

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: Final rule.

SUMMARY: The Social Security Act (the Act) requires that ACF regulate a national data collection system that provides comprehensive demographic and case-specific information on children who are in foster care and adopted. This final rule replaces existing Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations and the appendices to require title IV-E agencies to collect and report data to ACF on children in out-of-home care, and who exit out-of-home care to adoption or legal guardianship, children in out-of-home care who are covered by the Indian Child Welfare Act, and children who are covered by a title IV-E adoption or guardianship assistance agreement.

DATES: This rule is effective on January 13, 2017 except for the removal of § 1355.40 (amendatory instruction 3) and Appendices A through E to Part 1355 (amendatory instruction 5), which are effective as of October 1, 2019.

FOR FURTHER INFORMATION CONTACT: Kathleen McHugh, Director, Policy Division, Children's Bureau, 330 C Street, SW., Washington, DC 20201. Email address: cbcomments@acf.hhs.gov. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8:00 a.m. and 7:00 p.m. Eastern Time.

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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 final rule.

(1) Purpose of the AFCARS Final Rule

(a) The need for the regulatory action and how the action will meet that need: This rule finalizes AFCARS revisions proposed in a Notice of Proposed Rulemaking on February 9, 2015 (80 FR 7132, hereafter referred to as the 2015 NPRM) and in a Supplemental Notice of Proposed Rulemaking on April 7, 2016 (81 FR 20283, hereafter referred to as the 2016 SNPRM). We revised the AFCARS regulations to: (1) Incorporate statutory requirements enacted since 1993; (2) implement the statutory mandate to assess penalties for noncompliant data submissions; (3) enhance the type and quality of information title IV-E agencies report to ACF; and (4) incorporate data elements related to the Indian Child Welfare Act (ICWA). Title IV-E agencies must submit data files on a semi-annual basis to ACF. The regulations specify the reporting population, standards for compliance, and all data elements. The final rule will improve the data reported to ACF by including more comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care and adds new data elements to better understand a child's experience in out-of-home care.

(b) Legal authority for the final rule: Section 479 of the Act mandates HHS regulate a data collection system for national adoption and foster care data. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

(2) Summary of the Major Provisions of the Final Rule

(a) Reporting Populations. AFCARS will have two reporting populations: the out-of-home care reporting population and the adoption and guardianship assistance reporting population. The out-of-home care reporting population includes a child of any age who is in

foster care under the placement and care responsibility of the title IV-E agency; is receiving title IV-E foster care maintenance payments under a title IV-E agreement; or 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 the reporting population, he or she remains in the reporting population until the title IV-E agency's responsibility for the child ends or the child's title IV-E foster care maintenance payment pursuant to a title IV-E agreement ends. The adoption and guardianship assistance reporting population includes a child whose adoption or guardianship was finalized during the report period, and the child's adoptive parents or guardians have a title IV-E adoption or guardianship assistance agreement with the reporting title IV-E agency.

(b) Data Structure. Title IV-E agencies must report AFCARS information in two separate data files: an out-of-home care data file and an adoption and guardianship assistance data file. The out-of-home care data file is a combination of point-in-time information (e.g., demographics) and information on the events in the child's life over time (e.g., every living arrangement and permanency plan). The adoption and guardianship assistance data file contains data that capture a child's demographic information, payment information, and certain agreement information.

(c) Data Elements. We retained the majority of data elements proposed for the out-of-home care reporting population proposed in the 2015 NPRM, but removed some data elements in response to comments (e.g., concurrent permanency plans) and modified others (e.g., caseworker visits and prior adoption/guardianship). We reduced the adoption and guardianship assistance reporting to include data on the child's demographics, subsidy amounts, adoption finalization date, and agreement termination date. Also, we retained nearly all of the data elements proposed in the 2016 SNPRM for the out-of-home care reporting population specific to Indian children as defined in ICWA, but removed two data elements: one data element requiring states to report if they provided additional information requested by tribes related to notification and one data element indicating the date when the state title IV-E agency began making active efforts.

(d) Compliance and Penalties. The final rule strengthens 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. 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 the corrected data. If a title IV–E agency does not meet the standards after corrective action, ACF will apply the penalties required in statute (section 474(f) of the Act).

