRM who requested direction on how to indicate instances where one individual of a married or unmarried couple adopts or obtains legal guardianship of a child.

Child’s relationship to the adoptive parent(s) or guardians(s). In paragraph (h)(2), we propose to require the title IV–E agency to report the relationship between the child and his or her adoptive parent(s) or legal guardian(s). We propose that the title IV–E agency indicate whether each relationship between the child and his or her

adoptive parent(s) or legal guardian(s) “applies” or “does not apply” in paragraphs (h)(2)(i) through (h)(2)(viii) paternal or maternal grandparents, other paternal or maternal relatives, sibling(s), kin, non-relative(s) and foster parent(s).

In the existing AFCARS, the types of relationships between the child and his or her adoptive parent(s) are limited to stepparent, other relative of child by birth or marriage, foster parent and non-relative (see Appendix B to part 1355, section II, VI.D). In the 2008 NPRM, we proposed an expanded list of relationships almost identical to the relationships proposed now, in order to further examine the extent to which relatives are being utilized as resources, but we did not include kin relationships as a response option. We received many supportive comments in response to the 2008 NPRM on the proposed expanded list; however, we also received comments for this data element and throughout the 2008 NPRM requesting the inclusion of kin relationships into the data elements. Based on the comments to the 2008 NPRM, we propose to include kin relationships in this data element, consistent with the addition of kin throughout our current proposal. We also modified the proposed response options to require the title IV–E agency to report the relationship between the child and his or her legal guardian(s). No other modifications were made to paragraph (h)(2) beyond the modifications already explained.

Date of birth of adoptive parent(s) or guardian(s). In paragraphs (h)(3) and (h)(6), we propose to require the title IV–E agency to report the month, day and year of birth of each adoptive parent or legal guardian. If the title IV–E agency indicated “married couple” or “unmarried couple” in paragraph (h)(1), the title IV–E agency must indicate the date of birth for both members of the couple in paragraphs (h)(3) and (h)(6), even if only one of those individuals is adopting or obtaining legal guardianship of the child. If the title IV–E agency has so indicated in (h)(1), the title IV–E agency must report the date of birth of the first adoptive parent or legal guardian in paragraph (h)(3) and the date of birth for the second adoptive parent, legal guardian, or other member of the couple in paragraph (h)(6). If the title IV–E agency indicated “single female” or “single male” in paragraph (h)(1), the title IV–E agency must indicate that person’s date of birth in paragraph (h)(3) and leave paragraph (h)(6) blank.

The title IV–E agency is required to report in the existing AFCARS only the year of birth for the adoptive parent(s)

(see Appendix B to part 1355, section II, VI.B). In the 2008 NPRM we proposed to require the title IV–E agency to report the month, day and year for each adoptive parent’s birth because we believe that title IV–E agencies already collect a full date of birth. We did not receive comments in response to the 2008 NPRM on this data element; however, we modified our proposal from the 2008 NPRM to include collecting a full date of birth for the child’s legal guardian(s), consistent with our proposed changes throughout paragraph (h).

Race of adoptive parent(s) or guardian(s). In paragraphs (h)(4)(i) through (vii) and (h)(7)(i) through (vii), we propose to require the title IV–E agency to report information on the race of each adoptive parent or legal guardian. If the title IV–E agency indicated “married couple” or “unmarried couple” in paragraph (h)(1), the title IV–E agency must indicate the race for both members of the couple in paragraphs (h)(4) and (h)(7), even if only one of those individuals is adopting or obtaining legal guardianship of the child. If the title IV–E agency has so indicated in (h)(1), the title IV–E agency must report the race for the first adoptive parent or legal guardian in paragraph (h)(4) and the race for the second adoptive parent, legal guardian, or other member of the couple in paragraph (h)(7). If the title IV–E agency indicated “single female” or “single male” in paragraph (h)(1), the title IV–E agency must indicate that person’s race in paragraph (h)(4) and leave paragraph (h)(7) blank.

The racial categories are consistent with the OMB standards for collecting information on race. Commenters to the 2008 NPRM suggested changes for the racial categories; however, we do not propose any changes here. The response options proposed in paragraphs (h)(4)(i) through (h)(4)(vii) and (h)(7)(i) through (h)(7)(vii) are the same as those in the existing AFCARS regulations (see Appendix B to part 1355, section II, VI.C), the 2008 NPRM, and other sections of this proposed rule where demographic information on race is collected; however, we modified our proposal from the 2008 NPRM to include collecting information on the legal guardian’s race, consistent with our proposed changes throughout paragraph (h).

Consistent with the existing AFCARS requirement and the 2008 NPRM, the title IV–E agency must allow the adoptive parent or legal guardian to determine his or her own race. If the adoptive parent, legal guardian or other member of the couple does not know his

or her race, the title IV–E agency must indicate that this information is not known (see paragraphs (h)(4)(vi) and (h)(7)(vi)). It is acceptable for the adoptive parent, legal guardian or other member of the couple to identify with more than one race, but not know one of those races. In such cases, the title IV–E agency must indicate the racial classifications that apply and also indicate that one of the races is not known (see paragraphs (h)(4)(vi) and (h)(7)(vi)). If the adoptive parent, legal guardian or other member of the couple declines to identify his or her race, the title IV–E agency must indicate that this information was declined (see paragraphs (h)(4)(vii) and (h)(7)(vii)).

Hispanic or Latino ethnicity of adoptive parent(s) or guardian(s). In paragraphs (h)(5) and (h)(8), we propose to require the title IV–E agency to report the Hispanic or Latino ethnicity of each adoptive parent or legal guardian by indicating “yes” or “no.” If the title IV–E agency indicated “married couple” or “unmarried couple” in paragraph (h)(1), the title IV–E agency must indicate information for both members of the couple in paragraph (h)(5) and (h)(8), even if only one of those individuals is adopting or obtaining legal guardianship of the child. If the title IV–E agency has so indicated in (h)(1), the title IV–E agency must report the Hispanic or Latino ethnicity for the first adoptive parent or legal guardian in paragraph (h)(5) and in paragraph (h)(8) for the second adoptive parent, legal guardian, or other member of the couple. If the title IV–E agency indicated “single female” or “single male” in paragraph (h)(1), the title IV–E agency must complete paragraph (h)(5) for that person and leave paragraph (h)(8) blank.

Similar to the data elements on race in paragraphs (h)(4) and (h)(7), the definitions in paragraph (h)(5) and (h)(8) are also consistent with the OMB race and ethnicity standards, as described in section 1355.43(b) of this proposed rule. Consistent with the existing AFCARS requirement and the 2008 NPRM, the title IV–E agency must allow the adoptive parent, legal guardian or other member of the couple to determine his or her own ethnicity. If the adoptive parent, legal guardian or other member of the couple does not know his or her ethnicity, the title IV–E agency must indicate the response option “unknown.” If the adoptive parent, legal guardian or other member of the couple refuses to identify his or her ethnicity, the title IV–E agency must indicate that the information was declined.

Our proposal is the same as the existing AFCARS requirement (see

Appendix B to part 1355, section II, VI.C), the 2008 NPRM and other sections of this proposed rule where demographic information on ethnicity is collected. We did not receive comments from the 2008 NPRM on this data element; however, we propose to require that the title IV–E agency collect this information for the child’s legal guardian(s), consistent with our proposed changes throughout paragraph (h).

Inter/Intrajurisdictional adoption or guardianship. In paragraph (h)(9), we propose to require the title IV–E agency to report whether the child was placed within the State or Tribal service area, outside of the State or Tribal service area or into another country for the adoption or legal guardianship. We propose to require the title IV–E agency to indicate “interjurisdictional adoption or guardianship” if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the State or Tribal service area. We propose to require the title IV–E agency to indicate “intercountry adoption or guardianship” if the reporting title IV–E agency placed the child for adoption or legal guardianship outside of the United States of America. We propose to require the title IV–E agency to indicate “intrajurisdictional adoption or guardianship” if the reporting title IV–E agency placed the child within the same State or Tribal service area. If the title IV–E agency indicates either “interjurisdictional adoption or guardianship” or “intercountry adoption or guardianship” for the child’s adoption or legal guardianship, the title IV–E agency must complete the data element in paragraph (h)(10); otherwise the title IV–E agency must leave paragraph (h)(10) blank.

In the existing AFCARS, the title IV–E agency is required to report the location of the agency or individual that had custody or responsibility of the child at the time of initiation of adoption proceedings from a list of three options: Within State; another State; or another country (see Appendix B to section II, VII.A). We proposed in the 2008 NPRM to change the name of the data element and the response options to: Interstate adoption; intercountry adoption; or intrastate adoption. We did not receive comments from the 2008 NPRM on this data element; however, we propose modifications to the 2008 NPRM proposal to collect information on inter/intrajurisdictional legal guardianships, consistent with other proposed changes to collect information on legal guardianships throughout paragraph (h). We also modified the definitions of the response options from

the 2008 NPRM proposal to include Tribal title IV–E agencies. We believe that our proposal may allow us to identify trends and/or challenges in interjurisdictional adoptions/guardianships.

Interjurisdictional adoption or guardianship jurisdiction. In paragraph (h)(10), we propose to require the title IV–E agency to indicate the name of the State, Tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for adoption or legal guardianship. This data element must be completed only if the title IV–E agency indicated “interjurisdictional adoption or guardianship” or “intercountry adoption or guardianship” in paragraph (h)(9); otherwise the title IV–E agency must leave it blank.

Title IV–E agencies are not required to report location information on an interjurisdictional or intercountry adoption or guardianship in the existing AFCARS. In the 2008 NPRM, we proposed requiring for the first time that the title IV–E agency report the location of the child’s adoption using the State’s numeric two-digit FIPS code. Commenters to the 2008 NPRM expressed concern with keeping up with ever-changing FIPS codes. We are modifying our 2008 NPRM proposal to remove FIPS codes, which are no longer being maintained and updated, and do not account for the breadth of jurisdictions that could be captured in this element, as they do not include non-Federal Tribes or other countries. Instead, we propose to require that the title IV–E agency indicate the jurisdiction’s or country’s name for identification purposes which we believe will address commenter concerns. ACF will work with title IV–E agencies to develop valid response options for this element. We also believe that the information reported in this data element, in combination with the information reported in paragraph (h)(9), will provide information on the extent to which title IV–E agencies are maximizing all potential adoptive and guardianship resources for waiting children and will assist ACF in responding to questions and concerns regarding interjurisdictional and intercountry placement issues.

Adoption or guardianship placing agency. In paragraph (h)(11), we propose to require the title IV–E agency to report the agency that placed the child for adoption or legal guardianship. We propose to require the title IV–E agency to indicate “title IV–E agency” if the reporting title IV–E agency placed the child for adoption or legal guardianship. We propose to require the

title IV–E agency to indicate “private agency under agreement” if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV–E agency. We propose to require the title IV–E agency to indicate “Indian Tribe under contract/agreement” if an Indian Tribe, Tribal organization or consortium placed the child for adoption or legal guardianship through a contract or agreement with the reporting title IV–E agency.

In the existing AFCARS, the title IV–E agency is required to report in the adoption data file the agency or individual that placed the child for adoption from a list of response options public or private agency, Tribal agency, independent person or birth parent (see Appendix B to part 1355, section II, VII.B). In the 2008 NPRM, we proposed to require the title IV–E agency to indicate the adoption placing agency from the response options “State agency,” “private agency under a contract/agreement” or “Tribal agency with agreement.” We did not receive comments to the 2008 NPRM on this data element; however, we propose modifications to the response options, explained in detail below. A general modification we propose is for title IV–E agencies to report the agency that placed the child for guardianship. This modification is consistent with modifications made throughout paragraph (h) to collect information on legal guardianships. We proposed in the 2008 NPRM to only collect this information for adoptions.

We propose to modify the response option “State agency” that was proposed in the 2008 NPRM to “title IV–E agency” because this language is inclusive of State and Tribal title IV–E agencies.

We propose to modify the definition of the response option “private agency under agreement” as proposed in the 2008 NPRM to remove the language specifying that the reporting State had placement and care responsibility for the child. This language is unnecessary because this data element is now in the out-of-home care data file.

We propose to modify the response option “Tribal agency with agreement” that was proposed in the 2008 NPRM to be “Indian Tribe under contract/agreement” to be inclusive of Indian Tribes, Tribal organizations or consortia that may have a contract or an agreement with the title IV–E agency. Additionally, we removed the language proposed in the 2008 NPRM specifying that the reporting State had placement and care responsibility of the child

because this data element is now in the out-of-home care data file.

Section 1355.44 Adoption and Guardianship Assistance Data File Elements

We propose to add section 1355.44 which provides all elements for the adoption and guardianship assistance data file. The proposal is for ACF to collect and report information commonly found in the title IV–E adoption or guardianship assistance agreement for the adoption and guardianship assistance reporting population as described in section 1355.41(b). In this data file, we propose to collect information on (1) the title IV–E agency submitting the adoption and guardianship assistance data file, (2) basic demographic information on each child, including the child’s date of birth, gender, race and ethnicity and (3) information in the child’s title IV–E adoption or guardianship agreement, including the date of finalization, and amount of subsidy and nonrecurring costs as well as living arrangement information. We propose this information to supplement data on adoption and legal guardianships collected in section 1355.43(h).

Currently, we collect information in the adoption data file on the reporting title IV–E agency, demographic information for adopted children in the data file’s reporting population, information on the child’s special needs status, birth parents, adoptive parents, placement information and whether the child receives State/Federal adoption support (see Appendix B to part 1355, Section I–VII). Currently we collect limited information on the population of children receiving adoption assistance and no information on children receiving title IV–E guardianship assistance in the adoption data file.

In the 2008 NPRM, we proposed to change the structure and content of the current AFCARS data files by no longer including an adoption file and requiring title IV–E agencies to report information on foster care adoptions and adoptive families in the out-of-home care data file only. We proposed that title IV–E agencies submit a new adoption and guardianship subsidy data file with information on children who were the subject of a State or Federal adoption assistance agreement (regardless of whether their adoption was final), additional information surrounding those adoption agreements and very limited information on children who were the subject of a subsidized guardianship agreement with the title IV–E agency.

The current proposal for the adoption and guardianship assistance data file contains similar data elements as the 2008 NPRM proposal, but differs in several significant ways. First, we propose to require a title IV–E agency to collect and report the same information on children under title IV–E guardianship assistance agreements as children under title IV–E adoption assistance agreements, per the revised adoption and guardianship assistance reporting population described in section 1355.41(b). Second, we propose that a title IV–E agency collect and report the same information in this data file for only those children in a finalized adoption or legal guardianship under a title IV–E assistance agreement. Although ACF no longer proposes to collect information on State-funded legal guardianships, this modification means that ACF will collect information on each child in a legal guardianship under a title IV–E relative legal guardianship assistance agreement in an increased number of data elements than we proposed in the 2008 NPRM. Finally, we propose for the first time to require a title IV–E agency to collect and report information on siblings who are living with the child in his or her adoptive or guardianship home.

We received many public comments in response to the proposal to restructure the collection of adoption information and the introduction of a separate subsidy data file in the 2008 NPRM and the 2010 FR Notice. Many commenters were pleased to see our proposal for the new adoption assistance and guardianship subsidy data file, and felt that collecting information for children in legal guardianships and adoptions would provide an important look at these children. Some commenters to the 2010 FR Notice expressed concerns, in general, about the necessity of collecting ongoing information for a child after his or her adoption or legal guardianship has been finalized and questioned how the expansion of data elements as proposed in the 2008 NPRM would help improve outcomes for children. ACF is required, per section 479(c)(3) of the Act, to capture information on adopted children, including demographics and information about the child's title IV–E adoption. While there is no statutory mandate to collect similar information for children who have achieved permanency through guardianship, we propose to collect the same information because we have the same need for the information for children supported by title IV–E funding, per section 473(d) of the Act.

Section 1355.44(a) General Information

In paragraph (a), we propose to collect general information that identifies the title IV–E agency submitting the adoption and guardianship assistance data file, the report date, and the child's record number.

Title IV–E agency. In paragraph (a)(1), we propose that the title IV–E agency indicate the name of the title IV–E agency responsible for submitting AFCARS data to ACF. A State title IV–E agency must indicate its State name for identification purposes. ACF will work with Tribal title IV–E agencies to provide further guidance on this element during implementation. This proposal differs from the existing AFCARS regulation which requires the title IV–E agency to identify itself using the U.S. Postal Service two letter abbreviation for the State or the ACF-provided abbreviation for the title IV–E Tribal agency responsible for submitting the AFCARS data to ACF. This proposal is also different from the 2008 NPRM in which we proposed to use Federal Information Processing Standard (FIPS) codes for State identification which are no longer being updated and maintained. We did not receive comments on this data element in response to the 2008 NPRM, but have opted not to proceed with the NPRM proposal to remove FIPS codes, which are no longer being updated and maintained.

The definition of this data element is the same as the one we proposed in the out-of-home care data file (see section 1355.43(a)(1)). We propose that the title IV–E agency report this information in the adoption and guardianship assistance data file as well as in the out-of-home care data file because the title IV–E agency will submit the two data files to us separately.

Report date. In paragraph (a)(2), we propose that a title IV–E agency report to us the last month and year that corresponds with the end of the report period, with the month being either March or September of any given year. The proposal for the report date is the same as in the existing AFCARS, and did not generate any comments when we proposed it in the 2008 NPRM. This proposal is the same as the report date we proposed for the out-of-home care data file in section 1355.43(a)(2).

Child record number. In paragraph (a)(3), we propose that the title IV–E agency report the child's record number, which is a unique person identification number, as an encrypted number. If a child was previously in out-of-home care, this number must be the same as the child record number provided in

section 1355.43(a)(4) of the out-of-home care data file. This proposed data element differs from both the existing AFCARS and the 2008 NPRM proposal. The 2008 NPRM proposal required a title IV–E agency to eliminate the use of sequential numbers for AFCARS, and we received no comments in response to this proposal.

Our current proposal prohibits the use of sequential numbers for AFCARS, and also requires the title IV–E agency to use the same child record number as is used in the out-of-home care data file if the child was in the out-of-home care reporting population before entering the adoption and guardianship assistance reporting population.

Similar to the instructions for the record number data element in the out-of-home care data file, the title IV–E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The title IV–E agency's encryption methodology must meet any standards that ACF prescribes through technical bulletins or policy. Requiring the title IV–E agency to maintain unique, encrypted child record numbers for AFCARS data files will allow us to track the amount of title IV–E adoption and guardianship assistance changes over time, and will help predict future changes based upon the age distribution of the population. We propose for the title IV–E agency to retain the same child record numbers between AFCARS data files, when applicable, to allow ACF to collect more comprehensive information about the permanency of title IV–E adoption and legal guardianship placements in the title IV–E program, as well as conduct analysis regarding the extent to which sibling groups are placed together permanently.

Section 1355.44(b) Child Demographics

In paragraph (b), we propose that the title IV–E agency collect and report demographic information on the child, including the child's date of birth, race and ethnicity.

Child's Birth Information. In paragraph (b)(1), we propose to collect information on the child's date of birth and whether the child was born in the United States.

We propose in paragraph (b)(1)(i), that the title IV–E agency report the child's date of birth in month, day and year format. This is basic demographic information which we are mandated to collect in section 479(c)(3)(A) of the Act for adoptions and is similar to the existing AFCARS requirement for the adoption data file, although we currently propose to collect this information for children in legal

guardianships as well. We provided the same proposal in the 2008 NPRM and there were no comments submitted in response to this proposed element.

The child's date of birth will assist us in conducting a variety of analyses including determining at what age children are being adopted or placed in legal guardianship under the title IV-E program. Since most children receive title IV-E adoption or guardianship assistance until the age of 18, or older for a title IV-E agency that chooses to extend assistance up to age 19, 20 or 21, knowing the child's date of birth will assist the title IV-E agency and the Federal government in conducting budget projections and program planning.

In paragraph (b)(1)(ii), we propose to require the title IV-E agency to report whether or not the child was born in the United States. If the child was born in the United States, indicate "yes." If the child was born in a country other than the United States, indicate "no." This is a newly proposed data element and will give us a national picture of how many foreign-born children are receiving title IV-E adoption or guardianship assistance. We specifically request comments from State and Tribal title IV-E agencies on this data element.

Child's sex. In paragraph (b)(2), we propose that the title IV-E agency report whether the child's sex is male or female, as appropriate. This proposal is unchanged from the requirement in the existing AFCARS regulation.

Race data elements. In paragraphs (b)(3)(i) through (b)(3)(viii), we propose that the title IV-E agency report information on the race of the child by indicating whether each race category applies with a "yes" or "no." The race definitions proposed are consistent with the existing AFCARS race definitions, and are similar to the response options proposed in the 2008 NPRM. The only difference in the current proposal is that we allow legal guardians to determine the child's race in addition to the child and the child's parent(s). We include this option to acknowledge that a relative guardian, rather than the child's parent(s), may be the appropriate person to determine the child's race, if that child has been living with him or her. As discussed earlier in section 1355.43(b)(3), the categories of race proposed are consistent with the OMB standards for collecting information on race. The title IV-E agency is to allow the parent(s), legal guardian(s) or the child, if appropriate, to determine the child's race. There was one public comment in response to the 2008 NPRM that suggested allowing a title IV-E agency to combine categories of race

and ethnicity. We agree, and the racial categories proposed both in the 2008 NPRM and the current proposal are aligned with those in NCANDS and NYTD.

If the child's race is unknown, the title IV-E agency must so indicate, as required in paragraph (b)(2)(vi). It is acceptable for the child to be identified with more than one race, but for the child, parent(s) or legal guardian(s) to not know one of those races. In such cases, the title IV-E agency must indicate the racial classifications that apply and also indicate that a race is unknown. If the child is abandoned the title IV-E agency must indicate that the race cannot be determined in paragraph (b)(2)(vii). Finally, if the parent(s), legal guardian(s) or the child, if appropriate, declines to identify the child's race, the title IV-E agency must indicate that this information was declined as outlined in paragraph (b)(2)(viii).

Hispanic or Latino ethnicity. We propose in paragraph (b)(4) that the title IV-E agency report the Hispanic or Latino ethnicity of the child, consistent with the current AFCARS requirement, and similar to the 2008 NPRM proposal. The only difference in the current proposal is that we allow the legal guardian(s) to determine the child's ethnicity in addition to the child and the child's parent(s). We include this option to acknowledge that a relative guardian, rather than the child's parent(s), may be the appropriate person to determine the child's ethnicity, if that child has been living with him or her. Similar to race, these definitions are consistent with the OMB race and ethnicity standards. Also, we propose, as we did in the 2008 NPRM, that the title IV-E agency may report whether the child's ethnicity is unknown, whether the child was abandoned, or whether the parent(s), legal guardian(s) or child, if appropriate, could not communicate or declined to provide this information. There were no comments submitted in response to this proposed data element in the 2008 NPRM.

Section 1355.44(c) Title IV-E Adoption and Guardianship Assistance Arrangement and Agreement Information

In paragraph (c), we propose that the title IV-E agency collect and report ongoing information on title IV-E adoption and guardianship arrangements and agreements. This proposed section is different from existing AFCARS, which does not include a data file with ongoing information on subsidies. It only includes information in the adoption

data file on a child's demographics, placement information and court information, as well as limited information on both the child's birth parent(s) and adoptive parent(s).

This new proposed section differs from both the existing AFCARS and the 2008 NPRM in that we propose to collect ongoing adoption and guardianship assistance agreement information for only those children with finalized title IV-E adoption and legal guardianship assistance agreements in effect during the report period.

Throughout this proposed section, a title IV-E agency is no longer required to report information on children who are in adoptive placements but do not yet have finalized adoptions or those with State-funded adoption assistance agreements. We propose to collect information on title IV-E adoption and guardianship assistance agreements for children with finalized adoptions or legal guardianships regardless of whether the agreement is for an ongoing subsidy, nonrecurring costs or in the case of a title IV-E finalized adoption, a Medicaid-only subsidy.

In the 2008 NPRM, we proposed that the title IV-E agency collect information on a child's adoption and adoptive parents at the time of a child's exit to adoption in section 1355.43(h) of the out-of-home care data file and new information in the adoption assistance and guardianship subsidy data file. We received several public comments in response to this proposal in the 2008 NPRM indicating concern that this change would increase burden on caseworkers and require programming changes in the SACWIS systems of title IV-E agencies. There were also a number of commenters to the 2010 FR Notice concerned about the increased burden of collecting data on children in adoptions and legal guardianships, and several commenters suggested that the requirement to collect case-level data on children in adoptive and guardianship homes would be a significant barrier to obtaining information since children already would have achieved permanency. We contemplated these comments, but, per the new adoption and guardianship assistance reporting population described in section 1355.41(b), we now propose to collect information for only those children under title IV-E adoption and guardianship assistance agreements. Because the title IV-E agency still supports the children under these adoption and guardianship assistance agreements, we anticipate that most of the information would already be in the case files or included in other modules of the title IV-E agency's case

management system, and therefore the title IV–E agency would not need to contact the adoptive parent(s) or relative guardian(s) for the information.