(3) *Costs and Benefits.* We estimate that costs for the final rule will be approximately \$40.7 million. Benefits are that we will have an updated AFCARS regulation for the first time since 1993. In addition to the current uses of the data, the new information will provide more comprehensive information to deepen our understanding of guardianships and to address the unique needs of Indian children as defined in ICWA who are in the state's placement and care responsibility and who exit to reunification, adoption or who are transferred to the custody of the Indian tribe. This will further our work to draw national statistics and trends about the foster care, adoption, and guardianship populations for assessing the current state of these federal programs and inform national policies with respect to adoption, guardianship, and foster care.

II. Background on AFCARS

AFCARS regulations were originally published in December 1993 in response to the statutory mandate for adoption and foster care data in section 479 of the Act. That mandate is for 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.

We use AFCARS data to:

- Draw national statistics and trends about the foster care and adoption populations for assessing the current state of foster care and adoption.

- Complete the annual Child Welfare Outcomes Report to Congress (section 479A of the Act).

- Develop our budgets.
- Calculate payments for the Adoption and Guardianship Incentive Payments program.

- Monitor title IV–E agency compliance with title IV–B and IV–E requirements, including drawing the population sample for title IV–E reviews.

- Develop appropriate national policies with respect to adoption and foster care; and

- Address the unique needs of Indian children as defined by ICWA in foster care or who exit to adoption, and their families.

III. Regulation Development

Proposed Rules: We published a NPRM on January 11, 2008 to revise AFCARS (73 FR 2082). We did not finalize that NPRM due to the President signing into law the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110–351) that substantially changed the title IV–E program. Rather, we analyzed the comments and sought additional comments through a **Federal Register** Notice (75 FR 43187, issued July 23, 2010). In September 2014, the President signed into law the Preventing Sex Trafficking and Strengthening Families Act (Public Law 113–183) that modified the AFCARS requirements in section 479 of the Act, the annual Child Welfare Outcomes Report in section 479A of the Act, and added a requirement for HHS to submit several reports to Congress requiring the collection and reporting of 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. We published the 2015 NPRM proposing to modify the requirements for title IV–E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV–E adoption or guardianship assistance agreement. In April 2015, we announced our intent to publish a supplemental NPRM that would propose adding ICWA-related data elements to AFCARS (80 FR 17713, issued April 2, 2015). ICWA establishes minimum federal standards for the removal of Indian children from their families and the placement of such children in foster care or adoptive placements that reflect the unique values of Indian culture. In cooperation with the Children's Bureau, the National Association of Public Child Welfare

Administrators (NAPCWA), an affiliate of the American Public Human Services Association (APHSA) hosted a conference call with state members of NAPCWA (*i.e.*, representatives of state child welfare agencies) on April 27, 2015. The purpose of the call was to obtain input from state members on what data state title IV–E agencies currently collect regarding ICWA and what they believed were the most important information title IV–E agencies should report in AFCARS related to ICWA. In addition, the Children's Bureau held a tribal consultation via conference call on May 1, 2015 to obtain input from tribal leaders on proposed AFCARS data elements related to ICWA. Comments were solicited during the call to determine essential data elements that title IV–E agencies should report to AFCARS. As part of on-going intra- and inter-agency collaboration, ACF consulted with federal experts on whether data exists, or not, and its utility in understanding the well-being of Indian children, youth, and families. ACF also consulted with federal partners at the Department of Justice (DOJ) and the Bureau of Indian Affairs (BIA) at the Department of the Interior on the ICWA statutory requirements in 25 U.S.C 1901 *et seq.*, the Department of Interior, Bureau of Indian Affairs Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (80 FR 10146 issued February 25, 2015, hereafter referred to as BIA's Guidelines), and Notice of Proposed Rulemaking to Implement Regulations for State Courts and Agencies in Indian Child Custody Proceedings (80 FR 14880, issued March 20, 2015). After considering all of the aforementioned input, the 2016 SNPRM was published on April 7, 2016 (81 FR 20283) and proposed to require that state title IV–E agencies collect and report certain information related to ICWA for Indian children in the AFCARS out-of-home care reporting population.