Assistance agreement type. In paragraph (c)(1), we propose for the first time to require the title IV–E agency to indicate whether the child is or was in a finalized adoption with a title IV–E adoption assistance agreement pursuant to section 473(a)(1)(A) of the Act or in a legal guardianship with a title IV–E guardianship assistance agreement pursuant to section 473(d) of the Act, in effect during the report period. The title IV–E agency is not required to collect and report this information in the existing AFCARS. In the 2008 NPRM, we proposed two data elements aimed at collecting information on agreement type “adoption assistance type” (adoptive placement, finalized title IV–E adoption pursuant to title IV–E assistance agreement or finalized adoption pursuant to State assistance agreement) and “subsidized guardianship agreement type” (supported by title IV–E funds or State funds). In the current proposal, we eliminate data elements proposed in the 2008 NPRM and instead propose one data element with narrowed response options since we propose to collect information on children under title IV–E adoption and guardianship assistance agreements only per 1355.41(b) rather than both title IV–E and non-title IV–E agreements. We did not receive specific comments on either proposed assistance agreement type data element in response to the 2008 NPRM.

Adoption or guardianship subsidy amount. In paragraph (c)(2), we propose that the title IV–E agency provide the per diem dollar amount of the title IV–E financial subsidy payment, if any, made to the adoptive parent(s) or guardian(s) on behalf of the child during the last month of the current report period. This does not include non-recurring costs. We propose that the title IV–E agency report the total amount of the subsidy payment made to the adoptive parent(s) or guardian(s), rather than the portion that the title IV–E agency may seek reimbursement from the Federal government under title IV–E. Further, in any situation where the title IV–E agency has an adoption or guardianship assistance agreement with adoptive parent(s) or legal guardian(s) but did not provide an actual payment in the last month of the report period, the title IV–E agency must indicate that \$0 payment was made. Such a situation is likely to occur if the title IV–E adoption or guardianship assistance agreement is for a “deferred subsidy,”

which a title IV–E agency may enter into at a later point.

This data element differs from both the existing AFCARS requirements and the data element proposed in the 2008 NPRM, however we request the information for the same reasons. Existing AFCARS policy guidance requires a title IV–E agency to report the monthly subsidy amount one time—at the finalization of the adoption.

We proposed in the 2008 NPRM that a title IV–E agency report information in two separate data elements on the subsidy amount for the adoption and legal guardianship for each report period beginning when the assistance agreement becomes effective and continue reporting for the duration of the agreement. We received a public comment in response to the “adoption assistance subsidy amount” data element proposed in the 2008 NPRM that suggested that a title IV–E agency should not be required to collect data on adoption agreements more than once, as the information is relatively stable over time. We considered this comment, and while the amounts may not change much from month to month, we have seen reductions in title IV–E subsidy amounts in recent years. Therefore, we continue to propose to collect this information so we can discern changing circumstances and fluctuations in subsidy amounts in title IV–E adoption and guardianship assistance agreements for as long as the agreement is in effect. We believe that collecting information on title IV–E adoption and guardianship subsidy amounts will be useful for States, Indian Tribes and the Federal government for budgetary planning and projection purposes. Information on title IV–E guardianship is collected in the CB–496 form currently; however this information is aggregated and does not provide specific information on the amount of the title IV–E guardianship subsidy that each child receives. Collecting child-level data on the amount of title IV–E guardianship assistance received by each child would allow ACF to conduct more nuanced analysis to determine how many children there are in certain subsidy ranges and more accurately project budget and program costs.

Nonrecurring adoption or guardianship costs. In paragraph (c)(3), we propose that a title IV–E agency report whether the IV–E agency made payments on behalf of the adoptive parent(s) per section 473(a)(6) of the Act or relative guardian(s), per section 473(d) of the Act, for nonrecurring costs. The title IV–E agency must indicate “costs paid” if the title IV–E agency paid nonrecurring costs at any point

during the report period; otherwise the title IV–E agency must indicate “no costs paid.”

Nonrecurring adoption or guardianship cost amount. In paragraph (c)(4), we propose that the title IV–E agency report the total dollar amount of payments the title IV–E agency made on behalf of the adoptive parent(s) or guardian(s) for nonrecurring costs during the report period. This includes payments the title IV–E agency makes directly to other service providers rather than to the adoptive parent(s) or relative guardian(s). The title IV–E agency must report an amount only if it responded that expenses for nonrecurring costs were paid in paragraph (c)(3). If the title IV–E agency indicated that no nonrecurring costs were paid, then the title IV–E agency must leave this data element blank.

Unlike title IV–E adoption and guardianship assistance payments which are ongoing and may fluctuate over time, reimbursements for nonrecurring costs are more likely to be made in a lump-sum or over a finite period of time. Although we propose to require title IV–E agencies to report the amount of the adoption or guardianship subsidy during the last month of each report period, we also propose to require the title IV–E agency to report the total amount of the non-recurring costs over the entire report period to capture the full amount of nonrecurring costs made on behalf of the adoptive parent(s) or legal guardian(s).

These data elements are not currently required in AFCARS and we first introduced them in the 2008 NPRM, but only for title IV–E adoption assistance agreements. The current proposal is a modification of the 2008 NPRM proposal to now include title IV–E legal guardianship agreements, per the revised adoption and guardianship assistance reporting population in section 1355.41(b). There were no substantive comments in response to the 2008 NPRM proposal to collect non-recurring costs of adoption. We seek information on nonrecurring cost reimbursements for adoption consistent with the requirement in section 479(c)(3)(D) of the Act to collect information on the extent of adoption assistance. There is no statutory mandate to collect this information for the IV–E guardianship program, however, since title IV–E funds are reimbursed for these costs, this information is essential for conducting budget projections and program planning for both title IV–E adoption assistance and guardianship assistance programs.

Adoption or guardianship finalization date. In paragraph (c)(5), we propose to require that the title IV–E agency report the date that the child’s adoption was finalized or the child’s guardianship became legally recognized. A child must have a finalized adoption or legal guardianship (in addition to a title IV–E agreement) in order to enter the adoption and guardianship assistance reporting population, therefore we believe that collecting the adoption or guardianship finalization date is fundamental to ensuring compliance with requirements in section 1355.41(b)(2) and to conduct budget projections. We received no substantive public comments in response to this proposal in the 2008 NPRM. The current proposal expands the 2008 NPRM proposal to account for a child in a legal guardianship under a title IV–E assistance agreement, as per the revised adoption and guardianship assistance reporting population described in section 1355.41(b).

An additional data element, “final adoption”, was proposed in the 2008 NPRM that required a title IV–E agency to collect information on whether the child who is the subject of an adoption assistance agreement had his or her adoption finalized. We eliminated this data element to maintain consistency with our proposal to limit the adoption and guardianship assistance reporting population to children with a finalized adoption or legal guardianship and a title IV–E assistance agreement. If the proposed changes to this reporting population are applied, the “final adoption” data element is unnecessary.

Adoption or guardianship placing agency. In paragraph (c)(6), we propose to require the title IV–E agency to indicate the agency that placed the child under a title IV–E adoption or guardianship assistance agreement at the time of the adoption or legal guardianship finalization. We propose that the title IV–E agency indicate “title IV–E agency” if the reporting title IV–E agency placed the child for adoption or legal guardianship. We propose that the title IV–E agency indicate “private agency under a contract/agreement” if a private agency placed the child for adoption. We propose the title IV–E agency indicate “Indian Tribe” if an Indian Tribe, Tribal organization or consortium that is not a title IV–E agency placed the child for adoption or legal guardianship through some type of arrangement with the reporting title IV–E agency. This includes both Tribal agencies under a contract or agreement with the title IV–E agency to place the child, as well as an Indian Tribe that placed the child

through another type of arrangement with the reporting title IV–E agency for an adoption or guardianship assistance agreement. We propose to retain the response option “private agency” from the existing AFCARS and 2008 NPRM for adoption only with minor modifications to their definitions. We propose to eliminate the response options “birth parent” and “independent person” as they are not applicable to the reporting population for the adoption and guardianship assistance data file proposed in section 1355.41(b).

This information is similar to what is proposed for section 1355.43(h)(11) but must be included in the adoption and guardianship assistance data file because this data file includes private agency adoptions for children who were not in foster care. The existing AFCARS includes this information in the adoption data file and requires the title IV–E agency to indicate the placing agency or individual from a limited number of response options that are public agency; private agency; Tribal agency; independent person and birth parent. We proposed in the 2008 NPRM to expand the response options for this proposal in order to collect more specific information about when the title IV–E agency was the placing agency, and as a result, several response options were newly proposed (State agency, private agency under contract/agreement, and Tribal agency with agreement), along with the retained options of “Tribal agency,” “private agency,” “birth parent,” and “independent person”.

We did not receive comments on this data element in the 2008 NPRM, but several comments in the 2010 FR Notice were supportive of tracking adoptions through private agencies and Indian Tribes. Therefore, we revised the 2008 NPRM proposal to remove the response option of “State agency” and “Tribal agency” and replace them with the response option “title IV–E agency” in order to conform to the changes in Public Law 110–351 that allow for an Indian Tribe to operate a title IV–E program directly (section 479B of the Act).

We do not propose to include the separate response option of “Tribal agency with agreement” that was proposed in the 2008 NPRM. Instead, Indian Tribes with title IV–E agreements are included in the response option of “Indian Tribe” because the Indian Tribe has an arrangement with the reporting IV–E agency for a title IV–E adoption or guardianship assistance agreement. If the title IV–E agency provides a response to paragraph (c)(6) of “Indian

Tribe” or “private agency,” the agency must complete paragraph (c)(7).

Inter/Intrajurisdictional adoption or guardianship. In paragraph (c)(7), we propose that the title IV–E agency identify whether the child had been placed under a title IV–E adoption or guardianship assistance agreement within the State or Tribal service area or in another State or Tribal service area for adoption or legal guardianship. This data element must be completed only if the title IV–E agency indicated either “Indian Tribe” or “private agency” in paragraph (c)(6). The title IV–E agency must indicate “interjurisdictional adoption or guardianship” if the title IV–E agency entered into a title IV–E adoption or guardianship assistance agreement with an adoptive parent(s) or guardian(s) who lives outside of the reporting State or Tribal service area or “intrajurisdictional” if the title IV–E agency entered into a title IV–E adoption or guardianship assistance agreement with an adoptive parent(s) or guardian(s) who lives in the reporting State or Tribal service area.

We propose to modify the 2008 NPRM proposal to limit our data collection in this data element to those children under title IV–E adoption and guardianship assistance agreements who were placed by an Indian Tribe or private agency through an arrangement with the title IV–E agency. We are making this modification per the revised adoption and guardianship assistance reporting population described in section 1355.41(b) and to avoid duplication in data collection with the information collected in section 1355.43(h)(9) on children under the placement and care responsibility of the title IV–E agency placed for adoption or legal guardianship. We also propose to delete the responses option “intercountry adoption—incoming” and “intercountry adoption—outgoing.”

The current AFCARS requirement is for the title IV–E agency to indicate, in the adoption data file, the location of the individual or agency that had custody or responsibility for the child at the time the adoption proceedings were initiated. The 2008 NPRM proposed an expansion of this data element to require a title IV–E agency to indicate whether a child was placed across State or Tribal service area lines for the purposes of adoption or legal guardianship or was the subject of an incoming or outgoing intercountry adoption.

We received several public comments in response to the 2008 NPRM proposal indicating concern regarding the ability of the title IV–E agency to access information relating to international

adoptions. To address these concerns, and because we believe only a few children adopted from or placed overseas will be able to meet the definition of an “applicable child” per section 473(a)(2)(A)(ii) of the Act, we propose to eliminate the reporting of title IV–E intercountry adoptions (outgoing or incoming). For the purposes of AFCARS, maintaining a separate response option is not necessary, as children who are placed overseas for the purposes of adoption that are receiving title IV–E adoption assistance would still be tracked in AFCARS, and reported under the “interjurisdictional adoption or guardianship” response option.

Interjurisdictional adoption or guardianship jurisdiction. In paragraph (c)(8), we propose to require the title IV–E agency to identify the name of the State, Tribal service area or Indian reservation where the child was placed for adoption or legal guardianship. If a child is placed in an interjurisdictional adoption or guardianship with Tribal members as indicated in paragraph (c)(7), the title IV–E agency must indicate the State in which the Tribal members live. We seek to collect information in this proposal in combination with paragraph (c)(7) because we believe that together these data elements will allow ACF to analyze data related to the number of children in interjurisdictional adoptive and guardianship placements under title IV–E assistance agreements that were not in the out-of-home care reporting population, as well as the location of those children.

This data element is not included in the current AFCARS adoption file. In the 2008 NPRM, we proposed for the first time that the title IV–E agency indicate the FIPS code of the State or country in which the child was placed into or placed from. We received several comments in response to the 2008 NPRM for this data element that raised concerns about the stability of country codes from FIPS, and indicated that a title IV–E agency would have to significantly modify its system in order to capture FIPS code information for international adoption. We agreed with these comments because FIPS codes are no longer being maintained and updated, and they also do not account for the breadth of jurisdictions that could be captured in this element, as they do not include non-Federal Tribes or other countries. Instead, we propose to require that the title IV–E agency report the jurisdiction or country name for those children placed by an Indian Tribe under a contract or agreement with the reporting title IV–E agency, or

a private agency under an arrangement with the reporting title IV–E agency. We believe this modification will address commenter concerns. In addition, ACF will work with title IV–E agencies to develop valid response options for this element.

Number of siblings. In paragraph (c)(9), we propose for the first time in the adoption and guardianship assistance data file to require a title IV–E agency to indicate the number of siblings, if applicable, that a child has that are either (1) in the title IV–E agency’s out-of-home care reporting population at any point during the report period, or (2) have a finalized adoption or legal guardianship and are under a title IV–E adoption or guardianship assistance agreement at any point during the report period. The child who is the subject of this record should not be included in this number. A sibling to the child is his or her brother or sister by biological, legal or marital connection. A title IV–E agency must report this information whether the child’s adoptive or guardianship home is in or out-of-State or Tribal service area. If the child does not have siblings that are in out-of-home care or under a title IV–E adoption or guardianship assistance agreement, the title IV–E agency must indicate “0.” If a child does not have any siblings, we propose that the title IV–E agency must indicate “not applicable” for this data element.

We are interested in proposing that the title IV–E agency report on a child’s siblings in paragraphs (c)(9) through (c)(11) of this section in order to learn more about sibling group placement in adoption and guardianship homes, and to comply with the mandate in section 471(a)(31)(A) of the Act. Under this statutory provision, the title IV–E agency must make reasonable efforts to place siblings removed from their home in the same foster care, kinship guardianship or adoptive placement, unless such a placement is contrary to the safety or well-being of any of the siblings. We propose paragraph (c)(9) specifically to determine the total number of siblings which ACF will use to ensure correct data entry in paragraphs (c)(10) and (c)(11). This proposal complements our proposal pertaining to collection of information on sibling groups in the out-of-home care data file.

Siblings in out-of-home care. In paragraph (c)(10), we propose for the first time to require a title IV–E agency to collect and report the child record number(s) of siblings who are in the out-of-home care population and are placed in the child’s adoptive or guardianship

home at any point during the report period. In this section, the sibling’s foster home must be the same as the child’s adoptive or guardianship home. A title IV–E agency must report this information whether the child’s living arrangement is in or out-of-State or Tribal service area. The record number of the child who is the subject of this record should not be reported. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. If no siblings in the out-of-home care population reside with the child during the report period, the title IV–E agency must leave this data element blank.

Siblings in adoption/guardianship. In paragraph (c)(11), we propose for the first time to require a title IV–E agency to collect the child record numbers of siblings who also have a finalized adoption or legal guardianship, are under a title IV–E adoption or guardianship assistance agreement and are living with the child in an adoptive or guardianship home at any point during the report period. The record number of the child who is the subject of this record should not be reported. For the purposes of AFCARS, a sibling to the child is his or her brother or sister by biological, legal or marital connection. If the child does not live with siblings with finalized adoptions or legal guardianships that are under title IV–E assistance agreements in the adoptive or guardianship home, the title IV–E agency must leave this data element blank.

Agreement termination date. In paragraph (c)(12), we propose that a title IV–E agency report the date that an adoption or guardianship assistance agreement was terminated or expired during the report period. This data element is not required in the existing AFCARS.

Typically, title IV–E adoption or guardianship assistance agreements continue until the child is age 18, or age 21 if the adopted child has a mental or physical handicap which warrants the continuation of assistance. However, Public Law 110–351 amended sections 475(8)(B)(i)(II) and (III) of the Act to allow title IV–E agencies the option to select an age up to age 21 for extended eligibility for all title IV–E programs, including adoption and guardianship assistance.

The only difference between the 2008 NPRM proposal and our current proposal is that we now include the end dates for title IV–E guardianship assistance agreements, per the revised adoption and guardianship assistance reporting population described in section 1355.41. We received one public

comment in response to the 2008 NPRM that indicated that a title IV–E agency may not collect adoption assistance agreement end dates explicitly, as most of the adoption assistance agreements terminate on the child’s 18th birthday. That may have been true in 2008, however given the extended assistance option in section 475(8)(B) of the Act we cannot presume that most adoption and guardianship agreements will terminate when the child reaches age 18. We propose to collect the end dates for title IV–E adoption and guardianship assistance agreements because combined with the child’s date of birth they will allow us to calculate more accurately the number of children served under title IV–E agreements, as well as the incidence of dissolution of adoption and legal guardianships for children supported by the title IV–E programs.

Following the direction of the 2008 NPRM, we are not proposing to require a title IV–E agency to report the adopted child’s special needs status separately as required in current AFCARS. In the current AFCARS we require a title IV–E agency to report whether it has determined that the child has special needs, and the primary factor (the child’s race, age, membership in a sibling group or medical condition or disability) in this determination. We do not wish to retain this data element, for the reasons described in the 2008 NPRM.

Section 1355.45 Compliance

In section 1355.45, we propose the types of assessments we will conduct to determine the accuracy of a title IV–E agency’s data, the data files which will be subject to these assessments, the compliance standards and the manner in which the title IV–E agency initially determined to be out of compliance can correct its data. This section also specifies how we propose to implement the statutory mandates of Public Law 108–145.

Public Law 108–145 added section 474(f) to the Act, which requires that ACF withhold certain funds from a title IV–E agency that “failed to submit to the Secretary data, as required by regulation, for the data collection system implemented under section 479.” Although we recognize that the provisions related to AFCARS in section 479 of the Act were designed to bolster our authority to take financial penalties for noncompliance with AFCARS requirements, we did not believe that the statute on its face was clear enough to implement penalties immediately after its enactment. In ACYF–CB–IM–04–04, issued February 17, 2004, we

notified title IV–E agencies that we would not implement the penalty structure in the statute until we published final regulations. Further, because we were in the midst of developing proposed rules that would change significantly the information that title IV–E agencies submit to AFCARS, we did not believe it prudent to implement a new penalty structure for the existing requirements in regulation.

This proposal is different from the current AFCARS regulations (section 1355.40(e) and Appendix E to part 1355) in that it applies the same compliance standards to both data files, expands the number of error types to include invalid data, cross-file errors and tardy transactions and creates a separate section to define the data file standards associated with timely submission and each error type defined in section 1355.45(b). This proposal is identical to that proposed in the 2008 NPRM with two revisions in section 1355.45(a). First, we propose to apply compliance standards to both the out-of-home care and adoption and guardianship assistance data files, whereas the 2008 NPRM subjected only the out-of-home care data file to compliance standards. Second, we propose to exempt certain populations in each data file from compliance determination, namely, for both data files, the population of children over age 18 and children in a legal guardianship under a title IV–E guardianship assistance agreement in the adoption and guardianship assistance data file.

Section 1355.45(a) Files Subject to Compliance

In paragraph (a), we propose that ACF determine whether a title IV–E agency’s out-of-home care and adoption and guardianship assistance data files are in compliance with the requirements of section 1355.42 of this part and certain data file and data quality standards (described further below in paragraphs (c) and (d)). This proposal is similar to the current AFCARS requirements in that the proposed out-of-home care and adoption and guardianship assistance data files are subject to a compliance determination separately. In the 2008 NPRM we proposed that only the out-of-home care data file be subject to a compliance determination, primarily because there was no statutory mandate to request information on guardianship agreements. We propose to now include the adoption and guardianship assistance data file in the compliance determination, but propose several exemptions for children included in this data file, as described below. The law

requires us to assure that the data submitted to us is reliable and consistent and authorizes us to utilize appropriate requirements and incentives to ensure that the system functions reliably (sections 479(c)(2) and (4) of the Act, respectively). We chose to fulfill these requirements by establishing specific standards for compliance, consistent with our current requirements (see Appendix E to part 1355) and those proposed in the 2008 NPRM. Although we received several comments to the 2008 NPRM in support of our proposal to exclude the adoption and guardianship data file from a compliance determination, we believe that since we are required by section 479(c)(3) of the Act to collect information on children in adoptions supported by title IV–E, it is appropriate to include this data file in our compliance determination process. We include exceptions, as described below, to exclude most of the children in optional title IV–E programs from compliance determination. We did not receive other comments on this approach in response to the 2008 NPRM or 2010 FR Notice, and therefore, do not believe there is a need to change this general approach.

We propose to exempt, in general, records related to a child in either data file whose 18th birthday occurred in a prior report period from a compliance determination as described in paragraph (e) of this section. However, in order to report full information for children on who we are statutorily required to collect information, the report period in which the child turns 18 will be subject to a compliance determination. Under this proposal, a child is exempted from a compliance determination because of age in each report period following that in which they turn 18 years of age, regardless of whether the title IV–E agency opts to adopt a revised definition of child per section 475(8)(B) of the Act. The primary reason that we are not subjecting records of these children to compliance determinations is because extended assistance is an option available under either the title IV–E plan (per section 475(8)(B) of the Act), or per the State’s former AFDC plan.

We also propose to exempt from a compliance determination, described in paragraph (e) of this section, a child of any age in the adoption and guardianship assistance data file who is in a legal guardianship under a title IV–E guardianship assistance program agreement per section 473(d) of the Act. We are not subjecting records of these children to compliance determinations primarily because electing to implement a title IV–E guardianship assistance

program is at the option of the title IV-E agency (per section 473(d) of the Act). No penalties will be applied to this population.

Although we do not propose compliance standards and penalties for submitting data on children in the adoption and guardianship assistance data file who are in a legal guardianship under a IV-E guardianship assistance agreement and/or children in either data file whose 18th birthday occurred in a previous report period, this information is still important to ACF and title IV-E agencies and we will take other steps to ensure that title IV-E agencies submit quality data. In particular, we may require the title IV-E agency to create and meet the goals of an AFCARS program improvement plan, target technical assistance efforts to collecting and reporting this information and/or develop data quality utilities for these records that will allow a title IV-E agency to evaluate the quality of the data files before submitting to ACF. We welcome comments on this proposal.

Section 1355.45(b) Errors

In paragraph (b), we outline the definitions of errors in paragraphs (b)(1) through (b)(5) of this section and propose how we will identify those errors when we assess information collected in a title IV-E agency's out-of-home care data file (per section 1355.43) and adoption and guardianship assistance data file (per section 1355.44). This section is similar in approach to the 2008 NPRM proposal, however, we modified this proposal to apply the compliance standards to both the out-of-home care data file and adoption and guardianship assistance data file and to except certain optional populations from compliance determination, as described in paragraph (a). We did not receive any substantive comments to this proposed approach in the 2008 NPRM. Specific comments on error types are included in each paragraph below.

Missing data. In paragraph (b)(1), we propose to define "missing data" as instances where the data element is blank or missing when a response is required. The data element descriptions proposed in sections 1355.43 and 1355.44 identify the circumstances in which a blank or missing response may be acceptable. For example, the data elements regarding second foster parent information in section 1355.43(e) must be left blank if the title IV-E agency previously indicated that the first foster parent is single. In such cases, the blank response is not missing data.

This proposal is identical to that in the 2008 NPRM; yet, the definition of

the term "missing data" we propose is more specific than is used in the existing AFCARS. AFCARS regulations currently define the term "missing data" to refer to both blank responses and invalid responses (discussed below). In the 2008 NPRM, we chose not to propose the existing definition in AFCARS to avoid the common confusion that only blank data is problematic, and we did not change the proposed definition here.

Finally, as described in the 2008 NPRM, we want to underscore that title IV-E agencies are not permitted to mask the fact that they have not obtained information by mapping it to a valid, but untrue, response option. This practice is not permitted as specified in the proposed section 1355.42(d), as it provides a misleading and inaccurate account of the characteristics and experiences of the reporting population. We did not receive comments on this proposal in response to the 2008 NPRM.

Invalid data. In paragraph (b)(2), we propose to define invalid data as any instance in which the response that the title IV-E agency provides does not match one of the valid responses or exceeds the possible range of responses described in proposed sections 1355.43 and 1355.44. These types of errors are not new. In the existing AFCARS, invalid data is known as "out-of-range" data. For example, if the response options for a data element are "yes," "no" and "abandoned," a title IV-E agency's response of "unknown" is invalid data for that data element. A revised definition for invalid data was first proposed in the 2008 NPRM and the proposal here is the same as that previously proposed. We did not receive any comments on this proposal in response to the 2008 NPRM, therefore we did not change our proposal. Further, in our experience, invalid data errors are easily remedied by title IV-E agencies.

Internally inconsistent data. In paragraph (b)(3), we propose to define internally inconsistent data as those data elements that fail a consistency check that is designed to validate the logical relationship between two or more data elements within a record. This proposal is the same as that proposed in the 2008 NPRM. For example, a response of "permanency plan not established" described in proposed section 1355.43(f)(1) and a date provided for the data element "date of permanency plan" described in proposed section 1355.43(f)(2) are internally inconsistent data. We will not attempt to determine which of the data elements is/are "likely" to be at fault, but will identify all data elements

assessed by the specified internal consistency in error. We received several comments to the 2008 NPRM requesting that ACF include the list of internal consistency checks in this NPRM. We have chosen not to promulgate the internal consistency checks through notice and comment rulemaking so as to provide maximum flexibility to change them as needed. We will, however, notify title IV-E agencies officially of the internal consistency checks. This approach is consistent with that taken with the NYTD compliance checks.

As described in the 2008 NPRM, these types of errors are not new and there are currently internal consistency validations outlined in the existing AFCARS. However, we have found that the existing internal consistency checks, while providing an important first step to quality data, are not extensive enough. Unfortunately, there are a number of occasions where a title IV-E agency's data pass all the existing internal consistency checks, but upon further analysis, ACF and the title IV-E agency discover that the data provides an inaccurate and unreliable picture of children in foster care in the title IV-E agency's placement and care responsibility. Based on our experience in AFCARS reviews and technical assistance, we believe that more internal consistency checks, along with other assessments to uncover errors, will provide us with more reliable and consistent data that we can publicize and use for our program activities with a higher degree of confidence.

Cross-file errors. In paragraph (b)(4), we propose a new type of data error known as cross-file errors. This error type was first proposed in the 2008 NPRM, and remains the same as that proposal. To determine whether cross-file errors occur, we propose to conduct a check to evaluate the data file for illogical and/or improbable patterns of recurrent response options across all applicable records within the out-of-home care or adoption and guardianship assistance data files. For example, if all children have the same date of birth in the out-of-home care data file, this is clearly a cross-file error. We received comments from the 2008 NPRM that indicated concern over increased workload and burden as a result of incorporating cross-file checks into the mapping of information to AFCARS data elements and preparation of AFCARS data files for submission. We considered these comments carefully, and as is the current practice we will provide title IV-E agencies with tools and assistance to conduct these checks. We anticipate that the burden will be

minimal, as the extraction code does not need to include these checks as it should be pulling data that have already been checked on an on-going basis via other means prior to submission of the AFCARS files. In addition, the agency's information system should already have certain edits incorporated into data fields to prevent the entry of invalid data. We ultimately believe that adding cross-file checks will assist title IV-E agencies and ACF in improving the quality of AFCARS data and may eventually reduce burden. As with the internal consistency checks, we will share with title IV-E agencies the specific cross-file checks.

Cross-file checks are not a part of the existing AFCARS compliance assessments, but are a part of the Data Quality Utility. We propose to evaluate a title IV-E agency's data files for cross-file errors to address some common problems identified in AFCARS assessment reviews. Often these problems are a result of underlying issues in the programming of the title IV-E agency's information system as opposed to data entry errors.

Tardy transactions. In paragraph (b)(5), we propose to define tardy transactions as a title IV-E agency's failure to record a child's removal and exit dates in the out-of-home care data file (sections 1355.43(d)(2) and (g)(2), respectively) within 30 days of those events occurring. Assessing a title IV-E agency's data file for tardy transactions is consistent with the existing AFCARS requirements, and also was proposed in the 2008 NPRM. We received comments to the 2008 NPRM suggesting that the 15-day timeframe was patently unreasonable and, as these dates cannot be corrected, could potentially also be counted as an error in subsequent submittals. We considered these comments, and we modified our proposal to allow a title IV-E agency 30 days to enter transaction dates before considering them 'tardy,' as opposed to the 15-day timeframe proposed in the 2008 NPRM. We continue to believe that ensuring a title IV-E agency's timely entry of removal and exit dates is critical to quality data. Additionally, as is the current practice in AFCARS, these errors are only assessed once. So, if the date was not entered in a timely manner, it will be assessed out of compliance for the report period the event occurred only and will not be re-assessed in the next and future report periods.

Section 1355.45(c) Data File Standards

In paragraph (c), we propose a set of file submission standards for ACF to determine that the title IV-E agency's

AFCARS is in compliance. These are minimal standards for timeliness, formatting and quality information that the title IV-E agency must achieve in order for us to process the title IV-E agency's data appropriately. This proposal is similar to the 2008 NPRM proposal, but is modified to apply data file standards to both the out-of-home care data file as well as the adoption records in the adoption and guardianship assistance data file. Several additional changes are incorporated into this proposal that were not included in the 2008 NPRM, which will be addressed in each of the paragraphs below.

Timely submission. In paragraph (c)(1), we propose that the title IV-E agency submit both AFCARS data files (*i.e.*, out-of-home care and adoption and guardianship assistance) according to the report periods and timeline (*i.e.*, within 30 days of the end of each six-month report period) as described in section 1355.42(a). This proposal differs from both the existing AFCARS requirements, which allow 45 days for submission, and the proposal in the 2008 NPRM, which reduced the timeframe for submission to 15 days. We received numerous comments that indicated concern about the 15-day submission timeframe proposed in the 2008 NPRM, and in response to these comments, we modified the timeframe to allow title IV-E agencies up to 30 days to submit their AFCARS data files. Since the file creation is an automated process and data accuracy should be incorporated into an agency's quality assurance process and evaluated on an on-going basis, we believe that the 30-day time frame is an adequate one to pull the file and ensure there are no transmission errors before the last day of the report period. This is not a time for the agency to begin assessing the accuracy and quality of the data that has been entered into the information system.

Proper format. In paragraph (c)(2), we propose that a title IV-E agency send us its data files in a format that meets our specifications, and submit 100 percent error-free data on limited basic demographic information on the child. This requirement was first proposed in the 2008 NPRM, and is revised in this proposal to apply formatting specifications to both AFCARS data files, as well as to exempt certain optional populations from these requirements, as described in section 1355.45(a). At this time we cannot outline the exact transmission method and/or formatting requirements for AFCARS data, other than specifying that submission of AFCARS data files must

be via an electronic method, as previously explained in the discussion in section 1355.42(e). However, in our experience, improperly formatted data files contribute to inefficiencies in our ability to process data from title IV-E agencies.

In addition, we propose that the title IV-E agency submit 100 percent error-free data for eleven basic demographic data elements described in sections 1355.43(a)(1) through (a)(4), 1355.43(b)(1)(i) and (b)(2), 1355.44(a)(1) through (a)(3) and 1355.44(b)(1)(i) and (b)(2). These data elements describe the "title IV-E agency name," "report date," "local agency," "child record number," "child's date of birth" and "child's gender" in both the out-of-home care data file and adoption records in the adoption and guardianship assistance data file. The errors that may be applicable to these data elements are missing data, invalid data, cross-file errors and internally inconsistent data, as defined in sections 1355.45(b)(1) through (b)(4). This proposal is revised slightly from its description in the 2008 NPRM to include child demographic information for the adoption records contained in the adoption and guardianship assistance data file.

As we proposed in the 2008 NPRM, we propose to require that title IV-E agencies have no errors at all for these basic demographic data elements because they contain information that is readily available to the title IV-E agency and is essential to our ability to analyze the data and determine whether the title IV-E agency is in compliance with the remaining data standards. For example, the child's date of birth is information that all title IV-E agencies collect on children in foster care and would typically have in their information system. Without the child's date of birth, we cannot run some other internal consistency or cross-file checks. Moreover, we cannot, for example, look at the age stratification of children in out-of-home care or determine the mean age of children adopted from foster care. There were a number of commenters that opposed the 100 percent reporting requirement for basic demographic data elements outlined in the 2008 NPRM, citing concerns over cost, burden and value of information. We considered these comments, however, based on our experience with the existing AFCARS and with NYTD, we have found that problems in these data elements are often the result of minor errors that can be rectified easily. We therefore believe that a 100 percent compliance standard for these basic and critical data elements is appropriate.

Acceptable cross-file. In paragraph (c)(3), we propose that a title IV–E agency's data file must be free of any cross-file errors that exceed the acceptable thresholds, as defined by ACF, to be in compliance with the AFCARS requirements. This data file standard is not currently included in AFCARS requirements and was first proposed in the 2008 NPRM, and our proposal here is modified slightly to clarify that ACF will establish acceptable levels of cross-file errors for use in determining compliance in the out-of-home care data file and adoption records in the adoption and guardianship assistance data file with this requirement. As stated earlier, we believe that cross-file errors indicate a systemic problem with the title IV–E agency's reported data. Thus we cannot be confident that the information accurately reflects the title IV–E agency's reporting populations for the out-of-home care and/or adoption and guardianship assistance data files. Therefore, we believe it appropriate not to tolerate such errors in either the out-of-home care or adoption and guardianship assistance data files. We received no comments on this proposal in response to the 2008 NPRM.

Section 1355.45(d) Data Quality Standards

In paragraph (d), we propose a set of data quality standards for the title IV–E agency to be in compliance with AFCARS. These standards are in addition to the formatting standards described in paragraph (c)(2) of this section, and focus on the quality of the data that a title IV–E agency provides. The data quality standards relate to missing data, invalid data and internally inconsistent data, as defined in error specifications per section 1355.45(b) and tardy transactions, as defined in paragraph (b)(5) of this section. No more than 10 percent total of the data for each data element in each of the title IV–E agency's out-of-home care or adoption and guardianship assistance data files may have these data errors to remain in compliance with the AFCARS standards. The numerical standard of 10 percent is consistent with the existing AFCARS standards, and also is similar to the 2008 NPRM proposal. We received a number of comments from the 2008 NPRM regarding this proposal, specifically concerns about applying this 10 percent standard to new data elements and suggestions for a phased-in approach to applying the data quality standards. We considered these comments, however, for reasons detailed below, we retain our proposal of a 10 percent standard for data quality.

As described in the 2008 NPRM, we considered decreasing the acceptable amount of errors permitted in the AFCARS data files to no more than five percent in order to ensure that we receive better quality data. As noted earlier, a number of public commenters and stakeholders have criticized the quality of AFCARS data. Although title IV–E agencies and ACF have made great strides in improving the quality of data over the past few years, we believe there is room for significantly more progress. Decreasing the acceptable threshold for compliance would be one avenue to compel title IV–E agencies to continue to improve their data. On the other hand, by increasing the number and breadth of the internal consistency checks and adding cross-file checks to the range of assessments that we perform on a title IV–E agency's data, we are setting a higher bar for compliance. Further, we acknowledge that by adding new data elements and applying compliance standards, including error specifications, to the adoption records in the adoption and guardianship assistance data file and requiring that the title IV–E agency report historical information for certain data elements, we are asking title IV–E agencies to report more information that will be subject to the compliance assessments, thereby increasing the likelihood of errors. We believe, therefore, that the most appropriate balance is to leave the numeric standard at 10 percent.

Section 1355.45(e) Compliance Determination and Corrected Data

In paragraph (e), we propose the methodology for determining compliance and a title IV–E agency's opportunity to submit corrected data where ACF has initially determined that the title IV–E agency's original submission does not meet the AFCARS standards. These data elements were proposed in the 2008 NPRM and are slightly modified in this proposal to include adoption records in the adoption and guardianship assistance data file in the compliance determination process, and exempt specific optional populations, as described in section 1355.45(a). The comments from the 2008 NPRM on this data element were mostly supportive, therefore our approach to compliance determination is the same.

In paragraph (e)(1), we propose that we first determine whether the title IV–E agency's out-of-home care data file and adoption records in the adoption and guardianship assistance data file meet the data file standards (*i.e.*, timely submission, proper format and

acceptable cross-file) described in paragraph (c) of this section. Consistent with existing AFCARS practice, we will determine compliance for each data file separately, meaning that one data file may be determined compliant and the other data file determined not compliant. As stated earlier in the description of these standards, we believe that if a title IV–E agency's data file cannot meet the data file standards, the information contained therein is not useful. In particular, if the title IV–E agency does not meet the proper format standard, we cannot process the title IV–E agency's data files and determine if the data files meet the other standards.

In paragraph (e)(2), we propose that we will then determine whether the title IV–E agency's out-of-home care data file and the adoption records in the adoption and guardianship assistance data file separately meet the data quality standards described in paragraph (d) of this section, if the data file standards, described in paragraph (c), are satisfied. We will calculate the error rates for each data element to determine if any one of them exceeds the outlined data quality standards. This is the same process by which we calculate the error rates for existing AFCARS data files.

In paragraph (e)(3), we propose procedures for a title IV–E agency to submit a corrected data file(s) to ACF if the title IV–E agency's data file(s) does not initially meet the data file and data quality standards. If the title IV–E agency does not meet the data file standards or the data quality standards (with the exception of the standard for tardy transactions, which is discussed below), a title IV–E agency will have until the deadline for submitting data for the subsequent report period to make changes to the data and submit the corrected data file to ACF. This timeframe for the title IV–E agency to submit corrected data is mandated by section 474(f)(1) of the Act. However, if a title IV–E agency does not meet the data quality standard related to tardy transactions, the title IV–E agency may not 'correct' these dates. This is because according to the removal transaction date and exit transaction date data elements in sections 1355.43(d)(2) and 1355.43(g)(2) of the out-of-home care data file, these dates must be computer generated and non-modifiable to reflect the data entry date and cannot be modified. The title IV–E agency is not permitted to change an entered transaction date for these data elements, and since the law requires that a title IV–E agency have another opportunity to submit data files that meet the standards, ACF will look towards the

transaction date(s) in the title IV–E agency’s next regularly submitted out-of-home care data file, rather than the corrected data file, to determine whether the title IV–E agency has achieved compliance.

For example, a title IV–E agency submits AFCARS data files for the report period ending March 31 on May 1 (due on April 30). ACF assesses the data files and notifies the title IV–E agency that the data files have not met the timely submission standard or the data quality standards for missing data and tardy transactions. The title IV–E agency must correct the data in the out-of-home care data file and the adoption records in the adoption and guardianship assistance data file so that missing data comprises no more than 10 percent of the applicable records in each data element and submit these corrected data files on time for the next submission by October 30. In addition, the title IV–E agency’s data files for the report period ending September 30, also submitted on October 30, must meet the data quality standards related to the tardy transactions. If all of these conditions are met, and the corrected data files contain no new errors in excess of the standards, ACF can then determine the title IV–E agency’s data submission in compliance with the AFCARS standards.

The title IV–E agency need not develop an actual corrective action plan that outlines how the title IV–E agency plans to comply with the data standards, as is required in other program improvement efforts in child welfare (*i.e.*, the current CFSR and title IV–E Eligibility Reviews). We believe that an actual plan is not necessary in this case, as we anticipate that the Federal system will identify the errors that caused the title IV–E agency’s data to be in noncompliance. Furthermore, because the period in which a title IV–E agency may submit data is relatively short, we believe that engaging in a process to develop an action plan and seek ACF approval will only reduce the amount of time the title IV–E agency has to make actual improvements that may bring the title IV–E agency into compliance with the standards.

Section 1355.45(f) Noncompliance

In paragraph (f), we propose to determine that a title IV–E agency has not complied with the AFCARS requirements if the title IV–E agency either does not submit corrected out-of-home care and adoption and guardianship assistance data files, or does not submit corrected data files that meet the compliance standards in paragraphs (c) and (d) of this section. A

title IV–E agency will not be found noncompliant for failure to collect data on, or errors in data pertaining to optional populations, specified in section 1355.45(a). This final determination of noncompliance means that ACF will withhold financial penalties as outlined in section 1355.46. We did not receive substantive comments on this section from the 2008 NPRM.

Section 1355.45(g) Other Assessments

In paragraph (g), we propose, as we did in the 2008 NPRM, that ACF may use other monitoring tools that are not explicitly mentioned in regulation to determine whether the title IV–E agency meets all AFCARS requirements. For example, we may wish to continue to conduct onsite reviews in some format to ensure proper data mapping or provide other technical assistance to ensure valid and quality data. We currently use this approach in AFCARS by conducting onsite assessment reviews of a title IV–E agency’s process to submit AFCARS data, including validating that the information in case files is accurately portrayed in the AFCARS submission. Through these assessment reviews we have found that title IV–E agencies may be in compliance with the AFCARS data standards, but not in compliance with all the AFCARS requirements. For example, through the aforementioned error checks, which we expect to be conducted automatically upon receipt of the data, we cannot determine whether the title IV–E agency is submitting the entire or the correct reporting population. Commenters to the 2008 NPRM suggested that this section is too open-ended, and advocated for full disclosure of all proposed assessment types. However, through the assessment reviews, we have been able to provide title IV–E agencies with targeted technical assistance on how to meet all aspects of the AFCARS requirements. We have often heard from States that the onsite activities tailored to a title IV–E agency’s system and programs are beneficial and provide the State with valuable technical assistance. Therefore, we want to reserve our ability to develop and conduct these and other monitoring activities for AFCARS, and do not want to tie ourselves to a particular approach which may need to change over time.

Section 1355.46 Penalties

In section 1355.46, we propose how ACF will assess and take penalties for a title IV–E agency’s noncompliance with AFCARS requirements outlined in section 1355.45. The penalty structure

we propose is consistent with section 474(f) of the Act, and is similar to that proposed in the 2008 NPRM. Commenters to the 2008 NPRM were opposed to ACF assessing penalties and suggested that we use incentives in lieu of or in combination with penalties or alternately, allow title IV–E agencies to reinvest funds to encourage data quality improvement. Commenters in response to the 2008 NPRM also suggested that we phase-in or delay enforcing the penalties. We considered these comments, however, Pub. L. 108–145 added paragraph (f) to section 474 of the Act which requires that the Department take specific fiscal penalties for a title IV–E agency’s lack of compliance with AFCARS standards. There is no provision in this law for incentives or reinvestment. In addition, penalties have already been delayed since January 2002, when we discontinued withholding Federal funds for a title IV–E agency’s failure to comply with AFCARS requirements (see ACYF–CB–IM–02–03) and in ACYF–CB–IM–04–04 we notified title IV–E agencies that we would not assess penalties until we issue revised final AFCARS regulations, the subject of this proposed rule. Title IV–E agencies have been aware of our proposed penalty structure since the 2008 NPRM; thus we encourage agencies to begin thinking about how the proposal will affect their AFCARS submissions.

Section 1355.46(a) Federal Funds Subject to a Penalty

In paragraph (a), we propose that the pool of funds that are subject to a penalty for noncompliance are the title IV–E agency’s claims for title IV–E foster care administrative costs for the quarter in which the original data file is due (as opposed to the corrected data file). Therefore, ACF would assess the penalty on the title IV–E agency’s claims for the third quarter of the Federal fiscal year for data files due on April 30, and on the first quarter of the Federal fiscal year for data files due on October 30. Such administrative costs are inclusive of claims for training, but would not include Statewide or Tribal Automated Child Welfare Information System (SACWIS/TACWIS) costs. We believe that this provision is consistent with the statutory language in section 474(f)(2) of the Act, which requires that the pool of funds subject to the penalty is the amount expended by the title IV–E agency for administration of foster care activities under the title IV–E plan approved under this part, meaning all title IV–E foster care administrative costs. Further, the law specifies that the pool be comprised of the title IV–E

agency's claims in the quarter that coincides with the report period deadline (*i.e.*, the first or third quarter of a fiscal year). This proposal is similar to that proposed in the 2008 NPRM, but is modified slightly to include claims for Tribal Automated Child Welfare Information Systems in the pool of funds that are subject to a penalty for noncompliance. This proposal also differs from the 2008 NPRM in that we are proposing to exclude SACWIS/TACWIS funding from the pool of funds subject to AFCARS penalties. We propose to exclude these funds because they support more than just the title IV-E foster care program (including State or Tribal programs not funded by title IV-E) and therefore have a broader benefit than the "administration of all title IV-E foster care administrative costs" as required in section 474(f)(2) of the Act.

Commenters in response to the 2008 NPRM expressed concerns to the proposal for this section over the assessment of penalties for completing various data elements. Specifically, commenters were concerned about the lack of implementation period in the 2008 NPRM proposal prior to the imposition of penalties, and the potential for title IV-E agencies to be penalized for not collecting data on new elements prior to the implementation of the final rule. We acknowledge these comments and intend to provide more specifics on implementation issues in the Final Rule after receiving and reviewing comments.

Section 1355.46(b) Penalty Amounts

In paragraph (b), we propose specific penalty amounts for noncompliance consistent with section 474(f)(2) of the Act. The statute specifies the amount of each penalty for noncompliance and requires that penalties continue until the title IV-E agency is able to meet the standards. It is possible that the calculated penalty amounts could be smaller than those in the existing regulation; however, a penalty that continues until a title IV-E agency's data file complies with the AFCARS standards provides an incentive for title IV-E agencies to correct their data in a timely manner. Our proposal for paragraphs (b)(1) and (2) is unchanged from the 2008 NPRM.

First six-month period. In paragraph (b)(1), we propose to assess a penalty in the amount of one sixth of one percent of the pool of Federal funds subject to a penalty once ACF determines the title IV-E agency is out of compliance with the AFCARS requirements according to section 1355.45(f). This penalty amount is specified per section 474(f)(2)(A) of

the Act. Using fiscal year 2010 claims data, we estimate that penalties could range from \$565 to \$228,174 for a title IV-E agency's noncompliance with the standards in a single report period. We did not receive comments to the 2008 NPRM or 2010 FR Notice on this proposal; therefore we did not change our proposal.

Subsequent six month periods. In paragraph (b)(2), we propose to assess a penalty in the amount of one fourth of one percent of the pool of funds subject to a penalty, should the title IV-E agency's noncompliance continue in subsequent six-month periods. This penalty amount is also specified per section 474(f)(2)(B) of the Act. Using FY 2010 data, we estimate that the penalty for subsequent noncompliance could range from \$1,413 to \$570,434 per report period. Commenters to the 2008 NPRM asked for clarification on our proposal for assessing penalties in subsequent six month report periods. As in the 2008 NPRM, we propose now to assess penalties for a data file for each report period. For example, a data file submitted for the first six month report period would be assessed for compliance apart of the data file submitted for the second six month report period. If the data file that is submitted for the first six month report period is determined to be out of compliance, then a penalty based on paragraph (b)(1) of this section could be assessed, regardless of whether the data file submitted for the second six month report period is determined to be in compliance. Additionally, if that same data file continues to be determined out of compliance in subsequent corrective submissions, then the penalty described in paragraph (b)(2) of this section could be assessed.

Commenters to the 2008 NPRM also expressed concern that because we are proposing to require title IV-E agencies to submit longitudinal data files, it is possible that certain data elements that are not permitted to be corrected could forever subject a title IV-E agency to penalties for errors. While this scenario is possible, we believe it is unlikely in most cases. Section 1355.45(d) describes that the AFCARS data file(s) would need to be determined to be out of compliance for 10 percent of the data quality standards in each of the areas of missing data, invalid data, internally inconsistent data, and tardy transactions. Although there are few data elements that a title IV-E agency is not permitted to correct (for example the transaction dates in sections 1355.43(d)(2) and (g)(2)); even if multiple transactions are determined to be incorrect, this does not mean that the

title IV-E agency would be determined to be out of compliance based on the 10 percent data quality standard. The title IV-E agency also has an opportunity after the initial period in which a penalty is assessed to correct other data elements that may be determined to be incorrect, therefore a title IV-E agency could, in the end, lower their error rate to not exceed the 10 percent data quality standard.