2015 NPRM Comments: In response to the 2015 NPRM, we received 126 comment letters from states, Indian tribes and organizations representing tribal interests, national advocacy/public interests groups, universities, and private citizens. Many commenters supported many of the revisions we proposed for reporting historical data and collecting new information on topics such as caseworker visits, transition plans, and siblings. Commenters suggested including data elements related to ICWA. However, some commenters expressed concern

with the burden of modifying state systems to report the additional data elements. Suggestions included that we pare down the overall number of data elements to a core set that collects essential information. Commenters suggested that some of the proposed data elements were better suited in case narratives or case reviews rather than AFCARS. We expand on these comments in the section-by-section discussion.

2016 SNPRM Comments: In response to the 2016 SNPRM, we received 91 comment letters from states, Indian tribes and organizations representing tribal interests, national child welfare advocacy/public interest groups, universities, and private citizens. Many commenters supported collecting ICWA-related data in AFCARS and stated that it will better inform practice for Indian children as defined in ICWA. However, many commenters also expressed concerns with the burden of modifying state data systems to collect and report new and additional data elements. They suggested that we pare down the overall number of data elements to a core set that collects essential information related to ICWA. Commenters stated that much of the proposed data elements were better suited for case reviews rather than AFCARS because much of the information is currently in case narratives. We expand on these comments in the section-by-section discussion.

IV. Discussion of Major Changes to the Final Rule

Discussed below are the major changes and provisions of the final rule.

A. Changes to the Out-of-Home Care Data File

We received many comments in response to the AFCARS out-of-home care data elements proposed in the 2015 NPRM and 2016 SNPRM that helped us strengthen, clarify, and streamline the data elements. In general, states and the national organization that represents state child welfare agencies believe there are data elements in both the 2015 NPRM and the 2016 SNPRM that exceed the scope of the requirements of recent child welfare legislation and they recommend that ACF review each proposed data element and focus on essential data elements that can be reasonably collected and compared across states. Some states expressed concerns about the proposed data elements, implementation period, penalties, timeframe for submission, limited access to court records, and associated burden. They suggested

paring down the number of data elements, providing adequate timeline and structure to implement changes including data exchanges with courts, and requested additional resources to meet the burden of implementation and training staff. In addition, some states expressed concerns that the rule includes data elements that attempt to capture qualitative and quantitative information that is not easily reducible to a single data field, and are more appropriate for a qualitative case review rather than an administrative data collection. We made the following major changes in the out-of-home care data file based on public comments:

Citizenship and Immigration

Throughout the final rule, we removed proposed data elements that required agencies to report whether or not the child or parent was born in the United States. State title IV–E agencies and a national organization representing state child welfare agencies were overwhelmingly opposed to agencies being required to report this in AFCARS, commenting that the data elements are not relevant to their work at the state and local level and could adversely impact the worker's relationship with families. However, in response to suggestions to add data elements related to parental immigration detention or deportation, we included these as response options in the *Child and family circumstances at removal* data element in section 1355.43(d). These changes are explained in further detail in the section-by-section discussion.

Sexual Orientation

We requested public input in the 2015 NPRM on whether AFCARS should include information on whether a child identifies as lesbian, gay, bisexual, transgender, or questioning (LGBTQ). We received comments both in favor and against title IV–E agencies collecting and reporting this information to AFCARS but we were convinced to include data elements in the final rule related to the sexual orientation of the child (section 1355.44(b)), the child's foster parent(s) (section 1355.44(e)), and adoptive parent(s) or legal guardian(s) (sections 1355.44(h)). Our goal in including this information is that the data will assist title IV–E agencies to help meet the needs of LGBTQ youth in foster care.

Information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality. Several state and county agencies, advocacy organizations and

human rights organizations have developed guidance and recommended practices for how to promote these conditions in serving LGBT youth in adoption, foster care and out-of-home placement settings. ACF provides state and tribal resources for Working With LGBTQ Youth and Families at the Child Welfare Information Gateway. The following links are provided as general examples of such guidance (Minnesota and California examples). ACF will provide technical assistance to agencies on collecting this information.

We also added, based on comments, whether there is family conflict related to the child's sexual orientation, gender identify, or gender expression as a *Child and family circumstance at removal* reported when a child is removed from home in section 1355.44(d).