Section 1355.46(c) Penalty Reduction From Foster Care Funding

In paragraph (c), we propose to take an assessed penalty by reducing the title IV-E agency's title IV-E foster care funding following ACF's determination of noncompliance. Our proposal is unchanged from that described in the 2008 NPRM. Commenters to the 2008 NPRM expressed general opposition to our proposal to take the penalty amount from the agency's title IV-E foster care reimbursement. However, section 474(f)(2) of the Act is specific that the penalty must be assessed on the total amount expended by the title IV-E agency for administration of foster care activities under the title IV-E plan.

Section 1355.46(d) Appeals

In paragraph (d), we propose to provide the title IV-E agency with an opportunity to appeal a final determination that the title IV-E agency is out of compliance inclusive of accompanying financial penalties to the HHS Departmental Appeals Board (DAB). Since section 474(f) of the Act does not require any unique appeal rights or time frames regarding AFCARS requirements, all appeals must follow the DAB regulations in 45 CFR part 16. We did not receive comments to the 2008 NPRM on this proposal.

We propose not to retain language that was newly proposed in the 2008 NPRM that a title IV-E agency be liable for applicable interest on the amount of funds we penalize, in accordance with the regulations at 45 CFR 30.18. This language was added to the 2008 NPRM to be consistent with Department-wide regulations and policy on collecting debts owed to the Federal government, however, upon further consideration, we believe that the provision requiring ACF to offset a title IV-E agency's grant award in the amount of the penalty (section 1355.46(c)) makes the need for such language obsolete.

Appendices

We propose to remove all of the appendices to 45 CFR part 1355 because they contain provisions and charts that are being substantively altered or made

obsolete by the provisions of this NPRM.

Appendix A contains the data element definitions and instructions for the existing foster care file. We propose instead the out-of-home care data file at proposed section 1355.43. Appendix B contains the adoption data element definitions and instructions for the existing adoption data file. We propose instead that the adoption data file be deleted and information pertaining to

adoption be incorporated into the out-of-home care data file at proposed section 1355.43(h). The adoption and guardianship assistance data file is proposed at section 1355.44. Appendix C contains existing technical file submission details. We explained in the discussion of section 1355.42(e) that we propose not to regulate file submission provisions. Appendix D contains the existing foster care and adoption data file layout and summary data file

details. We explained in the discussion on section 1355.42(a) that we are eliminating the summary data files and explained in section 1355.42(e) that we are not regulating file layout. Appendix E contains the existing data standards. We propose instead data standards in proposed section 1355.45. We did not receive comments to the 2008 NPRM on this proposal.

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS

Category	Element	Response options	Section citation		
General information	Title IV–E agency	Name	1355.43(a)(1)		
	Report date	Date	1355.43(a)(2)		
Child Information	Local agency	Name	1355.43(a)(3)		
	Child record number	Number	1355.43(a)(4)		
	Child’s date of birth	Date	Yes	1355.43(b)(1)(i)	
			No.	1355.43(b)(1)(ii)	
	Child’s sex	Male	Female.	1355.43(b)(2)	
			Female.		
	Child’s race:	—Race—American Indian or Alaska Native.	Yes	1355.43(b)(3)(i)	
			No.		
		—Race—Asian	Yes	No.	1355.43(b)(3)(ii)
				No.	
		—Race—Black or African American ..	Yes	No.	1355.43(b)(3)(iii)
				No.	
		—Race—Native Hawaiian or Other Pacific Islander.	Yes	No.	1355.43(b)(3)(iv)
				No.	
		—Race—White	Yes	No.	1355.43(b)(3)(v)
				No.	
	—Race—Unknown	Yes	No.	1355.43(b)(3)(vi)	
			No.		
	—Race—Abandoned	Yes	No.	1355.43(b)(3)(vii)	
			No.		
	—Race—Declined	Yes	No.	1355.43(b)(3)(viii)	
			No.		
	Child’s Hispanic or Latino ethnicity	Yes	No.	1355.43(b)(4)	
No.					
Unknown.					
Abandoned.					
Date of health assessment	Date	Declined.	1355.43(b)(5)		
		Declined.			
Timely health assessment	Yes	No.	1355.43(b)(6)		
		No.			
Health, behavioral or mental health conditions.	Child has a diagnosed condition.	No exam or assessment conducted.	1355.43(b)(7)		
		Exam or assessment conducted and none of the conditions apply..			
		Exam or assessment conducted but results not received..			
	—Intellectual disability	Existing condition	Previous condition.	1355.43(b)(7)(i)	
			Does not apply.		
	—Visually impaired	Existing condition	Previous condition.	1355.43(b)(7)(ii)	
			Does not apply.		
	—Hearing impaired	Existing condition	Previous condition.	1355.43(b)(7)(iii)	
			Does not apply.		
	—Physically disabled	Existing condition	Previous condition.	1355.43(b)(7)(iv)	
			Does not apply.		
	—Anxiety disorder	Existing condition	Previous condition.	1355.43(b)(7)(v)	
Does not apply.					
—Childhood disorders	Existing condition	Previous condition.	1355.43(b)(7)(vi)		
		Does not apply.			

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Learning disability	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(vii)
	—Substance use related disorder	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(viii)
	—Developmental disability	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(ix)
	—Other mental/emotional disorder	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(x)
	—Other diagnosed condition	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(xi)
	—Pregnant	Existing condition Previous condition. Does not apply.	1355.43(b)(7)(xii)
	School enrollment	Elementary Secondary. Post-secondary education or training. College. Not school-age. Not enrolled.	1355.43(b)(8)
	Educational level	Not school-age Kindergarten. 1st grade. 2nd grade. 3rd grade. 4th grade. 5th grade. 6th grade. 7th grade. 8th grade. 9th grade. 10th grade. 11th grade. 12th grade. Post-secondary education or training. College.	1355.43(b)(9)
	Educational stability	Yes No.	1355.43(b)(10)
	—Proximity	Applies Does not apply.	1355.43(b)(10)(i)
	—District/zoning rules	Applies Does not apply.	1355.43(b)(10)(ii)
	—Residential facility	Applies Does not apply.	1355.43(b)(10)(iii)
	—Services/programs	Applies Does not apply.	1355.43(b)(10)(iv)
	—Child request	Applies Does not apply.	1355.43(b)(10)(v)
	—Parent/Legal Guardian request	Applies Does not apply.	1355.43(b)(10)(vi)
	—Other	Applies Does not apply.	1355.43(b)(10)(vii)
	Special education	IEP IFSP. Not applicable.	1355.43(b)(11)
	IDEA Qualifying disability:		
	—Developmental delay	Applies Does not apply.	1355.43(b)(12)(i)
	—Autism	Applies Does not apply.	1355.43(b)(12)(ii)
	—Hearing impairment (including deafness)	Applies Does not apply.	1355.43(b)(12)(iii)
	—Emotional disturbance	Applies Does not apply.	1355.43(b)(12)(iv)
	—Intellectual Disability	Applies Does not apply.	1355.43(b)(12)(v)
	—Orthopedic impairment	Applies Does not apply.	1355.43(b)(12)(vi)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
Parent or legal guardian information.	—Other health impairment	Applies	1355.43(b)(12)(vii)
		Does not apply.	
	—Specific learning disability	Applies	1355.43(b)(12)(viii)
		Does not apply.	
	—Speech and language impairment	Applies	1355.43(b)(12)(ix)
		Does not apply.	
	—Traumatic brain injury	Applies	1355.43(b)(12)(x)
		Does not apply.	
	—Visual impairments (including blindness).	Applies	1355.43(b)(12)(xi)
		Does not apply.	
	—Other	Applies	1355.43(b)(12)(xii)
		Does not apply.	
	Prior adoption(s)	Yes	1355.43(b)(13)
		No.	
		Abandoned.	
	Prior adoption date(s)	Date(s)	1355.43(b)(13)(i)
	Prior adoption type(s)	Foster care adoption within State or Tribal service area.	1355.43(b)(13)(ii)
		Foster care adoption in another State or Tribal service area.	
		Intercountry adoption.	
		Other private or independent adoption.	
	Prior adoption jurisdiction(s)	Name	1355.43(b)(13)(iii)
	Prior guardianship(s)	Yes	1355.43(b)(14)
		No.	
		Abandoned.	
	Prior guardianship date(s)	Date(s)	1355.43(b)(14)(i)
	Prior guardianship type(s)	Foster care guardianship within State or Tribal service area.	1355.43(b)(14)(ii)
		Foster care guardianship in another State or Tribal service area.	
		Other private or independent guardianship.	
	Prior guardianship jurisdiction(s)	Name	1355.43(b)(14)(iii)
	Minor parent	Number	1355.43(b)(15)
	Child financial and medical assistance	Child has received support/assistance	1355.43(b)(16)
		No support/assistance received.	
	—SSI or Social Security benefits	Applies	1355.43(b)(16)(i)
		Does not apply.	
	—Title XIX Medicaid	Applies	1355.43(b)(16)(ii)
		Does not apply.	
	—Title XXI SCHIP	Applies	1355.43(b)(16)(iii)
		Does not apply.	
	—State/Tribal adoption assistance	Applies	1355.43(b)(16)(iv)
		Does not apply.	
	—State/Tribal foster care	Applies	1355.43(b)(16)(v)
		Does not apply.	
—Child support	Applies	1355.43(b)(16)(vi)	
	Does not apply.		
—Other	Applies	1355.43(b)(16)(vii)	
	Does not apply.		
Title IV–E foster care during report period	Yes	1355.43(b)(17)	
	No.		
Victim of sex trafficking prior to entering foster care.	Yes	1355.43(b)(18)	
	No.		
—Report to Law Enforcement	Yes	1355.43(b)(18)(i)	
	No.		
—Date	Date	1355.43(b)(18)(ii)	
Victim of sex trafficking while in foster care.	Yes	1355.43(b)(19)	
	No.		
—Report to Law Enforcement	Yes	1355.43(b)(19)(i)	
	No.		
—Date	Date	1355.43(b)(19)(ii)	
Year of birth of first parent or legal guardian.	Date	1355.43(c)(1)(i)	
	Abandoned.		
First parent or legal guardian born in the United States.	Yes	1355.43(c)(1)(ii)	
	No.		
	Abandoned.		
Year of birth of second parent or legal guardian.	Date	1355.43(c)(2)(i)	
	Abandoned.		
	Not applicable.		

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
Removal information	Second parent or legal guardian born in the United States.	Yes No. Abandoned. Not applicable.	1355.43(c)(2)(ii)
	Termination of parental rights petition	Date(s) Deceased.	1355.43(c)(3)(i)
	Termination of parental rights	Date(s)	1355.43(c)(3)(ii)
	Date of judicial finding of abuse or neglect	Date	1355.43(c)(4)
	Date of child's removal	No date. Date(s)	1355.43(d)(1)
	Removal transaction date	Date(s)	1355.43(d)(2)
	Environment at removal	Parent household Relative household. Legal guardian household. Justice facility. Medical/mental health facility. Other.	1355.43(d)(3)
	Authority for placement and care responsibility.	Court ordered Voluntary placement agreement. Not yet determined.	1355.43(d)(4)
	Child and family circumstances at removal:		
	—Runaway	Applies Does not apply.	1355.43(d)(5)(i)
	—Whereabouts unknown	Applies Does not apply.	1355.43(d)(5)(ii)
	—Physical abuse	Applies Does not apply.	1355.43(d)(5)(iii)
	—Sexual abuse	Applies Does not apply.	1355.43(d)(5)(iv)
	—Psychological or emotional abuse ..	Applies Does not apply.	1355.43(d)(5)(v)
	—Neglect	Applies Does not apply.	1355.43(d)(5)(vi)
	—Medical neglect	Applies Does not apply.	1355.43(d)(5)(vii)
	—Domestic violence	Applies Does not apply.	1355.43(d)(5)(viii)
	—Abandonment	Applies Does not apply.	1355.43(d)(5)(ix)
	—Failure to return	Applies Does not apply.	1355.43(d)(5)(x)
	—Caretaker's alcohol abuse	Applies Does not apply.	1355.43(d)(5)(xi)
	—Caretaker's drug abuse	Applies Does not apply.	1355.43(d)(5)(xii)
	—Child alcohol use	Applies Does not apply.	1355.43(d)(5)(xiii)
	—Child drug use	Applies Does not apply.	1355.43(d)(5)(xiv)
	—Prenatal alcohol exposure	Applies Does not apply.	1355.43(d)(5)(xv)
	—Prenatal drug exposure	Applies Does not apply.	1355.43(d)(5)(xvi)
	—Diagnosed condition	Applies Does not apply.	1355.43(d)(5)(xvii)
	—Inadequate access to mental health services.	Applies Does not apply.	1355.43(d)(5)(xviii)
	—Inadequate access to medical services.	Applies Does not apply.	1355.43(d)(5)(xix)
	—Child behavior problem	Applies Does not apply.	1355.43(d)(5)(xx)
	—Death of caretaker	Applies Does not apply.	1355.43(d)(5)(xxi)
	—Incarceration of caretaker	Applies Does not apply.	1355.43(d)(5)(xxii)
	—Caretakers significant impairment—physical/emotional.	Applies Does not apply.	1355.43(d)(5)(xxiii)
	—Caretaker's significant impairment—cognitive.	Applies Does not apply.	1355.43(d)(5)(xxiv)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
Living arrangement and provider information.	—Inadequate housing	Applies Does not apply.	1355.43(d)(5)(xxv)
	—Voluntary relinquishment for adoption. —Child requested placement	Applies Does not apply.	1355.43(d)(5)(xxvi)
	Date of living arrangement	Applies Does not apply. Date(s)	1355.43(d)(5)(xxvii) 1355.43(e)(1)
	Foster family home	Yes No.	1355.43(e)(2)
	Foster family home type:		
	—Licensed home	Applies Does not apply.	1355.43(e)(3)(i)
	—Therapeutic foster family home	Applies Does not apply.	1355.43(e)(3)(ii)
	—Shelter care foster family home	Applies Does not apply.	1355.43(e)(3)(iii)
	—Relative foster family home	Applies Does not apply.	1355.43(e)(3)(iv)
	—Pre-adoptive home	Applies Does not apply.	1355.43(e)(3)(v)
	—Kin foster family home	Applies Does not apply.	1355.43(e)(3)(vi)
	Other living arrangement type	Group home-family operated Group home-staff operated. Group home-shelter care. Residential treatment center. Child care institution. Child care institution-shelter care. Supervised independent living. Juvenile justice facility. Medical or rehabilitative facility. Psychiatric hospital. Runaway. Whereabouts unknown. Placed at home.	1355.43(e)(4)
	Private agency living arrangement	Private agency involvement No private agency involvement.	1355.43(e)(5)
	Location of living arrangement	Out-of-State or out-of-Tribal service area In-State or in-Tribal service area. Out-of-country. Runaway or whereabouts unknown.	1355.43(e)(6)
	Jurisdiction or country where child is living	Name	1355.43(e)(7)
	Number of siblings in out-of-home care	Number Not applicable.	1355.43(e)(8)
	Siblings placed together in out-of-home care.	Child record number(s)	1355.43(e)(9)
	Siblings in out-of-home care not living with child.	Child record number(s)	1355.43(e)(10)
	Number of siblings in an adoption or legal guardianship.	Number Not applicable.	1355.43(e)(11)
	Siblings in adoptive/guardianship placements living with child.	Child record number(s)	1355.43(e)(12)
	Siblings in adoptive/guardianship placements not living with child.	Child record number(s)	1355.43(e)(13)
	Number of children living with the minor parent.	Number	1355.43(e)(14)
	Marital status of the foster parent(s)	Married couple Unmarried couple. Separated. Single female. Single male.	1355.43(e)(15)
	Child's relationship to the foster parent(s)	Paternal grandparent(s) Maternal grandparent(s). Other paternal relative(s). Other maternal relative(s). Sibling(s). Non relative(s). Kin.	1355.43(e)(16)
	Year of birth for first foster parent	Date	1355.43(e)(17)
	Race of first foster parent:		

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(e)(18)(i)
	—Race—Asian	Yes No.	1355.43(e)(18)(ii).
	—Race—Black or African American ..	Yes No.	1355.43(e)(18)(iii).
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(e)(18)(iv).
	—Race—White	Yes No.	1355.43(e)(18)(v).
	—Race—Unknown	Yes No.	1355.43(e)(18)(vi).
	—Race—Declined	Yes No.	1355.43(e)(18)(vii).
	Hispanic or Latino ethnicity of first foster parent.	Yes No. Unknown. Declined.	1355.43(e)(19).
	Year of birth for second foster parent	Date	1355.43(e)(20)
	Race of second foster parent:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(e)(21)(i).
	—Race—Asian	Yes No.	1355.43(e)(21)(ii)
	—Race—Black or African American ..	Yes No.	1355.43(e)(21)(iii)
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(e)(21)(iv)
	—Race—White	Yes No.	1355.43(e)(21)(v)
	—Race—Unknown	Yes No.	1355.43(e)(21)(vi)
	—Race—Declined	Yes No.	1355.43(e)(21)(vii)
	Hispanic or Latino ethnicity of second foster parent.	Yes No. Unknown. Declined.	1355.43(e)(22)
	Sources of Federal assistance in living arrangement		
	—Title IV—E foster care	Applies Does not apply.	1355.43(e)(23)(i)
	—Title IV—E adoption subsidy	Applies Does not apply.	1355.43(e)(23)(ii)
	—Title IV—E guardianship assistance	Applies Does not apply.	1355.43(e)(23)(iii)
	—Title IV—A TANF	Applies Does not apply.	1355.43(e)(23)(iv)
	—Title IV—B	Applies Does not apply.	1355.43(e)(23)(v)
	—SSBG	Applies Does not apply.	1355.43(e)(23)(vi)
	—Chafee Foster Care	Applies Does not apply.	1355.43(e)(23)(vii)
	Independence Program	Does not apply.	
	—Other Federal source	Applies Does not apply.	1355.43(e)(23)(viii)
	Amount of payment	Dollar amount	1355.43(e)(24).
	Services provided in other living arrangements.	Yes No.	1355.43(e)(25)
	—Specialized education	Applies Does not apply.	1355.43(e)(25)(i)
	—Treatment	Applies Does not apply.	1355.43(e)(25)(ii)
	—Counseling	Applies Does not apply.	1355.43(e)(25)(iii)
	—Other services	Applies Does not apply.	1355.43(e)(25)(iv)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation	
Permanency planning	Permanency plan	Reunify with parent(s) or legal guardian(s) Live with other relatives. Adoption. Guardianship. Planned permanent living arrangement. Permanency plan not established.	1355.43(f)(1)	
	Date of permanency plan	Date(s)	1355.43(f)(2)	
	Concurrent permanency planning	Concurrent permanency plan	1355.43(f)(3)	
			No concurrent permanency plan. Not applicable.	
	Concurrent permanency plan	Live with other relatives	1355.43(f)(3)(i)	
		Adoption. Guardianship. Planned permanent living arrangement.		
	Date of concurrent permanency plan	Date(s)	1355.43(f)(3)(ii)	
	Reason for permanency plan change	Yes	1355.43(f)(4)	
		No.		
	—Not engaged in services	Applies	1355.43(f)(4)(i)	
		Does not apply.		
	—Lack of progress in reunification plan.	Applies	1355.43(f)(4)(ii)	
		Does not apply.		
	—Unable/incapable of caring for child permanently.	Applies	1355.43(f)(4)(iii)	
		Does not apply.		
	—Reunification appropriate	Applies	1355.43(f)(4)(iv)	
		Does not apply.		
	—Child preference	Applies	1355.43(f)(4)(v)	
		Does not apply.		
	—Adoption/guardianship appropriate	Applies	1355.43(f)(4)(vi)	
		Does not apply.		
	—Current foster care provider committed to permanency.	Applies	1355.43(f)(4)(vii)	
		Does not apply.		
	—Emancipation likely	Applies	1355.43(f)(4)(viii)	
		Does not apply.		
	Date of periodic review	Date(s)	1355.43(f)(5)	
	Date of permanency hearing	Date(s)	1355.43(f)(6)	
	Juvenile justice	Status offender	1355.43(f)(7)	
		Adjudicated delinquent. Both status offender and delinquent. Not applicable.		
	Caseworker visit dates	Date(s)	1355.43(f)(8)	
	Caseworker visit location	Child's residence	1355.43(f)(9)	
		Other location.		
	Caseworker visit purpose	Assessment or case planning	1355.43(f)(10)	
	Placement of the child. Transportation. Court hearing.			
Caseworker visit alone with child	Yes	1355.43(f)(11).		
	No.			
Transition plan	Yes	1355.43(f)(12)		
	No. Not applicable.			
—Housing	Applies	1355.43(f)(12)(i)		
	Does not apply.			
—Health insurance	Applies	1355.43(f)(12)(ii)		
	Does not apply.			
—Health care treatment decisions	Applies	1355.43(f)(12)(iii)		
	Does not apply.			
—Education	Applies	1355.43(f)(12)(iv)		
	Does not apply.			
—Mentoring and continuing support ..	Applies	1355.43(f)(12)(v)		
	Does not apply.			
—Work force support and employment services.	Applies	1355.43(f)(12)(vi)		
	Does not apply.			
Date of transition plan	Date	1355.43(f)(13)		
General exit information	Date of exit	Date(s)	1355.43(g)(1)	
	Exit transaction date	Date(s)	1355.43(g)(2)	

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
Exit to adoption and guardianship information.	Exit reason	Not applicable Reunify with parent(s)/legal guardian(s). Live with other relatives. Adoption. Emancipation. Guardianship. Runaway or whereabouts unknown. Death of child. Transfer to another agency. Other.	1355.43(g)(3)
	Transfer to another agency	State title IV–E agency Tribal title IV–E agency. Indian Tribe or Tribal agency (non-IV–E). Juvenile justice agency. Mental health agency. Other public agency. Private agency.	1355.43(g)(4)
	Marital status of the adoptive parent(s) or guardian(s).	Married couple Unmarried couple. Single female. Single male.	1355.43(h)(1)
	Child's relationship to the adoptive parent(s) or guardian(s):		
	—Paternal grandparent(s)	Applies Does not apply.	1355.43(h)(2)(i)
	—Maternal grandparent(s)	Applies Does not apply.	1355.43(h)(2)(ii)
	—Other paternal relative(s)	Applies Does not apply.	1355.43(h)(2)(iii)
	—Other maternal relative(s)	Applies Does not apply.	1355.43(h)(2)(iv)
	—Sibling(s)	Applies Does not apply.	1355.43(h)(2)(v)
	—Kin	Applies Does not apply.	1355.43(h)(2)(vi)
	—Non-relative(s)	Applies Does not apply.	1355.43(h)(2)(vii)
	—Foster parent(s)	Applies Does not apply.	1355.43(h)(2)(viii)
	Date of birth of first adoptive parent or guardian.	Date	1355.43(h)(3).
	Race of first adoptive parent or guardian:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(h)(4)(i)
	—Race—Asian	Yes No.	1355.43(h)(4)(ii)
	—Race—Black or African American ..	Yes No.	1355.43(h)(4)(iii)
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(h)(4)(iv)
	—Race—White	Yes No.	1355.43(h)(4)(v)
	—Race—Unknown	Yes No.	1355.43(h)(4)(vi)
	—Race—Declined	Yes No.	1355.43(h)(4)(vii)
	Hispanic or Latino ethnicity of first adoptive parent or guardian.	Yes No. Unknown. Declined.	1355.43(h)(5)
	Date of birth of second adoptive parent, guardian, or other member of the couple.	Date	1355.43(h)(6)
	Race of second adoptive parent, guardian, or other member of the couple:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.43(h)(7)(i)
	—Race—Asian	Yes No.	1355.43(h)(7)(ii)
	—Race—Black or African American ..	Yes No.	1355.43(h)(7)(iii)

ATTACHMENT A—PROPOSED OUT-OF-HOME CARE DATA FILE ELEMENTS—Continued

Category	Element	Response options	Section citation
	—Race—Native Hawaiian or Other Pacific Islander.	Yes No.	1355.43(h)(7)(iv)
	—Race—White	Yes No.	1355.43(h)(7)(v)
	—Race—Unknown	Yes No.	1355.43(h)(7)(vi)
	—Race—Declined	Yes No.	1355.43(h)(7)(vii)
	Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.	Yes No. Unknown. Declined.	1355.43(h)(8)
	Inter/Intrajurisdictional adoption or guardianship.	Interjurisdictional adoption or guardianship.. Intercountry adoption or guardianship. Intrajurisdictional adoption or guardianship.	1355.43(h)(9)
	Interjurisdictional adoption or guardianship jurisdiction.	Name	1355.43(h)(10)
	Adoption or guardianship placing agency	Title IV–E agency Private agency under agreement. Indian Tribe under contract/agreement.	1355.43(h)(11)