Child Financial and Medical Assistance

We proposed in the 2015 NPRM to collect financial and medical assistance information that support the child in two separate data elements: (1) Identify the source of federal assistance and total per diem payment amount for each of the child's living arrangements from a list seven types of assistance; and (2) identify whether the child received specific non-title IV–E federal or state/tribal financial and medical assistance during the report period. We received many comments expressing concern about the increased burden in particular to report specific federal assistance per diem payment amounts for every living arrangement. In response to these concerns, we were persuaded to revise the data elements by removing the data element related to per diem payment amounts for every living arrangement and consolidated the response options from both data elements into one data element. As a result, in section 1355.44(b) of the final rule, we require title IV–E agencies to report if the child received any of 13 types of state/tribal and federal financial and medical assistance during the report period.

Health, Behavioral or Mental Health Conditions and IDEA Qualifying Disability

We proposed in the 2015 NPRM to require agencies to report on a child's health, behavior or mental health conditions in one data element and the child's qualifying disability as defined by the Individuals with Disabilities Education Act (IDEA) if he/she has an Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) in another. We received many comments from state title IV–E agencies that the response options for both data elements were very similar conditions,

the distinction confusing, and could lead to unreliable data. We were persuaded by the commenters to streamline and consolidate the two data elements and as a result removed the specific requirement for agencies to report a child's qualifying disability, and modified and combined the response options into one data element called health, behavioral or mental health conditions with 11 conditions for agency to report on the child (section 1355.43(b)). This will provide us with better data on the child's health characteristics and meets the federal requirement to collect this information per section 479A(a)(7)(A)(v) of the Act regarding reporting clinically diagnosed conditions for certain children in foster care.

Siblings

We revised how we will collect information on siblings in the out-of-home care data file in the final rule. In the 2015 NPRM, we proposed to collect sibling information in both the out-of-home care data file and the title IV–E adoption and guardianship assistance data file:

- The number of siblings of the child who are in out-of-home care and the child record numbers for those siblings, those siblings who are placed together in out-of-home care and those not placed together; and
- the number of siblings who exited out-of-home care to adoption or guardianship and the child record numbers of those siblings who are living with the child and the child record numbers of those not living with the child.

Commenters generally agreed that information about siblings is important to collect, but had concerns that our proposal was too complicated and would not yield reliable information because there are many and varied reasons for siblings not being placed together. Commenters thought the proposal did not take into account the complexity of what may constitute a family in the eyes of a child, and this information is best captured qualitatively. We carefully reviewed the comments and recommendations. While we understand the concerns and issues the commenters raised that may make it difficult to report sibling information, we determined that we must continue to require agencies to report information about sibling placements. As we noted in the preamble to the 2015 NPRM, section 471(a)(31)(A) of the Act requires title IV–E agencies to 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. While we retained the core requirement for agencies to report on whether siblings are placed together in foster care and when siblings exit to adoption, we simplified reporting. We removed the data elements requiring the agency to report the sibling's child record numbers which was one of the concerns raised by commenters. Thus, the agency reports in the out-of-home care data file the following:

- The number of siblings of the child that are in foster care, and the number of siblings in the same living arrangement as the child on the last day of the report period (section 1355.42(b)).
- The number of siblings of the child who are in the same adoptive or guardianship home as the child, if the child exited foster care to adoption or guardianship (section 1355.44(h)).

Data Elements Related to ICWA

2016 SNPRM Rationale: The Government Accountability Office (GAO) reported in 2005 that there is no national data on children subject to ICWA by which to assess the experiences of AI/AN children in child welfare systems or with which to target guidance and assistance to states (GAO–05–290 Indian Child Welfare Act). Further, in response to comments on the 2015 NPRM and a reevaluation of our data collection authority, we were persuaded to propose that state title IV–E agencies report ICWA-related data. We proposed the data elements in the 2016 SNPRM as paragraph (i) to the proposed section 1355.43 (from the 2015 NPRM) after considering input from comments and federal agency experts. Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations and federal agencies have stated that ICWA is the “gold standard” of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.