ATTACHMENT B—PROPOSED ADOPTION AND GUARDIANSHIP ASSISTANCE DATA FILE ELEMENTS
[* Title IV–E Only]

Category	Element	Response options	Section citation
General information	Title IV–E agency	Name	1355.44(a)(1)
	Report Date	Date	1355.44(a)(2)
	Child Record Number	Number	1355.44(a)(3)
Child Demographics	Child’s date of birth	Date	1355.44(b)(1)(i)
	Child born in the United States	Yes No.	1355.44(b)(1)(ii)
	Child’s sex	Male Female.	1355.44(b)(2)
	Child’s race:		
	—Race—American Indian or Alaska Native.	Yes No.	1355.44(b)(3)(i)
	—Race—Asian	Yes No.	1355.44(b)(3)(ii)
	—Race—Black or African American	Yes No.	1355.44(b)(3)(iii)
	—Race—Native Hawaiian or other Pacific Islander.	Yes No.	1355.44(b)(3)(iv)
	—Race—White	Yes No.	1355.44(b)(3)(v)
	—Race—Unknown	Yes No.	1355.44(b)(3)(vi)
	—Race—Abandoned	Yes No.	1355.44(b)(3)(vii)
	—Race—Declined	Yes No.	1355.44(b)(3)(viii)
	Hispanic or Latino Ethnicity	Yes No. Unknown. Abandoned. Declined.	1355.44(b)(4)
Adoption and guardianship assistance arrangement and agreement information.	Assistance agreement type	Title IV–E adoption assistance agreement. Title IV–E guardianship assistance agreement.	1355.44(c)(1)
	Adoption or guardianship subsidy amount	Dollar amount	1355.44(c)(2)
	Nonrecurring adoption or guardianship costs.	Costs paid No costs paid	1355.44(c)(3)
	Nonrecurring adoption or guardianship cost amount.	Dollar amount	1355.44(c)(4)
	Adoption or guardianship finalization date	Date	1355.44(c)(5)

ATTACHMENT B—PROPOSED ADOPTION AND GUARDIANSHIP ASSISTANCE DATA FILE ELEMENTS—Continued
[* Title IV–E Only]

Category	Element	Response options	Section citation
	Adoption or guardianship placing agency	Title IV–E agency Private agency under a contract/agreement. Indian Tribe. Private agency.	1355.44(c)(6)
	Inter/intrajurisdictional adoption or guardianship.	Interjurisdictional adoption or guardianship.. Intrajurisdictional adoption or guardianship	1355.44(c)(7)
	Interjurisdictional adoption or guardianship jurisdiction.	Name	1355.44(c)(8)
	Number of siblings	Number	1355.44(c)(9)
	Siblings in out-of-home care	Not applicable.	
	Siblings in adoption/guardianship	Child record number(s)	1355.44(c)(10)
	Agreement termination date	Child record number(s)	1355.44(c)(11)
		Date	1355.44(c)(12)

VI. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. In particular, we have determined that a regulation is the best and most cost effective way to implement the statutory mandate for a data collection system regarding children in foster care and those that are adopted and support other statutory obligations to provide oversight of child welfare programs. Moreover, we consulted with the Office of Management and Budget (OMB) and determined that these rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

We have determined that the costs to title IV–E agencies as a result of this rule will not be significant. At least half of the costs that States and Tribes will incur as a result of the revisions to AFCARS will be eligible for Federal financial participation. Depending on the cost category and each agency’s approved plans for title IV–E and cost allocation, they may claim allowable costs as Automated Child Welfare Information System costs at the 50 percent rate, administrative costs for the proper and efficient administration of the title IV–E plan at the 50 percent rate, or training of agency staff at the 75 percent rate. We estimate that costs will be approximately \$24 million annually for AFCARS for the first five years of implementation, half of which (\$12 million) we estimate will be reimbursed by the Federal government as allowable costs under title IV–E. Additional costs to the Federal government to design a

system to collect the new AFCARS data are expected to be minimal.

Alternatives Considered: We considered whether alternative approaches could better meet ACF, State, and Tribal needs, but decided that our current approach, as proposed, best meets these needs. First, we considered whether other existing data sets could yield similar information. We determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or achieve adoption or guardianship with the involvement of the State or Tribal title IV–E agency. Further, we are required by section 479 of the Act to establish and maintain such a data system, so other data sources could not meet our statutory mandate.

We also considered whether we should permit title IV–E agencies to sample and report information on a representative population of children. We remain concerned, however, that there may be several significant limitations associated with using a sampling approach for collecting data on children who are in foster care, adoption and guardianship programs. If, under a sampling approach, ACF would be unable to collect reliable sample data for the title IV–E foster care eligibility reviews and the current CFRs or respond to other initiatives such as the Annual Outcomes Report to Congress and Adoption Incentives using sampling data, the use of AFCARS data would be limited. Second, when using a sample, small population subgroups (e.g., children who spend very long periods in foster care or children who get adopted or run away) might occur so rarely in the data that such analysis on these subgroups would not be meaningful.

VII. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. This proposed rule does not affect small entities because it is applicable only to State and Tribal title IV–E agencies.

VIII. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation). That threshold level is currently approximately \$146 million. This proposed rule does not impose any mandates on State, local or Tribal governments, or the private sector that will result in an annual expenditure of \$100 million or more.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. ch. 35, as amended) (PRA), all Departments are required to submit to OMB for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. This proposed rule contains information collection requirements in sections 1355.43, the out-of-home care data file and 1355.44, the adoption and guardianship assistance data file, that the Department has submitted to OMB for its review. In addition, the NPRM proposes to validate whether the title IV–E agency complies with the AFCARS data file and data quality standards

established in section 1355.45 by checking for errors in logic that mean that the data could not be accurate. However, these error checks are not information collection requirements themselves as they do not require the agency to produce, maintain or submit information to ACF, and so are not a part of the burden calculations. Rather, the error checks will be performed by ACF on each title IV–E agency’s out-of-home care and adoption and guardianship assistance data files to validate that they are providing the data as specified in the data file requirements in section 1355.43. The error checks are not appended to this regulation as they are rather technical aspects of data reporting that cannot be completed until ACF issues a final rule that contains the required data elements.

Collection of information for AFCARS is currently authorized under OMB number 0970–0422; however, this

NPRM significantly changes the collection requirements by adding longitudinal data requirements and additional data elements in the out-of-home care and adoption and guardianship assistance data files. We estimate that annual burden hours will increase to 568,749 from the currently approved 432,720 hours as a result of the proposed provisions in this NPRM and the inclusion of Tribal title IV–E agencies per section 479B of the Act.

The Department requires this collection of information to address the data collection requirements of section 479 of the Act. Specifically, the law requires the Department to develop a data collection system that can provide comprehensive national information on the demographic characteristics of adopted and foster children and their biological, foster or adoptive parents; the status of the foster care population; the number and characteristics of

children placed in or discharged from foster care; children adopted or who have experienced adoption dissolution, and children who are placed in foster care outside of the State or Tribal service area which has placement and care responsibility and the extent and nature of assistance provided by government adoption and foster care programs and the characteristics of the children to whom such assistance is provided. Further, this information is critical to our efforts to: Assess a title IV–E agency’s compliance with titles IV–B and IV–E of the Act and the current CFRs (45 CFR 1355.31 through 1355.37), conduct title IV–E eligibility reviews (45 CFR 1356.71), implement the Adoption Incentive and Legal Guardianship Payments program at section 473A of the Act and for other program purposes previously outlined.

The following are estimates:

Collection	Number of respondents	Number of responses per respondent	Average burden per response	Total burden hours
1355.43 Out-of-home care data file	67	2	3,591.15	481,214
1355.44 Adoption and guardianship assistance data file	67	2	653.25	87,535
Total	568,749

We arrived at these estimates after taking into consideration the existing and anticipated foster care, adoption, and guardianship assistance populations; factoring in the increase of burden in accordance with this proposed rule and efficiencies in reporting and the anticipated amount of worker and information system staff time to collect and report the information.

PRA rules require that we estimate the total burden created by this NPRM regardless of what information is already available. Thus, these burden hours are higher than currently authorized by OMB, and may be an overestimate since we are unable to account for information title IV–E agencies currently collect for their own purposes, but ACF proposes to collect for the first time under this NPRM. Below we describe in detail how we arrived at the estimated burden.

Out-of-Home Care Data File Burden Estimate

1. Our first step in estimating the burden was to estimate the out-of-home care reporting population at the approximate time of implementation. We used information from FY 2012 AFCARS data (the most recent final data

available) and applied the following assumptions:

- We assume that the proportion of children in title IV–E agencies with a State Automated Child Welfare Information System (SACWIS) versus non-SACWIS agencies will remain constant at roughly 85/15.
- We assume that the number of children entering the out-of-home care reporting population annually will rise slightly, given that the proposed out-of-home care reporting population now requires a title IV–E agency to continue reporting a child to AFCARS once he or she has entered foster care, regardless of subsequent living arrangements, and includes children whose whereabouts are unknown at the time the child was placed in the placement and care responsibility of the title IV–E agency. We believe this new out-of-home care reporting population will account for a minor increase in the number of children in the out-of-home care reporting population.
- We assume that the number of children who exit the out-of-home care reporting population annually will remain about the same as it is currently.
- We assume that children under the placement and care responsibility of a Tribal title IV–E agency will not represent a significant net increase in

the number of children in the out-of-home care reporting population.

Based on AFCARS data from FY 2012, 397,122 children were in foster care on September 30, 2012. Therefore, we estimate the following annual caseload figures: 337,554 children served in SACWIS title IV–E agencies and 59,586 in non-SACWIS title IV–E agencies; 216,140 children with new entries into foster care in SACWIS title IV–E agencies, and 38,142 in non-SACWIS title IV–E agencies; 240,923 children will exit foster care, approximately 51,225 of whom will exit to adoption and 16,418 will exit to guardianship. We do not expect any of the Tribal title IV–E agencies to have Tribal versions of SACWIS (TACWIS) for several years and we do not expect the inclusion of Tribal title IV–E agencies will result in a significant net increase in the numbers of children in the out-of-home care reporting population.

2. Our second step in estimating the burden was to estimate the number of recordkeeping hours that workers will spend on meeting AFCARS requirements. We used information from our existing AFCARS collection approved by OMB as a foundation which includes the following assumptions:

- Recordkeeping will require more time in a non-SACWIS title IV–E agency than it does for a SACWIS one.

- Entering the applicable out-of-home care data elements for a child newly entering the out-of-home care reporting population will take approximately one hour for SACWIS agencies and 1.5 hours for non-SACWIS agencies.

- Updating the child's out-of-home care record on average will take 0.35 hours for SACWIS agencies and 0.50 hours for non-SACWIS ones annually.

- Workers will take approximately 0.10 hour to enter exit data for non-adoption/guardianship cases and an additional 30 minutes (0.60 hours total) for children exiting through adoption and guardianship.

- Recordkeeping may require slightly more time in a Tribal IV–E agency due to staff being unfamiliar with the procedures.

We multiplied the time spent on the various recordkeeping activities as outlined in this step by the number of children in foster care described above in step 1, and arrived at a total of 479,204 recordkeeping hours for all children in the out-of-home care reporting population annually.

3. Our third step in estimating the burden was to estimate the time spent on actually reporting the information (e.g., submitting the out-of-home care data file). We used the following assumptions to develop the reporting hours estimate:

- We anticipate that title IV–E agencies will be using a technology such as XML to transmit the data and will need time to become familiar with and efficient in reporting their data in the first years of implementing the new procedures. This will increase the amount of time spent reporting.

- The proposed out-of-home care data file is comprised of many data elements that are currently in the existing foster care and adoption data files, but also additional data elements not currently in either existing data file. To accommodate the increased number of data elements (from both the current foster care and adoption data files) in the proposed out-of-home care data file, we anticipate that our estimate should be higher than the sum of the existing OMB-approved reporting burden hours of eight hours for the foster care data file and four hours for the adoption data file.

We estimate that the proposed changes to the out-of-home care data file will increase the reporting burden; e.g., time spent submitting the file, by approximately 25 percent or by 3 hours, for a total of 15 hours. We then multiplied by 67 title IV–E agencies and

two report periods with the 15 reporting burden hours, which results in an annual reporting burden of 2,010 hours. The 67 title IV–E agencies are 52 State title IV–E agencies plus the approximately 15 Tribal title IV–E agencies we have estimated will operate title IV–E programs over time pursuant to section 479B of the Act.

4. Finally, we calculated the total annual burden hours for the out-of-home care data file as 481,214 hours (479,204 total annual recordkeeping burden + 2,010 annual reporting burden = 481,214.)

Dividing this national and annual figure by the 67 title IV–E agencies and two semi-annual report periods, we arrive at approximately 3,591.15 burden hours per respondent per 6 month report period for the out-of-home care data file. $((481,214 \div 67 \text{ title IV–E agencies}) \div 2 \text{ report periods} = 3,591.15 \text{ burden hours per respondent per 6 month report period.})$

Adoption and Guardianship Assistance File Burden Estimate

1. We first estimated the annual burden associated with the title IV–E adoption assistance data elements.

- Data from the Title IV–E Programs Quarterly Financial Report, CB–496, for FY 2013 indicate 417,530 children receiving title IV–E adoption assistance. As a result of the changes in title IV–E adoption assistance eligibility included in section 473(e) of the Act, as amended by Pub. L. 110–351, we expect the percentage of children eligible for title IV–E adoption assistance will increase until FY 2018 when virtually all will be title IV–E eligible.

- We expect workers to spend 0.2 hours annually recording data in accordance with this NPRM on each child under a title IV–E adoption assistance agreement. Most information collected in the adoption and guardianship assistance data file is basic demographics and is static or can be easily found on the child's title IV–E assistance agreement. Most title IV–E adoption assistance agreements are updated or changed on an annual or biennial basis, unless the family circumstances change, requiring small amounts of recordkeeping.

- We calculate recordkeeping for title IV–E adoption assistance information to take approximately 83,506 hours $(0.2 \text{ hours} \times 417,530 \text{ children})$.

2. We then estimated the annual burden associated with the title IV–E guardianship assistance data elements.

- The title IV–E guardianship assistance program is an optional program that any title IV–E agency may choose to make available at any point.

For FY 2013, there were 12,537 children receiving title IV–E guardianship assistance payments with 26 title IV–E agencies reporting (CB–496). We project that the numbers of children receiving title IV–E guardianship assistance payments will continue to increase as more title IV–E agencies opt to provide title IV–E guardianship assistance payments.

- Most information collected in the adoption and guardianship assistance data file is basic demographics and is static or can be easily found on the child's title IV–E assistance agreement. Further, most title IV–E guardianship assistance agreements are updated or changed on an annual or biannual basis, unless family circumstances change, requiring small amounts of recordkeeping. However, title IV–E agencies will differ in their experience with collecting data on children under title IV–E guardianship assistance agreements and some may need more time to gather the necessary information. For that reason, we are increasing our estimate for this recordkeeping over the estimate for the title IV–E adoption assistance data elements to approximately 0.3 hours annually.

- We calculate recordkeeping for the title IV–E guardianship assistance information to take approximately 3,761 burden hours $(0.3 \text{ hours} \times 12,537 \text{ children})$. As is the case with all estimates in this section, we welcome comments on these assumptions and estimates.

3. In addition, we estimate that burden associated with actually reporting the adoption and guardianship assistance data file to ACF will take each title IV–E agency 2 hours each report period to complete the work necessary to submit the file. We then multiplied 67 title IV–E agencies and two report periods with the 2 reporting burden hours, which results in an annual reporting burden of 268 hours. $(67 \text{ title IV–E agencies} \times 2 \text{ report periods} \times 2 \text{ burden hours} = 268 \text{ total reporting burden hours annually.})$

4. Finally, we calculated the total annual burden hours for the adoption and guardianship assistance data file as 87,267 hours by combining the total recordkeeping $(83,506 + 3,761 = 87,267)$ and the reporting burden hours (268). $(87,267 + 268 = 87,535 \text{ total annual burden hours.})$ Dividing this national total by the 67 title IV–E agencies and two 6 month report periods we arrive at approximately 653.25 burden hours per respondent per 6 month report period. $((87,535 \div 67 \text{ title IV–E agencies}) \div 2 \text{ report periods} = 653.25 \text{ burden hours})$

per respondent per 6 month report period.)
 We have used the total cost and total burden hour estimates to provide

additional detail on projected average cost for each State and Tribal title IV–E agency implementing the changes

described in this NPRM. Our estimates are as follows:

Total reporting burden	568,749 hours.
Total cost	\$17,062,470 (50% reimbursable).
Average hourly labor rate	\$30.
Number of respondents	67.
Net average cost per respondent	\$127,332.

In making the above estimates, we want to acknowledge: (1) We have used average figures for title IV–E agencies of very different sizes and (2) these are rough estimates of the burden on Tribal title IV–E agencies because they have not operated AFCARS previously and we have limited information to use in making these estimates. We welcome comments on these factors and all others in this section.

ACF will consider comments by the public on this proposed collection of information in the following areas:

1. Evaluating whether the proposed collection is necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
2. Evaluating the accuracy of ACF’s estimate of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhancing the quality, usefulness, and clarity of the information to be collected; and
4. Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, either by fax to 202–395–6974 or by email to *OIRA_submission@omb.eop.gov*. Please mark faxes and emails to the attention of the desk officer for ACF.

X. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

XI. Assessment of Federal Regulations on Policies and Families

Section 654 of the Treasury and General Government Appropriations Act of 2000 (Pub. L. 106–58) requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency’s determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. These proposed regulations will not have an impact on family well-being as defined in the law.

XII. Executive Order 13132

Executive Order 13132 on Federalism requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. Consistent with Executive Order 13132, we specifically solicit comment from State and local government officials on this proposed rule.

XIII. Tribal Consultation Statement

ACF published a **Federal Register** notice on July 23, 2010 (75 FR 43187) requesting public comment and notifying the public of opportunities to meet with ACF to provide comments in person or in writing to inform development of a new NPRM on AFCARS. ACF conducted four in-person consultation sessions in the ACF Regions, two webinars and two sessions at a national conference held in Washington, DC that were attended by States and Tribes. We received comments from Tribal commenters, many of which either recommended collection of information outside the scope of AFCARS or voiced concerns relating to the implementation of AFCARS in Tribal title IV–E agencies. Specifically, several commenters expressed the desire that any requirement to participate in AFCARS be delayed for Tribal title IV–E agencies, the concern over duplication of data when Tribal cases are transferred from the State title IV–E agency to the Tribal title IV–E agency, and concern over the cost implications of requiring both

additional data elements and a data collection system for Tribal title IV–E agencies. Some Tribal commenters requested that ACF include additional data elements in AFCARS that would track information gleaned about a child’s needs from caseworker visits. We believe that this is addressed by a number of data elements in our proposal aimed at enhancing the information we receive about a child’s needs and caseworker visits (e.g., Health, behavioral or mental health conditions of the child in section 1355.43(b)(7) and special education in section 1355.43(b)(11), circumstances of removal in section 1355.43(d)(5), and caseworker visits in section 1355.43(f), among others). Another Tribal commenter requested other additional data elements to provide a comprehensive picture of the well-being of Tribal children including: Elements to identify whether a child is a member of an Indian Tribe and the name of the Indian Tribe of which the child is a member, data on Tribal notification, data on whether a Tribal title IV–E agency intervened in a State title IV–E agency case, cultural activities that the child is participating in while away from his or her parents, judicial findings of active efforts, and preferential treatment for Tribal placement resources. Finally, one Tribal commenter thought child welfare services provided in a detention setting should be reported to AFCARS regardless of where the child was placed. All comments and concerns submitted by Tribal commenters were considered in the development of this NPRM.

Several Indian Tribes responded with suggestions for including additional data elements in AFCARS specifically on the Indian Child Welfare Act of 1978 (ICWA), Pub. L. 95–608, and its impact on Tribal children. ICWA was passed in response to concerns about the large number of Indian children who were being removed from their families and Indian Tribes and the failure of States to recognize the culture and Tribal relations of Indian people. However, ICWA is outside ACF’s purview,

therefore we do not have the authority to collect specific data on ICWA implementation and compliance, instruct States and Indian Tribes on how to meet its requirements, or provide additional guidance. Therefore, we are not able to make these changes or additions to the AFCARS data elements in the proposed rule as requested by commenters. We are committed to working with Tribal title IV–E agencies to address implementation issues that arise under title IV–E programs and providing technical assistance to help them implement AFCARS.

Generally, there is support from the Tribal commenters to issue this regulation, even in the face of building an information system. We value the comments we have received from Tribal representatives and believe that the comments will enhance the new AFCARS requirements for Tribal title IV–E agencies, as well as State title IV–E agencies. Throughout this NPRM we have outlined our need to issue new requirements for AFCARS so that we can support longitudinal data and additional data elements that will drastically increase our tracking and knowledge of children who enter foster care and who exit to adoption or legal guardianship. We believe that our proposal to enhance AFCARS will expand and enrich our knowledge about children who are in the placement and care responsibility of Tribal title IV–E agencies, which is a benefit to not only Indian Tribes but also State and Federal governments that oversee child welfare programs.

List of Subjects in 45 CFR Part 1355

Adoption and foster care, Child welfare, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: January 12, 2015.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: January 27, 2015.

Sylvia M. Burwell,

Secretary.

For the reasons set forth in the preamble, we propose to amend 45 CFR part 1355 as follows:

PART 1355—GENERAL

■ 1. The authority citation for part 1355 continues to read as follows:

Authority: 45 U.S.C. 620 *et seq.* 42 U.S.C. 670 *et seq.*, 42 U.S.C. 1302.

■ 2. Revise § 1355.40 to read as follows:

§ 1355.40 Scope of the Adoption and Foster Care Analysis and Reporting System.

(a) This section applies to State and Tribal title IV–E agencies.

(b) An agency described in paragraph (a) of this section must collect information on the characteristics and experiences of a child in the reporting populations described in § 1355.41. The title IV–E agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption and guardianship assistance data file as required in § 1355.42, pertaining to information described in §§ 1355.43 and 1355.44.

■ 3. Add §§ 1355.41 through 1355.46 to read as follows:

§ 1355.41 Reporting populations.

(a) *Out-of-home care reporting population.* (1) A title IV–E agency must report a child of any age who is in out-of-home care. The out-of-home care reporting population includes a child in the following situations:

(i) A child in foster care as defined in § 1355.20.

(ii) A child under the placement and care responsibility of another public agency that has an agreement with the title IV–E agency pursuant to section 472(a)(2)(B) of the Act, or an Indian Tribe, Tribal organization or consortium with which the title IV–E agency has an agreement or contract and on whose behalf title IV–E foster care maintenance payments are made.

(iii) A child who runs away or whose whereabouts are unknown at the time the child is placed under the placement and care responsibility of the title IV–E agency.

(2) Once a child enters the out-of-home care reporting population, the child remains in the out-of-home care reporting population through the end of the report period in which the title IV–E agency's placement and care responsibility ends, regardless of any subsequent living arrangement.

(3) For AFCARS purposes, an out-of-home care episode is defined as the period between when a child enters the out-of-home care reporting population, as described in paragraph (a)(1) of this section, and when the title IV–E agency's placement and care responsibility ends.

(b) *Adoption and guardianship assistance reporting population.* (1) The title IV–E agency must include in the adoption and guardianship assistance reporting population any child who is:

(i) In a finalized adoption under a title IV–E adoption assistance agreement pursuant to section 473(a) of the Act with the reporting title IV–E agency that is or was in effect at some point during the current report period; or

(ii) In a legal guardianship under a title IV–E guardianship assistance agreement pursuant to section 473(d) of the Act with the reporting title IV–E agency that is or was in effect at some point during the current report period.

(2) A child remains in the adoption or guardianship assistance reporting population through the end of the report period in which the title IV–E agreement ends or is terminated.

§ 1355.42 Data reporting requirements.

(a) *Report periods and deadlines.* There are two six-month report periods based on the Federal fiscal year: October 1 to March 31 and April 1 to September 30. The title IV–E agency must submit the out-of-home care and adoption and guardianship assistance data files to ACF within 30 days of the end of the report period (*i.e.*, by April 30 and October 30). If the reporting deadline falls on a weekend, the title IV–E agency has through the end of the following Monday to submit the data file.

(b) *Out-of-home care data file.* A title IV–E agency must report the information required in § 1355.43 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV–E agency must report the most recent information for the applicable data elements in § 1355.43(a) and (b).

(2) Except as provided in paragraph (b)(3) of this section, the title IV–E agency must report the most recent information and all historical information for the applicable data elements described in § 1355.43(c), (d), (e), (f), (g) and (h).

(3) For a child who had an out-of-home care episode(s) as defined in § 1355.41(a) prior to the effective date of this section, the title IV–E agency must report the information for the data elements described in § 1355.43(d)(1), (g)(1) and (g)(3) for the out-of-home care episode(s) that occurred prior to the effective date of the final rule.

(c) *Adoption and guardianship assistance data file.* A title IV–E agency must report the most recent information for the applicable data elements in § 1355.44 that pertains to each child in the adoption and guardianship assistance reporting population on the last day of the report period.

(d) *Reporting missing information.* If the title IV–E agency fails to collect the information for a data element, the title

IV-E agency must report the element as blank or otherwise missing. The title IV-E agency is not permitted to default or map information that was not collected and is missing to a valid response option.

(e) *Electronic submission.* The title IV-E agency must submit the required data files electronically according to ACF's specifications.

(f) *Record retention.* The title IV-E agency must retain all records necessary to comply with the data requirements in §§ 1355.42 through 1355.44. The title IV-E agency's retention of such records is not limited to the requirements of 45 CFR 92.42(b) and (c).

§ 1355.43 Out-of-home care data file elements.

(a) *General information.* (1) *Title IV-E agency.* Indicate the name of the title IV-E agency responsible for submitting the AFCARS data to ACF.

(2) *Report date.* The report date corresponds with the end of the report period. Indicate the last month and the year of the report period.

(3) *Local agency.* Indicate the name of the local county, jurisdiction or equivalent unit that has primary responsibility for the child.

(4) *Child record number.* Indicate the child's record number. This is an encrypted, unique person identification number that is the same for the child, no matter where the child lives while in the placement and care responsibility of the title IV-E agency in out-of-home care and across all report periods and episodes. The title IV-E agency must apply and retain the same encryption routine or method for the person identification number across all report periods. The record number must be encrypted in accordance with ACF standards.

(b) *Child information.* (1)(i) *Child's date of birth.* Indicate the month, day and year of the child's birth. If the actual date of birth is unknown because the child has been abandoned, provide an estimated date of birth. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." A date of birth that results in a child age of 22 years or more is an invalid response.

(ii) *Child born in the United States.* Indicate whether the child was born in the United States. If the child was born in the United States, indicate "yes." If the child was born in a country other than the United States, indicate "no."

(2) *Child's sex.* Indicate whether the child is "male" or "female," as appropriate.

(3) *Child's race.* In general, a child's race is determined by the child, the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(3)(i) through (b)(3)(viii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The child or parent or legal guardian does not know or is unable to communicate the race, or at least one race of the child.

(vii) *Race—abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—declined.* The child or parent(s) or legal guardian(s) has declined to identify a race.

(4) *Child's Hispanic or Latino ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent(s) or legal guardian(s) does not know or is unable to communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child is abandoned indicate

"abandoned." Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."

(5) *Date of health assessment.* Indicate the month, day, and year of the child's most recent health assessment. This assessment could include an initial health screening, or any follow-up health screening that the title IV-E agency has scheduled for a child in a foster care placement, as required by section 422(b)(15)(A) of the Act. If the child has not received a health assessment, the title IV-E agency must leave this paragraph blank.

(6) *Timely health assessment.* Indicate whether the child has been receiving health assessments within the timeframes for initial and follow-up health screenings established by the title IV-E agency, as required by section 422(b)(15)(A) of the Act. Indicate "yes" if the child has received all initial or follow-up health assessments before or on the due date(s) for such assessments as of the end of the report period. Indicate "no" if the child is currently not meeting the timeline for health assessments established by the title IV-E agency. If a child has not received a health assessment during the report period, the title IV-E agency must leave this paragraph blank.

(7) *Health, behavioral or mental health conditions.* Indicate whether the child was diagnosed by a qualified professional, as defined by the State or Tribe, as having a health, behavioral or mental health condition listed below, prior to or during the child's current out-of-home care episode as of the last day of the report period. Indicate "child has a diagnosed condition" if a qualified professional has made such a diagnosis and for each element described in paragraphs (b)(7)(i) through (xii) of this section indicate "existing condition," "previous condition" or "does not apply," as applicable. Indicate "no exam or assessment conducted" if a qualified professional has not conducted a medical exam or assessment of the child. Indicate "exam or assessment conducted and none of the conditions apply" if a qualified professional has conducted a medical exam or assessment and has concluded that the child does not have one of the conditions listed below. Indicate "exam or assessment conducted but results not received" if a qualified professional has conducted a medical exam or assessment but the title IV-E agency has

not yet received the results of such an exam or assessment.

(i) *Intellectual disability.* The child has, or had previously, significantly sub-average general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect the child's socialization and learning.

(ii) *Visually impaired.* The child has, or had previously, a visual impairment that may significantly affect educational performance or development.

(iii) *Hearing impaired.* The child has, or had previously, a hearing impairment, whether permanent or fluctuating, that adversely affects educational performance.

(iv) *Physically disabled.* The child has, or had previously, a physical condition that adversely affects the child's day-to-day motor functioning, including, but not limited to, cerebral palsy, spina bifida, multiple sclerosis, muscular dystrophy, orthopedic impairments and other physical impairments.

(v) *Anxiety disorder.* The child has, or had previously, one or more of the following over a long period of time and to a marked degree: Acute stress disorder, agoraphobia, generalized anxiety disorder, obsessive-compulsive disorder, panic disorder, post-traumatic stress disorder, separation anxiety, social or specific phobia.

(vi) *Childhood disorders.* The child has, or had previously, one or more of the following disorders over a long period of time and to a marked degree: Attention deficit or hyperactivity disorder, conduct disorder or oppositional disorder.

(vii) *Learning disability.* The child has, or had previously, an achievement level on individually administered, standardized tests in reading, mathematics or written expression that is substantially below that expected for age, schooling and level of intelligence.

(viii) *Substance use related disorder.* The child has, or had previously a dependency on alcohol or other drugs (legal or non-legal).

(ix) *Developmental disability.* The child has, or had previously been diagnosed with a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402), section 102(8). This means a severe, chronic disability of an individual that is attributable to a mental or physical impairment or combination of mental and physical impairments that manifests before the age of 22, is likely to continue indefinitely and results in substantial

functional limitations in three or more areas of major life activity. Areas of major life activity include: Self-care; receptive and expressive language; learning; mobility; self-direction; capacity for independent living; and economic self-sufficiency; and reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of "developmental disability," do not indicate the individual conditions that form the basis of this diagnosis separately.

(x) *Other mental/emotional disorder.* The child has, or had previously, one or more of the following conditions over a long period of time and to a marked degree: Mood disorders, personality disorders or psychotic disorders.

(xi) *Other diagnosed condition.* The child has, or had previously, a condition other than those described above that requires special medical care. This includes, but is not limited to, conditions such as chronic illness, a diagnosis as HIV positive or AIDS.

(xii) *Pregnant.* If the title IV-E agency indicated "female" in paragraph (b)(2) of this section, provide the appropriate response. If the title IV-E agency indicated "male" in paragraph (b)(2) of this section, leave this data element blank.

(8) *School enrollment.* Indicate whether the child is a full-time student at and enrolled in (or in the process of enrolling in) "elementary," "secondary" or "post-secondary education or training" or "college," as of the earlier of the last day of the report period or the day of exit for a child exiting out-of-home care prior to the end of the report period. A child is still considered enrolled in school if the child would otherwise be enrolled in a school that is currently out of session. An "elementary or secondary school student" is defined in section 471(a)(30) of the Act as a child that is: Enrolled (or in the process of enrolling) in an institution which provides elementary or secondary education, as determined under the law of the State or other jurisdiction in which the institution is located; instructed in elementary or secondary education at home in accordance with a home school law of the State or other jurisdiction in which the home is located; in an independent study elementary or secondary education program in accordance with the law of the State or other jurisdiction in which the program is located, which is administered by the local school or

school district; or incapable of attending school on a full-time basis due to the medical condition of the child, which incapability is supported by a regularly updated information in the case plan of the child. Enrollment in "post-secondary education or training" refers to full-time enrollment in any post-secondary education or training, other than an education pursued at a college or university. Enrollment in "college" refers to a child that is enrolled full-time at a college or university. If child has not reached compulsory school age, indicate "not school-age." If the child has reached compulsory school-age, but is not enrolled or in the process of enrolling in any school setting full-time, indicate "not enrolled."

(9) *Educational level.* Indicate the highest educational level from Kindergarten to college or post-secondary education/training completed by the child as of the last day of the report period. If child has not reached compulsory school-age, indicate "not school-age." Indicate "Kindergarten" if the child is currently in or about to begin 1st grade. Indicate "1st grade" if the child is currently in or about to begin 2nd grade. Indicate "2nd grade" if the child is currently in or about to begin 3rd grade. Indicate "3rd grade" if the child is currently in or about to begin 4th grade. Indicate "4th grade" if the child is currently in or about to begin 5th grade. Indicate "5th grade" if the child is currently in or about to begin 6th grade. Indicate "6th grade" if the child is currently in or about to begin 7th grade. Indicate "7th grade" if the child is currently in or about to begin 8th grade. Indicate "8th grade" if the child is currently in or about to begin 9th grade. Indicate "9th grade" if the child is currently in or about to begin 10th grade. Indicate "10th grade" if the child is currently in or about to begin 11th grade. Indicate "11th grade" if the child is currently in or about to begin 12th grade. Indicate "12th grade" if the child has graduated from high school. Indicate "Post-secondary education or training" if the child has completed any post-secondary education or training, including vocational training, other than an education pursued at a college or university. Indicate "College" if the child has completed at least a semester of study at a college or university.

(10) *Educational stability.* Indicate if the child enrolled or is in the process of enrolling in a new elementary or secondary school prompted by an initial placement after entry into foster care or a placement change during the report period with "yes" or "no" as appropriate. If "yes," indicate which of

the applicable reason(s) for the change in enrollment as described in paragraphs (b)(10)(i) through (vii) of this section “applies” or “does not apply;” if “no,” the title IV–E agency must leave those data elements blank.

(i) *Proximity*. The child enrolled in a new school because of the distance to his or her former school.

(ii) *District/zoning rules*. The child enrolled in a new school because county or jurisdictional law or regulations prohibited attendance at former school.

(iii) *Residential facility*. The child enrolled in a new school because he or she formerly attended school on the campus of a residential facility.

(iv) *Services/programs*. The child enrolled in a new school to participate in services or programs (academic, behavioral or supportive services) not offered at former school.

(v) *Child request*. The child enrolled in a new school because he or she requested to leave former school and enroll in new school.

(vi) *Parent/Legal guardian request*. The child enrolled in a new school because his or her parent(s) or legal guardian(s) requested for the child to leave the former school and enroll in a new school.

(vii) *Other*. The child enrolled in a new school for a reason other than those detailed in paragraphs (b)(10)(i) through (vi) of this section.

(11) *Special education*. Indicate whether the child has an Individualized Education Program (IEP) as defined in section 614(d)(1) of Part B of Title I of the Individuals with Disabilities Education Act (IDEA) and implementing regulations, and/or an Individualized Family Service Program (IFSP) as defined in section 636 of Part C of Title I of IDEA and implementing regulations, as of the end of the report period. Indicate “IEP,” if the child has an IEP, “IFSP,” if the child has an IFSP or “not applicable” if the child does not have an IEP or IFSP.

(12) *IDEA qualifying disability*. If the child has an IEP or IFSP, indicated in paragraph (b)(11) of this section, indicate which of the disability categories listed in the data elements described in paragraphs (b)(12)(i) through (xii) of this section “applies” or “does not apply;” otherwise the title IV–E agency must leave those data elements blank.

(i) *Developmental delay*. The child has been assessed by appropriate diagnostic instruments and procedures and is experiencing delays in one or more of the following areas, as defined by the State: Physical development, cognitive development, communication

development, social or emotional development or adaptive development.

(ii) *Autism*. The child has a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three that adversely affects a child’s educational performance. The child may also exhibit other characteristics, such as engagement in repetitive activities and stereotyped movements, resistance to environmental change, change in daily routines and unusual responses to sensory experiences.

(iii) *Hearing impairment (including deafness)*. The child has an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance.

(iv) *Emotional disturbance*. (A) The child has a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance:

(1) An inability to learn that cannot be explained by intellectual, sensory or health factors;

(2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(3) Inappropriate types of behavior or feelings under normal circumstances;

(4) A general pervasive mood of unhappiness or depression;

(5) A tendency to develop physical symptoms or fears associated with personal or school problems.

(6) Schizophrenia.

(v) *Intellectual disability*. The child has a significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects the child’s educational performance.

(vi) *Orthopedic impairment*. The child has a severe orthopedic impairment that adversely affects a child’s educational performance, including impairments caused by a congenital anomaly, impairments caused by disease and impairments from other causes (e.g., cerebral palsy, amputations and fractures or burns that cause contractures).

(vii) *Other health impairment*. The child has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment that is due to chronic or acute health problems (e.g., asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, etc.) and

adversely affects a child’s educational performance.

(viii) *Specific learning disability*. The child has a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia and developmental aphasia.

(ix) *Speech and language impairment*. The child has a communication disorder, such as stuttering, impaired articulation, language impairment or a voice impairment, which adversely affects a child’s educational performance.

(x) *Traumatic brain injury*. The child has an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance.

(xi) *Visual impairments (including blindness)*. The child has impairment in vision that, even with correction, adversely affects a child’s educational performance.

(xii) *Other*. The child has a condition other than those described above that adversely affects a child’s educational performance.

(13) *Prior adoption(s)*. Indicate whether the child experienced prior legal adoption(s) before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another country. Indicate “yes” if the child experienced at least one prior legal adoption, “no” if the child has never been legally adopted or “abandoned” if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal adoption(s), the title IV–E agency must complete the data elements Prior adoption date, Prior adoption type, and Prior adoption jurisdiction described in paragraphs (b)(13)(i) through (iii) of this section for each prior adoption, as applicable; otherwise the title IV–E agency must leave those data elements blank.

(i) *Prior adoption date(s)*. Indicate the month and year that each prior adoption was finalized if the title IV–E agency indicated previously that the child was adopted in the data element Prior

adoption described in paragraph (b)(13) of this section. In the case of a prior intercountry adoption where the adoptive parent(s) readopted the child in the United States, the title IV–E agency must provide the date of the adoption (either the original adoption in the home country or the re-adoption in the United States) that is considered final in accordance with applicable laws. If the child was not previously adopted, the title IV–E agency must leave this data element blank.

(ii) *Prior adoption type(s)*. Indicate the type of each prior adoption if the title IV–E agency indicated that the child was adopted previously in the data element Prior adoption described in paragraph (b)(13) of this section. Indicate “foster care adoption within State or Tribal service area” if the child was in foster care in the reporting State or Tribal service area at the time the prior adoption was legalized. Indicate “foster care adoption in another State or Tribal service area” if the child was in foster care in another State or Tribal service area at the time the prior adoption was legalized. Indicate “intercountry adoption” if the child had a prior adoption that occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “other private or independent adoption” if the child’s prior adoption was neither a foster care adoption nor an intercountry adoption as defined above. If the child was not previously adopted, the title IV–E agency must leave this data element blank.

(iii) *Prior adoption jurisdiction(s)*. For each prior adoption noted in paragraph (b)(13)(ii) of this section that occurred outside of the reporting State or Tribal service area, indicate the name of the State, Tribal service area Indian reservation or country, in which the child was previously adopted; otherwise the title IV–E agency must leave this data element blank.

(14) *Prior guardianship(s)*. Indicate whether the child experienced a prior legal guardianship(s) before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(7) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making. Indicate “yes” if the child has experienced at least one

prior legal guardianship, “no” if the child has never been in a legal guardianship, or “abandoned” if the information is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” If the child has experienced a prior legal guardianship(s), the title IV–E agency must complete the data elements Prior guardianship date, Prior guardianship type and Prior guardianship jurisdiction described in paragraphs (b)(14)(i) through (iii) of this section for each legal guardianship that the child has experienced; otherwise the title IV–E agency must leave those data elements blank.

(i) *Prior guardianship date(s)*. Indicate the month and year that each prior guardianship became legalized if the title IV–E agency indicated that the child was placed in a legal guardianship previously as indicated described in paragraph (b)(14) of this section. If the child was not previously in a legal guardianship, the title IV–E agency must leave this data element blank.

(ii) *Prior guardianship type(s)*. Indicate the type of each prior guardianship if the title IV–E agency indicated that the child was in a guardianship previously in the data element Prior guardianship described in paragraph (b)(14) of this section. Indicate “foster care guardianship within State or Tribal service area” if the child was in foster care in the reporting State or Tribal service area at the time the prior guardianship was legalized. Indicate “foster care guardianship in another State or Tribal service area” if the child was in foster care in another State or Tribal service area at the time the prior guardianship was legalized. Indicate “other private or independent guardianship” if the child’s prior guardianship was not a foster care guardianship as defined above. If the child was not previously in a guardianship, the title IV–E agency must leave this data element blank.

(iii) *Prior guardianship jurisdiction(s)*. For each prior guardianship noted in paragraph (b)(14)(ii) of this section that occurred outside of the reporting State or Tribal service area, indicate the name of the State, Tribal service area or Indian reservation in which the child was previously in a guardianship; otherwise the title IV–E agency must leave this data element blank.

(15) *Minor parent*. Indicate the number of children of the child who is the subject of this record. A minor parent has a child(ren) if he or she has

given birth herself or fathered any child(ren) who was born. This refers to biological parenthood, regardless of whether or not such children live with their parent(s). A title IV–E agency must report a child older than age 18 in foster care as a “minor parent” if he or she has children. If the child who is the subject of this record does not have a child, indicate “0.” If the title IV–E agency indicates that the minor parent has at least one child the title IV–E agency must complete the data element “number of children living with the minor parent(s)” described in paragraph (e)(14) of this section.

(16) *Child financial and medical assistance*. Indicate whether the child has received financial and medical assistance, other than title IV–E, at any point during the six-month report period. Indicate “child has received support/assistance” if the child was the recipient of such assistance during the report period, and indicate which of the following sources of support described in paragraphs (b)(16)(i) through (vii) of this section “applies” or “does not apply.” Indicate “no support/assistance received” if none of these apply.

(i) *SSI or Social Security benefits*. The child is receiving support from Supplemental Security Income (SSI) or other Social Security benefits under title II or title XVI of the Act.

(ii) *Title XIX Medicaid*. The child is eligible for and may be receiving assistance under the State’s title XIX program for medical assistance, including any benefits through title XIX waivers or demonstration programs.

(iii) *Title XXI SCHIP*. The child is eligible for and receiving assistance under a State’s Children’s Health Insurance Program (SCHIP) under title XXI of the Act, including any benefits under title XXI waivers or demonstration programs.

(iv) *State/Tribal adoption assistance*. The child is receiving an adoption subsidy or other adoption assistance paid for solely by the State or Indian Tribe.

(v) *State/Tribal foster care*. The child is receiving a foster care payment that is solely funded by the State or Indian Tribe.

(vi) *Child Support*. Child support funds are being paid to the title IV–E agency for the benefit of the child by assignment from the receiving parent.

(vii) *Other*. The child is receiving financial support from another source not previously listed above.

(17) *Title IV–E foster care during report period*. Indicate whether a title IV–E foster care maintenance payment was paid on behalf of the child at any point during the report period that is

claimed under title IV–E foster care with a “yes” or “no,” as appropriate. Indicate “yes” if the child has met all eligibility requirements of section 472(a) of the Act and the title IV–E agency has claimed, or intends to claim, Federal reimbursement for foster care maintenance payments made on the child’s behalf during the report period.

(18) *Victim of sex trafficking prior to entering foster care.* Indicate whether the child had been a victim of sex trafficking before the current out-of-home care episode. Indicate “yes” if the child was a victim or “no” if the child had not been a victim.

(i) *Report to Law Enforcement.* If the title IV–E agency indicated “yes” in paragraph (b)(18) of this section, indicate whether a report was made to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate “yes” if a report was made to law enforcement and indicate “no” if no report was made.

(ii) *Date.* If the title IV–E agency indicated “yes” in paragraph (b)(18)(i) of this section, indicate the date that the agency made the report to law enforcement.

(19) *Victim of sex trafficking while in foster care.* Indicate “yes” if the child was a victim of sex trafficking while in foster care at any time during the current six-month report period. Indicate “no” if the child was not a victim while in foster care at any time during the current six-month report period.

(i) *Report to law enforcement.* If the title IV–E agency indicated “yes” in this paragraph (b)(19), indicate whether a report was made to law enforcement for entry into the NCIC database. Indicate “yes” if a report was made to law enforcement and indicate “no” if no report was made.

(ii) *Date.* If the title IV–E agency indicated “yes” in paragraph (b)(19)(i) of this section, indicate the date the agency made the report to law enforcement.

(c) *Parent or legal guardian information.* (1)(i) *Year of birth of first parent or legal guardian.* If applicable, indicate the year of birth of the first parent (biological, legal or adoptive) or legal guardian to the child. To the extent that a child has both a parent and a legal guardian or two different sets of legal parents, the title IV–E agency must report on those who had legal responsibility for the child. We are not seeking information on putative parent(s) in this paragraph. If there is only one parent or legal guardian to the child, that person’s year of birth must be reported here. If the child was

abandoned indicate “abandoned.” Abandoned means that the child was left alone or with others and the identity of the child’s parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(ii) *First parent or legal guardian born in the United States.* Indicate whether the first parent (biological, legal or adoptive) or legal guardian to the child was born in the United States. This must be the same parent or legal guardian whose birth information was reported in paragraph (c)(1)(i) of this section. If the first parent or legal guardian was born in the United States, indicate “yes.” If the first parent or legal guardian was born in a country other than the United States, indicate “no.” If the child was abandoned indicate “abandoned.” Abandoned means that the child was left alone or with others and the identity of the child’s parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.”

(2)(i) *Year of birth of second parent or legal guardian.* If applicable, indicate the year of birth of the second parent (biological, legal or adoptive) or legal guardian to the child. We are not seeking information on putative parent(s) in this paragraph. If the child was abandoned, indicate “abandoned.” Abandoned means that the child was left alone or with others and the identity of the child’s parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” Indicate “not applicable” if there is not another parent or legal guardian.

(ii) *Second parent or legal guardian born in the United States.* Indicate the country of birth for the second parent (biological, legal or adoptive) or legal guardian to the child. This should be the same parent or legal guardian whose birth information was reported in paragraph (c)(2)(i) of this section. If the second parent or legal guardian was born in the United States, indicate “yes.” If the second parent or legal guardian was born in a country other than the United States, indicate “no.” If the child was abandoned, indicate “abandoned.” Abandoned means that the child was left alone or with others and the identity of the child’s parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a “safe haven.” Indicate “not applicable” if there is not another parent or legal guardian.

(3)(i) *Termination of parental rights petition.* Indicate the month, day and year that each petition to terminate the parental rights of a biological, legal and/

or putative parent was filed in court, if applicable. Indicate “deceased” if the parent is deceased.

(ii) *Termination of parental rights.* Enter the month, day and year that the court terminated the parental rights of a biological, legal and/or putative parent, for each petition date reported in paragraph (c)(3)(i) of this section, if applicable. If the parent is deceased, enter the date of death.

(4) *Date of judicial finding of abuse or neglect.* Indicate the month, day and year of the first judicial finding that the child has been subject to child abuse or neglect, if applicable. Indicate “no date” if there is no such finding by the end of the report period.

(d) *Removal information.* (1) *Date of child’s removal.* Indicate the removal date(s) in month, day and year format for each removal of a child who enters the placement and care responsibility of the title IV–E agency.

(i) For a child who is removed and is placed initially in foster care, indicate the date that the title IV–E agency received placement and care responsibility.

(ii) For a child who ran away or whose whereabouts are unknown at the time the child is removed and is placed in the placement and care responsibility of the title IV–E agency, indicate the date that the title IV–E agency received placement and care responsibility.

(iii) For a child who is removed and is placed initially in a non-foster care setting, indicate the date that the child enters foster care as the date of removal.

(2) *Removal transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (d)(1) of this section was entered into the information system.