Comments: Generally, tribes, organizations representing tribal interests, national child welfare advocacy organizations, and private citizens fully support the overall goal and purpose of including ICWA-related data in AFCARS, and the data elements as proposed in the 2016 SNPRM. These commenters believe that collecting ICWA-related data in AFCARS will:

1. provide data on core ICWA requirements such as “active efforts” and placement preferences, as well as assess how the child welfare system is working for Indian children as defined by ICWA, families and communities;
2. facilitate access to culturally-appropriate services to extended families and other tribal members who can serve as resources and high quality placements for tribal children;
3. help address and reduce the disproportionality of AI/AN children in foster care; and
4. provide avenues for collaboration between states and tribes that are more meaningful and outcome driven, including improved policy development, technical assistance, training and resource allocation as a result of having reliable data available.

Overall, tribal commenters and national child welfare advocacy organizations believe that collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families will be kept together when possible, and will help prevent AI/AN children from entering the foster care system. Many of the tribal commenters that supported the 2016 SNPRM also recommended extensive training for title IV–E agencies and court personnel in order to ensure accurate and reliable data reporting. Some commenters recommended additional data elements.

Commenters from some states and the national organization representing state child welfare agencies generally supported the overall goal and purpose of including ICWA-related data in AFCARS. One state commented that reporting national data related to ICWA was needed and long over-due. Some states reiterated concerns expressed in their comments to the NPRM related to the implementation period, penalties, timeline for submission, limited access to court records and the associated burden. Those states made similar recommendations to reduce the number of elements, provide an adequate implementation timeline, and requested additional resources to implement and train staff. As with their comments to the NPRM, some states identified proposed ICWA-related data elements that they believe would not be easily captured in a single data field and may therefore be better assessed through qualitative case file review. Some states also suggested that we clarify the language of the ICWA-related data elements and definitions in relation to BIA's regulations in order to increase national uniformity of practice and data collection. Several states said that they have a small number of AI/AN children

in their AFCARS reporting population and they requested that federal funding be made available to the fullest extent possible to help prepare for the low-occurring event of reporting the ICWA-related information.

Final Rule: We understand the burden issues that states raised in collecting and reporting additional data to AFCARS; however, we have determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data. Most states commented positively about improving data on Indian children as defined in ICWA. As we stated in the 2016 SNPRM, it is unclear how well state title IV–E agencies implement ICWA’s requirements because of the lack of data related to ICWA. Even in states with large AI/AN populations, there may be confusion regarding how and when to apply ICWA.

We retained most of the data elements proposed in the 2016 SNPRM with some minor revisions to be consistent with the final rule published by the Department of the Interior, Bureau of Indian Affairs that addresses requirements for state courts regarding ICWA (81 FR 38778). We modified our final AFCARS rule requiring state title IV–E agencies to report whether active efforts were made prior to removal and prior to a termination of parental rights (TPR), and to identify which active efforts were made prior to removal and during the child’s out-of-home care episode. We agree with commenters’ suggestions that we include information when a state title IV–E agency inquired of extended family if the child is an Indian child because extended family may have information that parents do not know. We removed the requirement for states to report the date on which the state title IV–E agency began making active efforts in order to coordinate with the BIA’s regulation clarifying that ICWA applies when the state title IV–E agency knows or has reason to know that a child is an Indian child as defined in ICWA. We removed the data element requiring states to report whether the state provided additional information the tribe requested related to notification. We explain this more in the section-by-section discussion.

We determined the best approach for the final rule is to integrate the data elements proposed in the 2016 SNPRM as section 1355.43(i) into applicable sections of this final rule at section 1355.44. These sections are: Child information (section 1355.44(b)); Parent or legal guardian information (section 1355.44(c)); Removal information (section 1355.44(d)); Living arrangement

and provider information (section 1355.44(e)); Permanency planning (section 1355.44(f)); General exit information (section 1355.44(g)); and Exit to adoption and guardianship information (section 1355.44(h)).

On June 14, 2016, BIA published the final rule, Indian Child Welfare Act Proceedings (81 FR 38778). BIA’s final rule requires fewer court orders than its proposed rule and increases flexibility for recording court decisions. In response to state and tribal comments suggesting congruence with the BIA’s final rule, we revised data elements in this final rule as appropriate to reflect the BIA’s regulations including removing requirements that state title IV–E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV–E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance to increase state title IV–E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

B. Revisions to Data on Children Who Are Adopted and Children Who Are Placed in Legal Guardianships

2015 NPRM Proposal and Rationale: In the 2015 NPRM, we proposed a new data file to collect information on children who have title IV–E adoption or guardianship assistance agreements and several new out-of-home care data elements to collect information on children who exit out-of-home care to adoption or legal guardianship.

Title IV–E Adoption and Guardianship Assistance data file: We proposed in the 2015 NPRM to require the title IV–E agency to report ongoing information on children under a title IV–E adoption and guardianship assistance agreement (called the title IV–E adoption and guardianship assistance data file), 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. The information included: demographics on each child, finalization/legalization dates, jurisdiction of the adoption, adoption or guardianship placing agency, subsidy and nonrecurring costs amounts, and sibling information.

Section 1355.44(h) Exit to adoption and guardianship information: We also proposed data elements in the out-of-home care data file related to all children who exit out-of-home care to adoption or legal guardianship. This included children who have a title IV–E adoption or guardianship assistance

agreement, with or without a subsidy, and those who do not have either an agreement or subsidy. We proposed to require that the title IV–E agency report information on children who exit out-of-home care to adoption or legal guardianship, including: Demographic information (race, ethnicity, date of birth) on the adoptive parents/legal guardians; child’s relationship to the adoptive parents/legal guardians; whether the child was placed within or outside of the state or tribal service area, or into another country for adoption or legal guardianship, and if so the name of the jurisdiction; and the agency that placed the child.

Comments: We received public comments on the overall proposal to collect information on children under title IV–E adoption and guardianship agreements, comments on individual data elements, and suggestions for expanding the information to be reported. A national organization representing state child welfare agencies requested that we remove the title IV–E adoption and guardianship assistance data file from the final rule and in general recommended that all AFCARS data elements be clearly defined and structured to provide accurate, reliable, and valid information. Additional comments and concerns raised by the organization were that: some state laws and/or policies regarding the oversight allowed with an adoptive family restricts the ongoing collection and use of information about these children; children under guardianship and adoption assistance agreements do not have open service cases even when there is a subsidy; many states capture the financial information regarding title IV–E adoption and guardianship subsidies in other systems; and many states would be required to make a significant changes to their application and report programs. In addition, the organization specifically noted that requiring agencies to report on an optional program for a child under a title IV–E guardianship assistance agreement reaches beyond our statutory authority. Several others, including states, agreed with the recommendation to remove the title IV–E adoption and guardianship assistance data file, raising additional concerns about the burden on workers. Some national advocacy/public interest groups representing children and adoption agency interests supported the collection of information on children under title IV–E assistance agreements. Some of these groups suggested including data elements on children with state guardianship agreements and additional historical

data elements. We also received specific comments on the data elements in section 1355.44(h) that we address in the section-by-section discussion of the preamble related to gender of the adoptive parents and legal guardians, sexual orientation of the adoptive parents and legal guardians, the definition of kin, and information on siblings.

We carefully reviewed all of the comments and reconsidered our essential needs at the federal level for data on children who are adopted and in legal guardianships, and revised the final rule as described below.

Final Rule: Adoption Assistance data file: We retained the adoption and guardianship assistance reporting population as proposed, given the growing dominance of this population as a component of the title IV–E beneficiary population. However, we reduced the data elements to those that are essential for our needs in understanding this population of children who are receiving Federal benefits: a child’s basic demographic information, subsidy amounts, and adoption and guardianship finalization and subsidy termination dates. As specified in the NPRM, this information will be used to discern changing circumstances and fluctuations in title IV–E payment amounts, responding to questions raised by Congress, and for budgetary planning and projection purposes. We removed the requirements for agencies to report non-recurring costs amounts as we do not have a specified need for this case level information and agencies report this type of information in the aggregate. We reduced reporting on siblings which is only reported in the out-of-home care file, as is the adoption jurisdiction and adoption reporting agency.

Final Rule: Section 1355.44(h) Exit to adoption and guardianship information: We determined that it was essential for us to have more robust information about all children who exit state or tribal foster care to adoption or legal guardianship, which is found in the out-of-home care data file at section 1355.44(h). We added and revised data elements based on commenters’ suggestions to ensure we have a comprehensive set of information about children who exit foster care to adoption and guardianship. The most notable data elements we added to the out-of-home care data file for children who exit to adoption or guardianship are:

- Sexual orientation of the adoptive parent(s) or legal guardian(s);
- Tribal membership of the adoptive parent(s) or legal guardian(s);

- The assistance agreement type (adoption assistance agreement, state/tribal adoption assistance agreement, adoption-title IV–E agreement, non-recurring expenses only; Medicaid only; title IV–E guardianship assistance agreement, state/tribal guardianship assistance agreement, or no agreement); and

- The number of siblings of the child who are in the same adoptive or guardianship home as the child who exited out-of-home care to adoption or guardianship.