(3) *Environment at removal.* Indicate the type of environment (household or facility) the child was living in at the time of each removal for each removal reported in paragraph (d)(1) of this section. Indicate “parent household” if the child was living in a household that included one or both of the child’s parents, whether biological, adoptive or legal. Indicate “relative household” if the child was living with a relative(s), the relative(s) is not the child’s legal guardian and neither of the child’s parents were living in the household. Indicate “legal guardian household” if the child was living with a legal guardian(s), the guardian(s) is not the child’s relative and neither of the child’s parents were living in the household. Indicate “justice facility” if the child was in a detention center, jail or other similar setting where the child was detained. Indicate “medical/mental

health facility” if the child was living in a facility such as a medical or psychiatric hospital or residential treatment center. Indicate “other” if the child was living in another situation not so described, such as living independently.

(4) *Authority for placement and care responsibility.* Indicate the title IV–E agency’s authority for placement and care responsibility of the child for each removal reported in paragraph (d)(1) of this section. “Court ordered” means that the court has issued an order that is the basis for the title IV–E agency’s placement and care responsibility. “Voluntary placement agreement” means that an official voluntary placement agreement has been executed between the parent(s), guardian(s) or child age 18 or older and the title IV–E agency. The placement remains voluntary even if a subsequent court order is issued to continue the child in out-of-home care. “Not yet determined” means that a voluntary placement agreement has not been signed or a court order has not been issued. When either a voluntary placement agreement is signed or a court order issued, the record must be updated from “not yet determined” to the appropriate response option to reflect the title IV–E agency’s authority for placement and care responsibility at that time.

(5) *Child and family circumstances at removal.* Indicate all child and family circumstances that were present at the time of the child’s removal and/or related to the child being placed into foster care for each removal reported in paragraph (d)(1) of this section. Indicate whether each circumstance listed in the data elements described in paragraphs (d)(1)(i) through (xxvii) “applies” or “does not apply” for each removal indicated in paragraph (d)(1) of this section.

(i) *Runaway.* The child has left, without authorization, the home or facility where the child was residing.

(ii) *Whereabouts unknown.* The child’s whereabouts are unknown and the title IV–E agency does not consider the child to have run away.

(iii) *Physical abuse.* Alleged or substantiated physical abuse, injury or maltreatment of the child by a person responsible for the child’s welfare.

(iv) *Sexual abuse.* Alleged or substantiated sexual abuse or exploitation of the child by a person who is responsible for the child’s welfare.

(v) *Psychological or emotional abuse.* Alleged or substantiated psychological or emotional abuse, including verbal abuse, of the child by a person who is responsible for the child’s welfare.

(vi) *Neglect.* Alleged or substantiated negligent treatment or maltreatment of the child, including failure to provide adequate food, clothing, shelter, supervision or care by a person who is responsible for the child’s welfare.

(vii) *Medical neglect.* Alleged or substantiated medical neglect caused by a failure to provide for the appropriate health care of the child by a person who is responsible for the child’s welfare, although the person was financially able to do so, or was offered financial or other means to do so.

(viii) *Domestic violence.* Alleged or substantiated physical or emotional abuse between one adult member of the child’s home and a partner or the child and his or her partner if the child is age 18 or older. This does not include alleged or substantiated maltreatment of the child by a person who is responsible for the child’s welfare.

(ix) *Abandonment.* The child was left alone or with others and the parent or legal guardian’s identity is unknown and cannot be ascertained. This includes a child left at a “safe haven.” This category does not apply when the identity of the parent(s) or legal guardian(s) is known.

(x) *Failure to return.* The parent, legal guardian or caretaker did not or has not returned for the child or made his or her whereabouts known. This category does not apply when the identity of the parent, legal guardian or caretaker is unknown.

(xi) *Caretaker’s alcohol abuse.* A parent, legal guardian or other caretaker responsible for the child uses alcohol compulsively that is not of a temporary nature.

(xii) *Caretaker’s drug abuse.* A parent, legal guardian or other caretaker responsible for the child uses drugs compulsively that is not of a temporary nature.

(xiii) *Child alcohol use.* The child uses alcohol.

(xiv) *Child drug use.* The child uses drugs.

(xv) *Prenatal alcohol exposure.* The child has been identified as prenatally exposed to alcohol, resulting in fetal alcohol spectrum disorders such as fetal alcohol exposure, fetal alcohol effect or fetal alcohol syndrome.

(xvi) *Prenatal drug exposure.* The child has been identified as prenatally exposed to drugs.

(xvii) *Diagnosed condition.* The child has a clinical diagnosis by a qualified professional of a health, behavioral or mental health condition, such as one or more of the following: Intellectual disability, emotional disturbance, specific learning disability, hearing, speech or sight impairment, physical

disability or other clinically diagnosed condition.

(xviii) *Inadequate access to mental health services.* The child or child’s family has inadequate resources to access the necessary mental health services outside of the child’s out-of-home care placement.

(xix) *Inadequate access to medical services.* The child or child’s family has inadequate resources to access the necessary medical services outside of the child’s out-of-home care placement.

(xx) *Child behavior problem.* The child’s behavior in his or her school and/or community adversely affects his or her socialization, learning, growth and/or moral development. This includes all child behavior problems, as well as adjudicated and non-adjudicated status or delinquency offenses and convictions.

(xxi) *Death of caretaker.* Existing family stress in caring for the child or an inability to care for the child due to the death of a parent, legal guardian or other caretaker.

(xxii) *Incarceration of caretaker.* The child’s parent, legal guardian or caretaker is temporarily or permanently placed in jail or prison which adversely affects his or her ability to care for the child.

(xxiii) *Caretaker’s significant impairment—physical/emotional.* A physical or emotional illness or disabling condition of the child’s parent, legal guardian or caretaker that adversely limits his or her ability to care for the child.

(xxiv) *Caretaker’s significant impairment—cognitive.* The child’s parent, legal guardian or caretaker has cognitive limitations that impact his or her ability to function in areas of daily life, which adversely affect his or her ability to care for the child. It also may be characterized by a significantly below-average score on a test of mental ability or intelligence.

(xxv) *Inadequate housing.* The child’s or his or her family’s housing is substandard, overcrowded, unsafe or otherwise inadequate which results in it being inappropriate for the child to reside. This circumstance also includes homelessness.

(xxvi) *Voluntary relinquishment for adoption.* The child’s parent has voluntarily relinquished the child by assigning the physical and legal custody of the child to the title IV–E agency, in writing, for the purpose of having the child adopted.

(xxvii) *Child requested placement.* The child, age 18 or older, has requested placement into foster care.

(e) *Living arrangement and provider information.* (1) *Date of living*

arrangement. Indicate the month, day and year representing the first date of placement in each of the child's living arrangements for each out-of-home care episode. Indicate the date that the child was considered by the title IV-E agency as having run away or when his or her whereabouts became unknown. In the case of a child who is already in a living arrangement and remains there when the title IV-E agency receives placement and care responsibility, indicate the date of the VPA or court order providing the title IV-E agency with placement and care responsibility for the child, rather than the date that the child was originally placed in the living arrangement.

(2) *Foster family home.* Indicate whether each of the child's living arrangements is a foster family home, with a "yes" or "no" as appropriate. If the child has run away or the child's whereabouts are unknown, indicate "no." If the title IV-E agency indicates that the child is living in a foster family home, by indicating "yes," the title IV-E agency must complete the data element Foster family home type in paragraph (e)(3) of this section. If the title IV-E agency indicates "no," the title IV-E agency must complete the data element Other living arrangement type in paragraph (e)(4) of this section.

(3) *Foster family home type.* If the title IV-E agency indicated that the child is living in a foster family home in the data element described in paragraph (e)(2), indicate whether each foster family home type listed in the data elements in paragraphs (e)(3)(i) through (e)(3)(vi) of this section applies or does not apply; otherwise the title IV-E agency must leave this data element blank.

(i) *Licensed home.* The child's living arrangement is licensed or approved by the State or Tribal licensing/approval authority.

(ii) *Therapeutic foster family home.* The home provides specialized care and services.

(iii) *Shelter care foster family home.* The home is so designated by the State or Tribal licensing/approval authority, and is designed to provide short-term or transitional care.

Relative foster family home. The foster parent(s) is related to the child by biological, legal or marital connection and the relative foster parent(s) lives in the home as his or her primary residence.

(v) *Pre-adoptive home.* The home is one in which the family and the title IV-E agency have agreed on a plan to adopt the child.

(vi) *Kin foster family home.* The home is one in which there is a kin

relationship as defined by the title IV-E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child's family and the foster parent(s).

(4) *Other living arrangement type.* If the title IV-E agency indicated that the child's living arrangement is other than a foster family home in the data element Foster family home in paragraph (e)(2) of this section, indicate the type of setting; otherwise the title IV-E agency must leave this data element blank. Indicate "group home-family operated" if the child is in a group home that provides 24-hour care in a private family home where the family members are the primary caregivers. Indicate "group home-staff operated" if the child is in a group home that provides 24-hour care for children where the caregiving is provided by shift or rotating staff. Indicate "group home-shelter care" if the child is in a group home that provides 24-hour care which is short-term or transitional in nature, and is designated by the State or Tribal licensing/approval authority to provide shelter care. Indicate "residential treatment center" if the child is in a facility that has the purpose of treating children with mental health or behavioral conditions. Indicate "child care institution" if the child is in a private child care institution, or a public child care institution which accommodates no more than 25 children, and is licensed by the State or Tribal authority responsible for licensing or approving child care institutions. This does not include detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of children who are determined to be delinquent. Indicate "child care institution-shelter care" if the child is in a child care institution as defined above and the institution is designated to provide shelter care by the State or Tribal authority responsible for licensing or approving child care institutions and is short-term or transitional in nature. Indicate "supervised independent living" if the child is living independently in a supervised setting. Indicate "juvenile justice facility" if the child is in a secure facility or institution where alleged or adjudicated juvenile delinquents are housed. Indicate "medical or rehabilitative facility" if the child is in a facility where an individual receives medical or physical health care, such as a hospital. Indicate "psychiatric hospital" if the child is in a facility that provides emotional or psychological health care and is licensed or accredited

as a hospital. Indicate "runaway" if the child has left, without authorization, the home or facility where the child was placed. Indicate "whereabouts unknown" if the child is not in the physical custody of the title IV-E agency or person or institution with whom the child has been placed, the child's whereabouts are unknown and the title IV-E agency does not consider the child to have run away. Indicate "placed at home" if the child is home with the parent(s) or legal guardian(s) in preparation for the title IV-E agency to return the child home permanently.

(5) *Private agency living arrangement.* Indicate the type of contractual relationship with a private agency for each of the child's living arrangements reported in paragraph (e)(1) of this section. Indicate "private agency involvement" if the child is placed in a living arrangement that is either licensed, managed or run by a private agency that is under contract with the title IV-E agency. Indicate "no private agency involvement" if the child's living arrangement is not licensed, managed or run by a private agency.

(6) *Location of living arrangement.* Indicate whether each of the child's living arrangements reported in paragraph (e)(1) of this section is located within or outside of the reporting State or Tribal service area or is outside of the country. Indicate "out-of-State or out-of-Tribal service area" if the child's living arrangement is located outside of the reporting State or Tribal service area. Indicate "in-State or in-Tribal service area" if the child's living arrangement is located within the reporting State or Tribal service area. Indicate "out-of-country" if the child's living arrangement is outside of the United States. Indicate "runaway or whereabouts unknown" if the child has run away from his or her living arrangement or the child's whereabouts are unknown. If the title IV-E agency indicates either "out-of-State or out-of-Tribal service area" or "out-of-country" for the child's living arrangement, the title IV-E agency must complete the data element in paragraph (e)(7) of this section; otherwise the title IV-E agency must leave it blank.

(7) *Jurisdiction or country where child is living.* Indicate the name of the State, Tribal service area, Indian reservation or country where the reporting title IV-E agency placed the child for each living arrangement, if the title IV-E agency indicated either "out-of-State or out-of-Tribal service area" or "out-of-country" in paragraph (e)(6) of this section; otherwise the title IV-E agency must leave it blank.

(8) *Number of siblings in out-of-home care.* Indicate the current total number of siblings, if applicable, that the child has who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Do not include the child who is the subject of this record in the total number. If the child does not have siblings who themselves are in out-of-home care under the placement and care responsibility of the reporting title IV–E agency during the report period, the title IV–E agency must indicate “0” as the number for this data element. If the child does not have any siblings, the title IV–E agency must indicate “not applicable” for this data element. If the title IV–E agency indicates either “0” or “not applicable,” the title IV–E agency must leave the data elements in paragraphs (e)(9) and (e)(10) of this section blank.

(9) *Siblings placed together in out-of-home care.* Indicate the child record number(s) of each sibling(s) who is in out-of-home care under the placement and care responsibility of the reporting title IV–E agency and who is placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child’s living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(10) *Siblings in out-of-home care not living with child.* Indicate the child record number(s) of each sibling(s) who is in out-of-home care under the placement and care responsibility of the reporting title IV–E agency, and who is not placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child’s living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(11) *Number of siblings in an adoption or legal guardianship.* Indicate the total number of siblings, if applicable, that a child has who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or legal guardianship. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Do not

include the child who is the subject of this record in the total number. If the child does not have siblings who exited the placement and care responsibility of the reporting title IV–E agency to a finalized adoption or legal guardianship, the title IV–E agency must indicate “0” as the number for this data element. If the child does not have any siblings, the title IV–E agency must indicate “not applicable” for this data element. If the title IV–E agency indicates either “0” or “not applicable,” the title IV–E agency must leave the data elements in paragraphs (e)(12) and (e)(13) of this section blank.

(12) *Siblings in adoptive/guardianship placements living with child.* Indicate the child record number(s) of each sibling(s) who exited the placement and care responsibility of the title IV–E agency to a finalized adoption or a legal guardianship and who is placed with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child’s living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(13) *Siblings in adoptive/guardianship placements not living with child.* Indicate the child record number(s) of each sibling(s) who exited the placement and care responsibility of the title IV–E agency to a finalized adoption or a legal guardianship and who is not living with the child in the same living arrangement at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child’s living arrangement is in or out of the State or Tribal service area. Do not include the child record number for the child who is the subject of this record.

(14) *Number of children living with the minor parent.* Indicate the number of the minor parent’s children living with him or her in the same living arrangement if the title IV–E agency indicated that the minor parent has children in paragraph (b)(15) of this section. Report this information for each living arrangement. Do not include any child(ren) of the minor parent who is in out-of-home care and placed separately from his or her parent. If the minor parent does not have any children, the title IV–E agency must leave this data element blank.

(15) *Marital status of the foster parent(s).* Indicate the marital status of

the child’s foster parent(s) for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate “married couple” if the foster parents are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Indicate “unmarried couple” if the foster parents are living together as a couple, but are not united in matrimony according to applicable laws. Indicate “separated” if the foster parent is legally separated or is living apart from his or her spouse. Indicate “single female” if the foster parent is a female who is not married and is not living with another individual as part of a couple. Indicate “single male” if the foster parent is a male who is not married and is not living with another individual as part of a couple. If the response is either “married couple” or “unmarried couple,” the title IV–E agency must complete the data elements for the second foster parent in paragraphs (e)(20) through (e)(22) of this section; otherwise the title IV–E agency must leave those data elements blank.

(16) *Child’s relationships to the foster parent(s).* Indicate the type of relationship between the child and his or her foster parent(s), for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. Indicate “paternal grandparent(s)” if the foster parent(s) is the child’s paternal grandparent (by biological, legal or marital connection). Indicate “maternal grandparent(s)” if the foster parent(s) is the child’s maternal grandparent (by biological, legal or marital connection). Indicate “other paternal relative(s)” if the foster parent(s) is the child’s paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate “other maternal relative(s)” if the foster parent(s) is the child’s maternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin. Indicate “sibling(s)” if the foster parent(s) is a brother or sister of the child, either biologically, legally or by marriage. Indicate “non-relative(s)” if the foster parent(s) is not related to the child (by biological, legal or marital connection). Indicate “kin” if the foster parent(s) has kin relationship to the child as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child’s family and the foster parent(s).

(17) *Year of birth for first foster parent.* Indicate the year of birth for the

first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section.

(18) *Race of first foster parent.* Indicate the race of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (e)(18)(i) through (vii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The first foster parent has declined to identify a race.

(19) *Hispanic or Latino ethnicity of first foster parent.* Indicate the Hispanic or Latino ethnicity of the first foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the first foster parent does not know his or her ethnicity indicate "unknown." If the individual

refuses to identify his or her ethnicity, indicate "declined."

(20) *Year of birth for second foster parent.* Indicate the birth year of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. The title IV–E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(15) of this section.

(21) *Race of second foster parent.* Indicate the race of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated in paragraph (e)(3) of this section, if applicable. In general, an individual's race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (e)(21)(i) through (vii) of this section applies with a "yes" or "no." The title IV–E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(15) of this section.

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America) and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The second foster parent does not know his or her race, or at least one race.

(vii) *Race—declined.* The second foster parent has declined to identify a race.

(22) *Hispanic or Latino ethnicity of second foster parent.* Indicate the Hispanic or Latino ethnicity of the second foster parent for each foster family home living arrangement in which the child is placed, as indicated

in paragraph (e)(3) of this section, if applicable. In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second foster parent does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined." The title IV–E agency must leave this data element blank if there is no second foster parent according to paragraph (e)(15) of this section.

(23) *Sources of Federal assistance in living arrangement.* Indicate in the data elements described in paragraphs (e)(23)(i) through (e)(23)(viii) of this section if the identified source of Federal assistance "applies" or "does not apply" on the last day of the child's placement in each living arrangement or on the last day of the report period if the child's living arrangement is ongoing, for each living arrangement as indicated in paragraph (e)(1) of this section. If the title IV–E agency indicated "applies" in paragraph (e)(23)(i), (e)(23)(ii), or (e)(23)(iii), the title IV–E agency must complete the data element in paragraph (e)(24) of this section; otherwise the title IV–E agency must leave it blank.

(i) *Title IV–E foster care.* The child is determined eligible for title IV–E foster care maintenance payments.

(ii) *Title IV–E adoption subsidy.* The child is determined eligible for a title IV–E adoption assistance subsidy.

(iii) *Title IV–E guardianship assistance.* The child is determined eligible for a title IV–E guardianship assistance subsidy.

(iv) *Title IV–A TANF.* The child is living with relatives who are receiving a Temporary Assistance for Needy Families (TANF) cash assistance payment on behalf of the child.

(v) *Title IV–B.* The child's living arrangement is supported by funds under title IV–B of the Act.

(vi) *SSBG.* The child's living arrangement is supported by funds under title XX of the Act.

(vii) *Chafee Foster Care Independence Program.* The child is living independently and is supported by funds under the John F. Chafee Foster Care Independence Program.

(viii) *Other federal source.* The child's living arrangement is supported through other Federal funds not indicated above.

(24) *Amount of payment.* Indicate the total (title IV–E agency and Federal share) per diem amount of the foster care maintenance payment, adoption

assistance subsidy, or guardianship assistance subsidy that the child is eligible for or paid to the foster parent(s) on behalf of the title IV–E eligible child on the last day of each living arrangement or the last day of the report period, if the child’s living arrangement is ongoing. The title IV–E agency must complete this data element for each living arrangement as indicated in paragraph (e)(1) of this section if the title IV–E agency indicated “applies” in paragraph (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) for that living arrangement. If the title IV–E agency indicated “applies” in paragraph (e)(23)(i), (e)(23)(ii), or (e)(23)(iii) of this section and no payment was made, the title IV–E agency must indicate “0” for this data element.

(25) *Services provided in other living arrangements.* If the title IV–E agency indicated that the child’s living arrangement is other living arrangement type as indicated in paragraph (e)(4) of this section, indicate the type of services, if any, that is provided by this setting. If there are no services provided by the agency setting, the title IV–E agency must indicate “no.” If the title IV–E agency indicated in paragraph (e)(2) of this section that the child is living in a foster family home, leave this data element blank. If there are services provided, the title IV–E agency must indicate “yes” in paragraph (e)(25) and then indicate whether each paragraphs (e)(25)(i) through (e)(25)(iv) of this section “applies” or does not apply.”

(i) Specialized education.

(ii) Treatment.

(iii) Counseling.

(iv) Other services.

(f) *Permanency planning.* (1)

Permanency plan. Indicate each permanency plan established for the child. Indicate “reunify with parent(s) or legal guardian(s)” if the plan is to keep the child in out-of-home care for a limited time and the title IV–E agency is to work with the child’s parent(s) or legal guardian(s) to establish a stable family environment. Indicate “live with other relatives” if the plan is for the child to live permanently with a relative(s) (by biological, legal or marital connection) who is not the child’s parent(s) or legal guardian(s). Indicate “adoption” if the plan is to facilitate the child’s adoption by relatives, foster parents, kin or other unrelated individuals. Indicate “guardianship” if the plan is to establish a new legal guardianship. Indicate “planned permanent living arrangement” if the plan is for the child to remain in foster care until the title IV–E agency’s placement and care responsibility ends. The title IV–E agency must only select

“planned permanent living arrangement” consistent with the requirements in section 475(5)(C)(i) of the Act. Indicate “permanency plan not established” if a permanency plan has not yet been established.

(2) *Date of permanency plan.* Indicate the month, day and year that each permanency plan(s) was established during each out-of-home care episode.

(3) *Concurrent permanency planning.* Indicate whether the title IV–E agency has identified a concurrent permanency plan for the child. Indicate “concurrent permanency plan,” if there is a concurrent permanency plan for the child, “no concurrent permanency plan” if the title IV–E agency uses concurrent permanency planning but does not have a concurrent permanency plan for the child or “not applicable” if the title IV–E agency does not engage in concurrent permanency planning. If the title IV–E agency indicates that the child has a concurrent permanency plan, the title IV–E agency must complete the data elements in paragraphs (f)(3)(i) and (ii) of this section; otherwise the title IV–E agency must leave these data elements blank.

(i) *Concurrent permanency plan.* The title IV–E agency must indicate the type of plan if the child has a concurrent permanency plan as indicated in paragraph (f)(3) of this section. Indicate “live with other relatives” if the plan is for the child to live permanently with a relative or relatives (by biological, legal or marital connection) who is not the child’s parent(s) or legal guardian(s). Indicate “adoption” if the plan is to facilitate the child’s adoption by a relative(s), foster parents, kin or other unrelated individuals. Indicate “guardianship” if the plan is to establish a new legal guardianship. Indicate “planned permanent living arrangement” if the plan is for the child to remain in foster care until the title IV–E agency’s placement and care responsibility ends. The title IV–E agency must only select “planned permanent living arrangement” consistent with the requirements in section 475(5)(C)(i) of the Act.

(ii) *Date of concurrent permanency plan.* Indicate the month, day and year that each concurrent plan was established if the title IV–E agency indicated that the child has a concurrent permanency plan in paragraph (f)(3) of this section.

(4) *Reason for permanency plan change.* Indicate whether the child’s permanency plan changed during the report period and the reason(s) for the change in the child’s permanency plan. Indicate “yes” if the child’s permanency plan changed during the report period.

Indicate “no” if the child’s permanency plan did not change during the report period. If the title IV–E agency indicates “yes,” the title IV–E agency must indicate whether each reason described in paragraphs (f)(4)(i) through (viii) of this section “applies” or “does not apply.” If there is no change in the child’s permanency plan, leave paragraphs (f)(4)(i) through (viii) of this section blank.

(i) *Not engaged in services.* The child’s parent(s) or legal guardian(s) has not engaged in services or otherwise taken the steps necessary to reunify with the child.

(ii) *Lack of progress in reunification plan.* The child’s parent(s) or legal guardian(s) is not meeting the requirements of the case plan for reunification consistently by demonstrating needed changes in behavior to provide a safe family home for the child or otherwise taking the steps necessary to reunify with the child.

(iii) *Unable/incapable of caring for child permanently.* The child’s parent(s) or legal guardian(s) is unable or incapable of permanently caring for the child, due to permanent, long-term or other extenuating circumstances, such as abandonment of the child by the child’s parent(s) or legal guardian(s), death of the child’s parent(s) or legal guardian(s), long-term incarceration of the child’s parent(s) or legal guardian(s) or if the rights of the child’s parent(s) have been terminated or the legal guardianship was dissolved.

(iv) *Reunification appropriate.* The child’s parent(s) or legal guardian(s) is able to permanently and safely care for the child.

(v) *Child preference.* An older child stated his or her preference for the change in the permanency plan.

(vi) *Adoption/guardianship appropriate.* Permanency for the child through adoption or legal guardianship is a more appropriate permanency plan.