C. Report Periods and Deadlines

In section 1355.43(a) *Report periods and deadlines*, we modified the final rule to allow title IV–E agencies up to 45 days after the end of the report period to transmit the AFCARS data files.

V. Implementation Timeframe

We are providing two fiscal years for title IV–E agencies to comply with sections 1355.41 through 1355.47. State and tribal title IV–E agencies must continue to report data related to children in foster care and who have been adopted with title IV–E agency involvement to ACF in accordance with section 1355.40 and the appendix to part 1355 during the implementation period. It is essential for agencies to continue to report AFCARS data to ACF without interruption because AFCARS data is used for various reports, planning and monitoring, and to make the Adoption and Guardianship Incentive awards.

We received comments from many states on the implementation timeframe and several offered suggestions. State commenters to both the 2015 NPRM and the 2016 SNPRM indicated they would need sufficient time to make changes to their electronic case management systems to collect new information. Several state title IV–E agencies and a national organization representing state title IV–E agencies indicated that implementing the ICWA-related data elements proposed in the 2016 SNPRM in addition to the elements proposed in the 2015 NPRM would require more time than one year and two states indicated a need for two to three years. Several state title IV–E agencies indicated that ICWA-related information is documented in case files and in narrative formats. Additionally, several state title IV–E agencies noted that collecting the information from courts would impact their implementation timeframe because the court information systems do not always contain the information proposed in the 2016 SNPRM or because there is no data

exchange interface between the court and state title IV–E agency’s case management system. Commenters to the 2015 NPRM also suggested that this final rule not be implemented until after Round 3 of the Child and Family Services Reviews (CFSR).

State title IV–E agencies and the national organization representing state title IV–E agencies recommended either a tiered or a phased-in approach to compliance with the AFCARS requirements and penalties. Several of those commenters suggested that we allow agencies additional time to implement the changes proposed in the 2016 SNPRM regarding ICWA data elements.

We understand states’ concerns about the system changes that are needed since this final rule will implement the statutory AFCARS penalties. However, we determined that a two federal fiscal year period is sufficient for states to implement all changes for the AFCARS final rule. We are not providing a phase-in period for the ICWA-related data elements. As we noted in the 2016 SNPRM, we are issuing one final rule on AFCARS and we considered all comments on the 2015 NPRM and the 2016 SNPRM.

VI. Section-by-Section Discussion of Comments and Regulatory Provisions

Section 1355.40 Foster Care and Adoption Data Collection

In this section, we modified the requirements in the current section 1355.40 to require title IV–E agencies to continue to submit AFCARS data during the implementation timeframe. We must keep the current AFCARS regulations at section 1355.40 and the appendices to part 1355 until the dates listed in the **DATES** section of this rule. This means that title IV–E agencies must continue to report AFCARS data in the same manner they do currently until the implementation date of this final rule as discussed in section V of this final rule.

Section 1355.41 Scope of the Adoption and Foster Care Analysis and Reporting System

In this section, we set forth the scope of AFCARS.

In paragraph (a), we specify that state and tribal title IV–E agencies must collect and report AFCARS data, unless it is indicated for state title IV–E agencies only.

In paragraph (b), we specify that title IV–E agencies must submit the data to ACF on a semi-annual basis as required in section 1355.43 in a format according to ACF’s specifications.

In paragraph (c)(1), we clarified that the terms in section 1355.41 through

1355.47 are defined as they appear in 45 CFR 1355.20, except that for purposes of specified data elements related to the Indian Child Welfare Act of 1978 (ICWA), terms are defined as they appear in 25 CFR 23.2 and 25 U.S.C. 1903. This is similar to paragraph (i)(1) as proposed in the 2016 SNPRM and incorporates the definitions recently promulgated in BIA's regulations at 25 CFR 23.2.