(vii) *Current foster care provider committed to permanency.* The child’s current foster care provider, whether a relative, foster parent, kin or other individual, expressed a commitment to care permanently for the child and the permanency plan of adoption, reunification or legal guardianship has been ruled out by the title IV–E agency.

(viii) *Emancipation likely.*

Permanency for the child through reunification, adoption or legal guardianship is not an appropriate permanency plan.

(5) *Date of periodic review.* Enter the month, day and year of each periodic review, either by a court or by administrative review (as defined in

section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act.

(6) *Date of permanency hearing.* Enter the month, day and year of each permanency hearing held by a court or an administrative body appointed or approved by the court that meets the requirements of section 475(5)(C) of the Act.

(7) *Juvenile justice.* Indicate whether the child was found to be a status offender or adjudicated delinquent by a juvenile judge or court at any time during the report period. If the child was not found to be a status offender or adjudicated delinquent during the report period indicate “not applicable.” If the child was involved with the juvenile justice system, indicate the type of involvement. Indicate “status offender” if the child has been found to be a status offender. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate “adjudicated delinquent” if the child has been adjudicated delinquent. Indicate “both status offender and delinquent” if the child has been found to be a status offender and adjudicated delinquent during the report period.

(8) *Caseworker visit dates.* Enter each date in which a caseworker had an in-person, face-to-face visit with the child consistent with section 422(b)(17) of the Act. Indicate the month, day and year of each visit.

(9) *Caseworker visit location.* Indicate the location of each in-person, face-to-face visit between the caseworker and the child. Indicate “child’s residence” if the visit occurred at the location where the child is currently residing, such as the current foster care provider’s home, child care institution or facility. Indicate “other location” if the visit occurred at any location other than where the child currently resides, such as the child’s school, a court, a child welfare office or in the larger community.

(10) *Caseworker visit purpose.* Indicate the primary purpose of each in-person, face-to-face visit between the caseworker and the child. Indicate “assessment or case planning” if the purpose of the visit was to assess the child’s situation, whether through a formal assessment or continuous assessment or if the purpose was to conduct other case planning activities for the child’s safety, permanency or well-being. Indicate “placement of the child” if the purpose of the visit was to place the child in foster care or another setting. Indicate “transportation” if the purpose of the visit was to transport the child to a visit or appointment. Indicate “court hearing” if the purpose of the

visit was to attend a court hearing related to the child’s case.

(11) *Caseworker visit alone with child.* Indicate if the caseworker visited the child alone at any time during the visit for each in-person, face-to-face visit between the caseworker and the child. Indicate “yes” or “no,” as appropriate.

(12) *Transition plan.* Indicate whether a child has a transition plan that meets the requirements of section 475(5)(H) of the Act. Indicate “yes” or “no” or “not applicable.” If the title IV–E agency indicates “yes,” the title IV–E agency must indicate the provisions that are included in the child’s transition plan as described in paragraphs (f)(12)(i) through (vi) of this section by indicating if a provision “applies” or “does not apply.” If the title IV–E agency indicates “no” or “not applicable,” leave paragraphs (f)(12)(i) through (vi) of this section blank.

(i) *Housing.* Specific options on housing are included in the child’s transition plan.

(ii) *Health insurance.* Specific options on health insurance are included in the child’s transition plan.

(iii) *Health care treatment decisions.* Information is included in the child’s transition plan on the importance of designating another individual to make health care treatment decisions on behalf of the child, if child is unable to make such decisions, and the child’s transition plan provides the child with the option to execute a health care power of attorney, health care proxy or other similar document.

(iv) *Education.* Specific options on education are included in the child’s transition plan.

(v) *Mentoring and continuing support.* Specific options on mentoring and continuing support services are included in the child’s transition plan.

(vi) *Workforce support and employment services.* Specific options on work force supports and employment services are included in the child’s transition plan.

(13) *Date of transition plan.* Indicate the month, day and year of the child’s transition plan, if the title IV–E agency indicated in paragraph (f)(12) of this section that the child has a transition plan that meets the requirements of section 475(5)(H) of the Act; otherwise leave this paragraph blank.

(g) *General exit information.* Provide exit information for each out-of-home care episode. An exit occurs when the title IV–E agency’s placement and care responsibility of the child ends.

(1) *Date of exit.* Indicate the month, day and year for each of the child’s exits from out-of-home care. An exit occurs when the title IV–E agency’s placement

and care responsibility of the child ends. If the child has not exited out-of-home care the title IV–E agency must leave this data element blank. If this data element is applicable, the data elements in paragraphs (g)(2) and (g)(3) of this section must have a response.

(2) *Exit transaction date.* A non-modifiable, computer-generated date which accurately indicates the month, day and year each response to paragraph (g)(1) of this section was entered into the information system.

(3) *Exit reason.* Indicate the reason for each of the child’s exits from out-of-home care. Indicate “not applicable” if the child has not exited out-of-home care. Indicate “reunify with parent(s)/ legal guardian(s)” if the child was returned to his or her parent(s) or legal guardian(s) and the title IV–E agency no longer has placement and care responsibility. Indicate “live with other relatives” if the child exited to live with a relative (related by a biological, legal or marital connection) other than his or her parent(s) or legal guardian(s). Indicate “adoption” if the child was legally adopted. Indicate “emancipation” if the child exited care due to age. Indicate “guardianship” if the child exited due to a legal guardianship of the child. Indicate “runaway or whereabouts unknown” if the child ran away or the child’s whereabouts were unknown at the time that the title IV–E agency’s placement and care responsibility ends. Indicate “death of child” if the child died while in out-of-home care. Indicate “transfer to another agency” if placement and care responsibility for the child was transferred to another agency, either within or outside of the reporting State or Tribal service area, but not if the transfer is to a public agency, Indian Tribe, Tribal organization or consortium that has an agreement with a title IV–E agency under section 472(a)(2)(B) of the Act. Indicate “other” if the child exited due to marriage, confinement to jail or prison or for a reason not described.

(4) *Transfer to another agency.* If the title IV–E agency indicated the child was transferred to another agency in the data element Exit reason described in paragraph (g)(3) of this section, indicate the type of agency that received placement and care responsibility for the child from the following options: “State title IV–E agency,” “Tribal title IV–E agency,” “Indian Tribe or Tribal agency (non-IV–E),” “juvenile justice agency,” “mental health agency,” “other public agency” or “private agency.”

(h) *Exit to adoption and guardianship information.* Report information in paragraphs (h)(1) through (11) only if the title IV–E agency indicated the child

exited to adoption or legal guardianship in the data element Exit reason described in paragraph (g)(3) of this section. Otherwise the title IV–E agency must leave these data elements blank.

(1) *Marital status of the adoptive parent(s) or guardian(s)*. Indicate the marital status of the adoptive parent(s) or legal guardian(s). Indicate “married couple” if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws. Include common law marriage, where provided by applicable laws. Complete this data element even if only one person of the married or common law married couple is the adoptive parent or legal guardian of the child. Indicate “unmarried couple” if the adoptive parents or guardians are living together as a couple, but are not united in matrimony according to applicable laws. Complete this data element even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate “single female” if the adoptive parent or legal guardian is a female who is not married and is not living with another individual as part of a couple. Indicate “single male” if the adoptive parent or legal guardian is a male who is not married and is not living with another individual as part of a couple. If the response is “married couple” or “unmarried couple,” the title IV–E agency also must complete the data elements for the second adoptive parent or second legal guardian in paragraphs (h)(6) through (8) of this section; otherwise the title IV–E agency must leave these data elements blank.

(2) *Child’s relationship to the adoptive parent(s) or guardian(s)*. Indicate the type of relationship, kinship or otherwise, between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in the data elements described in paragraphs (h)(2)(i) through (viii) of this section “applies” or “does not apply.”

(i) *Paternal grandparent(s)*. The adoptive parent(s) or legal guardian(s) is the child’s paternal grandparent(s), by biological, legal or marital connection.

(ii) *Maternal grandparent(s)*. The adoptive parent(s) or legal guardian(s) is the child’s maternal grandparent(s), by biological, legal or marital connection.

(iii) *Other paternal relative(s)*. The adoptive parent(s) or legal guardian(s) is the child’s paternal relative (by biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin.

(iv) *Other maternal relative(s)*. The adoptive parent(s) or legal guardian(s) is the child’s maternal relative (by

biological, legal or marital connection) other than a grandparent, such as an aunt, uncle or cousin.

(v) *Sibling(s)*. The adoptive parent or legal guardian is a brother or sister of the child, either biologically, legally or by marriage.

(vi) *Kin*. The adoptive parent(s) or legal guardian(s) has a kin relationship with the child, as defined by the title IV–E agency, such as one where there is a psychological, cultural or emotional relationship between the child or the child’s family and the adoptive parent(s) or legal guardian(s).

(vii) *Non-relative(s)*. The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.

(viii) *Foster parent(s)*. The adoptive parent(s) or legal guardian(s) was the child’s foster parent(s).

(3) *Date of birth of first adoptive parent or guardian*. Indicate the month, day and year of the birth of the first adoptive parent or legal guardian.

(4) *Race of first adoptive parent or guardian*. In general, an individual’s race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (h)(4)(i) through (vii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White*. A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown*. The first adoptive parent or legal guardian does not know his or her race, or at least one race.

(vii) *Race—Declined*. The first adoptive parent, or legal guardian has declined to identify a race.

(5) *Hispanic or Latino ethnicity of first adoptive parent or guardian*. In general, an individual’s ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a “yes” or “no.” If the first adoptive parent or legal guardian does not know his or her ethnicity, indicate “unknown.” If the individual refuses to identify his or her ethnicity, indicate “declined.”

(6) *Date of birth of second adoptive parent, guardian, or other member of the couple*. Indicate the month, day and year of the date of birth of the second adoptive parent, legal guardian, or other member of the couple. The title IV–E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(7) *Race of second adoptive parent, guardian, or other member of the couple*. In general, an individual’s race is determined by the individual. Indicate whether each race category listed in the data elements described in paragraphs (h)(7)(i) through (vii) of this section applies with a “yes” or “no.” The title IV–E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(i) *Race—American Indian or Alaska Native*. An American Indian or Alaska Native individual has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian*. An Asian individual has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American*. A Black or African American individual has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander*. A Native Hawaiian or Other Pacific Islander individual has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White*. A White individual has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The second adoptive parent, legal guardian, or other member of the couple does not know his or her race, or at least one race.

(vii) *Race—Declined.* The second adoptive parent, legal guardian, or other member of the couple has declined to identify a race.

(8) *Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.* In general, an individual's ethnicity is determined by the individual. An individual is of Hispanic or Latino ethnicity if the individual is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the second adoptive parent, legal guardian, or other member of the couple does not know his or her ethnicity, indicate "unknown." If the individual refuses to identify his or her ethnicity, indicate "declined." The title IV-E agency must leave this data element blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(9) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the State or Tribal service area, outside of the State or Tribal service area or into another country for adoption or legal guardianship. Indicate "interjurisdictional adoption or guardianship" if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the State or Tribal service area but within the United States of America. Indicate "intercountry adoption or guardianship" if the reporting title IV-E agency placed the child for adoption or legal guardianship outside of the United States of America. Indicate "intrajurisdictional adoption or guardianship" if the reporting title IV-E agency placed the child within the same State or Tribal service area as the one with placing responsibility. If the title IV-E agency indicates either "interjurisdictional adoption or guardianship" or "intercountry adoption or guardianship" for the child's adoption or legal guardianship, the title IV-E agency must complete the data element in paragraph (h)(10) of this section; otherwise the title IV-E agency must leave it blank.

(10) *Interjurisdictional adoption or guardianship jurisdiction.* Indicate the name of the State, Tribal service area, Indian reservation or country where the reporting title IV-E agency placed the child for adoption or legal guardianship. The title IV-E agency must complete

this data element only if the title IV-E agency indicated either "interjurisdictional adoption or guardianship" or "intercountry adoption or guardianship" in paragraph (h)(9) of this section; otherwise the title IV-E agency must leave it blank.

(11) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate "title IV-E agency" if the reporting title IV-E agency placed the child for adoption or legal guardianship. Indicate "private agency under agreement" if a private agency placed the child for adoption or legal guardianship through an agreement with the reporting title IV-E agency. Indicate "Indian Tribe under contract/agreement" if an Indian Tribe, Tribal organization or consortia placed the child for adoption or legal guardianship through a contract or an agreement with the reporting title IV-E agency.

§ 1355.44 Adoption and Guardianship Assistance Data File Elements.

A title IV-E agency must collect and report the following information for each child in the adoption and guardianship assistance reporting population, if applicable based on § 1355.42(c).

(a) *General information.* (1) *Title IV-E agency.* Indicate the name of the title IV-E agency responsible for submitting the AFCARS data to ACF.

(2) *Report date.* The report date corresponds to the end of the current report period. Indicate the last month and the year of the report period.

(3) *Child record number.* The child record number is the encrypted, unique person identification number. If a child was previously in out-of-home care, this number must be the same as the child record number provided in § 1355.43(a)(4) of the out-of-home care data file. The child record number must remain the same for the child, no matter where the child lives and across all report periods. The title IV-E agency must apply and retain the same encryption routine or method for the child record number across all report periods. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child demographics.* (1)(i) *Child's date of birth.* Indicate the month, day and year of the child's birth.

(ii) *Child born in the United States.* Indicate whether the child was born in the United States. If the child was born in the United States, indicate "yes." If the child was born in a country other than the United States, indicate "no."

(2) *Child's sex.* Indicate whether the child is "male" or "female," as appropriate.

(3) *Child's race.* In general, a child's race is determined by the child or the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(2)(i) through (b)(2)(viii) of this section applies with a "yes" or "no."

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains Tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A White child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—Unknown.* The child or parent or legal guardian does not know the race, or at least one race of the child.

(vii) *Race—Abandoned.* The child's race is unknown because the child has been abandoned. Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—Declined.* The child or parent or legal guardian has declined to identify a race.

(4) *Hispanic or Latino Ethnicity.* In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent or legal guardian does not know or cannot communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child was abandoned indicate "abandoned." Abandoned means that the child was

left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."

(c) *Adoption and guardianship assistance arrangement and agreement information.* (1) *Assistance agreement type.* Indicate whether the child is or was in a finalized adoption with a title IV-E adoption assistance agreement or in a legal guardianship with a title IV-E guardianship assistance agreement, pursuant to sections 473(a) and 473(d) of the Act, in effect during the report period. Indicate "title IV-E adoption assistance agreement" or "title IV-E guardianship assistance agreement," as appropriate.

(2) *Adoption or guardianship subsidy amount.* Indicate the per diem dollar amount of the financial subsidy paid to the adoptive parent(s) or legal guardian(s) on behalf of the child during the last month of the current report period, if any. The title IV-E agency must indicate "0" if a financial subsidy was not paid during the last month of the report period.

(3) *Nonrecurring adoption or guardianship costs.* Indicate whether the IV-E agency made payments on behalf of the adoptive parent(s) or legal guardian(s) for nonrecurring costs, per sections 473(a)(6) and 473(d) of the Act, during the current report period. Indicate "costs paid" or "no costs paid," as appropriate.

(4) *Nonrecurring adoption or guardianship cost amount.* Indicate the total dollar amount of the payment the title IV-E agency made on behalf of the adoptive parent(s) or guardian(s) for the nonrecurring costs during the report period if the title IV-E agency reported that these costs were paid in the data element Nonrecurring adoption or guardianship costs described in paragraph (3); otherwise the title IV-E agency must leave this data element blank.

(5) *Adoption or guardianship finalization date.* Indicate the month, day and year that the child's adoption was finalized or the guardianship became legalized.

(6) *Adoption or guardianship placing agency.* Indicate the agency that placed the child for adoption or legal guardianship. Indicate "title IV-E agency" if the reporting title IV-E agency placed the child for adoption or legal guardianship. Indicate "private agency under a contract/agreement" if a private agency placed the child for adoption or legal guardianship through

a contract or agreement with the reporting title IV-E agency. Indicate "Indian Tribe" if an Indian Tribe, Tribal organization or consortium placed the child for adoption or legal guardianship. Indicate "private agency" if a private agency had legal custody of the child or on behalf of a parent placed the child for adoption or legal guardianship. If the title IV-E agency indicates either "Indian Tribe" or "private agency," the title IV-E agency must complete paragraphs (c)(7) and (8) of this section; otherwise the title IV-E agency must leave blank.

(7) *Inter/Intrajurisdictional adoption or guardianship.* Indicate whether the child was placed within the State or Tribal service area or in another State or Tribal service area for adoption or legal guardianship. Indicate "interjurisdictional adoption or guardianship" if the title IV-E agency entered into a title IV-E adoption or guardianship assistance agreement with an adoptive parent(s) or a guardian(s) who lives outside of the reporting State or Tribal service area. Indicate "intrajurisdictional adoption or guardianship" if the title IV-E agency entered into a title IV-E adoption or guardianship assistance agreement with an adoptive parent(s) or a guardian(s) who lives in the reporting State or Tribal service area.

(8) *Interjurisdictional adoption or guardianship jurisdiction.* Indicate the name of the State, Tribal service area or Indian reservation in which the child was placed for adoption or legal guardianship, if the title IV-E agency indicated "interjurisdictional adoption or guardianship" in paragraph (c)(7) of this section; otherwise the title IV-E agency must leave this paragraph blank.

(9) *Number of siblings.* Indicate the number of siblings that a child has that, at any point during the report period, are either: in out-of-home care or have a finalized adoption or legal guardianship and are under a title IV-E adoption or guardianship assistance agreement. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Do not include the child who is the subject of this record in the number. If the child does not have siblings that are in out-of-home care or under a title IV-E adoption or guardianship assistance agreement, the title IV-E agency must indicate "0" as the number for this data element. If a child does not have any siblings, the title IV-E agency must indicate "not applicable" for this data element.

(10) *Siblings in out-of-home care.* Indicate the child record number(s) of siblings who are in out-of-home care

and are placed in the child's adoptive or guardianship home at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child is living in or out-of-State or Tribal service area. Do not include the record number for the child who is the subject of this record. If the child is not residing with any siblings who are in out-of-home care, the title IV-E agency must leave this data element blank.

(11) *Siblings in adoption/guardianship.* Indicate the child record number(s) of siblings who also have a finalized adoption or legal guardianship, are under a title IV-E adoption or guardianship assistance agreement and are living with the child at any point during the report period. A sibling to the child is his or her brother or sister by biological, legal or marital connection. Report this information whether the child is living in or out-of-State or Tribal service area. Do not include the record number for the child who is the subject of this record. If the child does not have any siblings in the adoptive or guardianship home who also have a finalized adoption or legal guardianship and are under a title IV-E adoption or guardianship assistance agreement, the title IV-E agency must leave this data element blank.

(12) *Agreement termination date.* If the title IV-E agency terminated the adoption assistance or guardianship assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement terminated or expired; otherwise leave this data element blank.

§ 1355.45 Compliance.

(a) *Files subject to compliance.* ACF will evaluate the out-of-home care and adoption and guardianship assistance data files that a title IV-E agency submits to determine whether the data complies with the requirements of § 1355.42 and the data file submission and data quality standards described in paragraphs (c) and (d) of this section. ACF will exempt records related to a child in either data file whose 18th birthday occurred in a prior report period and will exempt records relating to a child in the adoption and guardianship assistance data file who is in a title IV-E guardianship from a compliance determination as described in paragraph (e) of this section.

(b) *Errors.* ACF will utilize the error definitions in paragraphs (b)(1) through (b)(5) of this section to assess a title IV-E agency's out-of-home care and adoption and guardianship assistance

data files. This assessment of errors will help ACF to determine if the title IV–E agency's submitted data files meet the data file submission and data quality standards outlined in paragraphs (c) and (d) of this section. ACF will develop and issue error specifications.

(1) *Missing data.* Missing data refers to instances in which a data element has a blank or otherwise missing response, when such a response is not a valid option as described in §§ 1355.43 or 1355.44.

(2) *Invalid data.* Invalid data refers to instances in which a data element contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in §§ 1355.43 or 1355.44.

(3) *Internally inconsistent data.* Internally inconsistent data refers to instances in which a data element fails an internal consistency check designed to validate the logical relationship between data elements within each record. This assessment will identify all data elements involved in a particular check as in error.

(4) *Cross-file errors.* A cross-file error occurs when a cross-file check determines that a response option for a data element recurs across the records in either the out-of-home care data file or adoption and guardianship assistance data file beyond a specified acceptable threshold.

(5) *Tardy transactions.* Tardy transactions are instances in which the removal transaction date or exit transaction date described in § 1355.43(d)(2) and (g)(2) respectively, are entered into the title IV–E agency's information system more than 30 days after the event.

(c) *Data file standards.* To be in compliance with the AFCARS requirements the title IV–E agency must submit a data file in accordance with the data file standards described in paragraphs (c)(1) through (3) of this section.

(1) *Timely submission.* ACF must receive the data files on or before the reporting deadline described in § 1355.42(a).

(2) *Proper format.* The data files must meet the technical standards issued by ACF for data file construction and transmission. In addition, each record subject to compliance standards within the data file must have the data elements described in §§ 1355.43(a)(1) through (a)(4), 1355.43(b)(1)(i) and

(b)(2), 1355.44(a)(1) through (a)(3) and 1355.44(b)(1)(i) and (b)(2) be 100 percent free of missing data, invalid data and internally inconsistent data. ACF will not process a title IV–E agency's data file that does not meet the proper format standard.

(3) *Acceptable cross-file.* The data files must be free of cross-file errors that exceed the acceptable thresholds, as defined by ACF.

(d) *Data quality standards.* To be in compliance with the AFCARS requirements, the title IV–E agency must submit a data file that has no more than 10 percent total of missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records. These standards are in addition to the formatting standards described in paragraph (c)(2) of this section.

(e) *Compliance determination and corrected data.* (1) ACF will first determine whether the title IV–E agency's out-of-home care data file and adoption and guardianship assistance data file meets the data file standards in paragraph (c) of this section. Compliance is determined separately for each data file.

(2) If each data file meets the data file standards, ACF will then determine whether each data file meets the data quality standards in paragraph (d) of this section. For every data element, we will divide the total number of applicable records in error (numerator) by the total number of applicable records (denominator), to determine whether the title IV–E agency has met the applicable data quality standards.

(3) In general, a title IV–E agency that has not met either the data file standards or data quality standards must submit a corrected data file(s) no later than when data is due for the subsequent six month report period (*i.e.*, by April 30 and October 30), as applicable. ACF will determine that the corrected data file(s) is in compliance if it meets the data file and data standards in paragraphs (c) and (d) of this section. *Exception:* If ACF determines initially that the title IV–E agency's data file has not met the data quality standard related to tardy transactions, ACF will determine compliance with regard to the transaction dates only in the out-of-home care data file submitted for the subsequent report period.

(f) *Noncompliance.* If the title IV–E agency does not submit a corrected data file, or submits a corrected data file that

fails to meet the compliance standards in paragraphs (c) and (d) of this section, ACF will notify the title IV–E agency of such and apply penalties as provided in § 1355.46.

(g) *Other assessments.* ACF may use other monitoring tools or assessment procedures to determine whether the title IV–E agency is meeting all of the requirements of §§ 1355.41 through 1355.44.

§ 1355.46 Penalties.

(a) *Federal funds subject to a penalty.* The funds that are subject to a penalty are the title IV–E agency's claims for title IV–E foster care administration and training for the quarter in which the title IV–E agency is required to submit the data files. For data files due on April 30, ACF will assess the penalty based on the title IV–E agency's claims for the third quarter of the Federal fiscal year. For data files due on October 30, ACF will assess the penalty based on the title IV–E agency's claims for the first quarter of the Federal fiscal year.

(b) *Penalty amounts.* ACF will assess penalties in the following amounts:

(1) *First six month period.* ACF will assess a penalty in the amount of one sixth of one percent ($\frac{1}{6}$ of 1%) of the funds described in paragraph (a) of this section for the first six month period in which the title IV–E agency's submitted corrected data file does not comply with § 1355.45.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of one fourth of one percent ($\frac{1}{4}$ of 1%) of the funds described in paragraph (a) of this section for each subsequent six month period in which the title IV–E agency continues to be out of compliance.

(c) *Penalty reduction from grant.* ACF will offset the title IV–E agency's title IV–E foster care grant award in the amount of the penalty from the title IV–E agency's claims following the title IV–E agency notification of ACF's final determination of noncompliance.

(d) *Appeals.* The title IV–E agency may appeal ACF's final determination of noncompliance to the HHS Departmental Appeals Board pursuant to 45 CFR part 16.

Appendices A through E to Part 1355 [Removed]

■ 4. Remove Appendices A through E to Part 1355.

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