In paragraph (c)(2), we clarified for state title IV-E agencies that in cases where ICWA applies, the term "legal guardian" includes an Indian custodian as defined in ICWA at 25 U.S.C. 1903. These data elements are in sections 1355.44(c)(1), (c)(2), (d)(4), and (d)(5). We understand that there are instances where ICWA applies where Indian custodians may have legal responsibility for the child. Since we are integrating the ICWA-related data elements into select sections of this regulation, we want to take this opportunity to clarify that in the instances where ICWA applies and an Indian custodian may have legal responsibility of the child who is now in out-of-home care, the term "legal guardian" includes an Indian custodian.

Comment: A few commenters suggested additional definitions, such as "voluntary" placement, "ICWA eligible child," and "reactivation" of children who have multiple removals for the same reasons, and to expand the definition of tribe to distinguish between federally recognized, non-federally recognized, and historic/aboriginal tribes.

Response: We did not add a definition of "voluntary" placement because the term is already defined by section 472(f) of the Act. We did not define "reactivation" because it is not a term used in these regulations. We did not specifically define "ICWA eligible child" in this regulation, but we did include by reference definitions in the BIA's ICWA regulation at 25 CFR 23.2 so if the BIA amends the definition of children to whom ICWA applies, it will automatically be changed for the purpose of these regulations rather than requiring ACF to issue another regulatory action. Since we integrated the ICWA-related data elements into other sections of the final rule we no longer have a list of applicable definitions pertaining to the ICWA-related data elements. Rather, section 1355.41(c)(1) specifies that terms in sections 1355.41 through 1355.47 are defined as they appear in 45 CFR 1355.20, except that for purposes of data elements related to ICWA, terms that appear in sections 1344.44(b)(3) through (b)(8), (c)(3), (c)(4), (c)(6), (c)(7), (d)(3),

(e)(8) through (e)(11), (f)(10), and (h)(20) through (h)(23) are defined as they appear in 25 CFR 23.2 and 25 U.S.C. 1903. This means that the ICWA-related data elements will follow either BIA regulations as they appear in 25 CFR 23.2 or the statute at 25 U.S.C. 1903. In paragraph (c)(2), we clarified for state title IV-E agencies that in cases where ICWA applies, the term "legal guardian" includes an Indian custodian as defined in ICWA at 25 U.S.C. 1903. These data elements are in sections 1355.44(c)(1), (c)(2), (d)(4), and (d)(5).

Section 1355.42 Reporting Populations

In this section, we define the reporting populations for the AFCARS out-of-home care and adoption and guardianship assistance data files.

Section 1355.42(a) Out-of-Home Care Reporting Population

In paragraph (a), we define and clarify the out-of-home care reporting population. Consistent with current AFCARS, the child enters the out-of-home care reporting population when the child's first placement meets the definition of foster care in section 1355.20. A title IV-E agency must report a child of any age who is in out-of-home care for more than 24 hours.

Comment: Several state title IV-E agencies, a national organization representing state child welfare agencies and other commenters supported the out-of-home care reporting population. However, several states and others expressed confusion over who is included in this population, particularly juvenile justice youth, runaway and homeless youth, youth on a trial home visit and children who reenter care.

Response: We take this opportunity to clarify the reporting population for out-of-home care. Overall, the out-of-home care reporting population includes a child of any age who is in foster care as defined in 1355.20 for longer than 24 hours until the title IV-E agency no longer has placement and care responsibility. The out-of-home care reporting population includes a child under the title IV-E agency's placement and care who:

- Has run away or whose whereabouts are unknown at the time the title IV-E agency becomes responsible for the child, until the title IV-E agency's responsibility for placement and care ends;
- is placed into foster care after a non-foster care setting, until the title IV-E agency's placement and care responsibility ends;
- is placed at home, including a child on a trial discharge or trial home visit,

until the title IV-E agency's placement and care responsibility ends;

- is placed from a foster care placement into a non-foster care setting, until the title IV-E agency's placement and care responsibility ends;
- is age 18 and older, including those in a supervised independent living setting, until the title IV-E agency's placement and care responsibility ends.

The out-of-home care reporting population also includes 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, and, on whose behalf title IV-E foster care maintenance payments are made until title IV-E foster care maintenance payments cease to be made on behalf of the child. We specifically note that children placed pursuant to title IV-E agreements are reported in the out-of-home care reporting population only if the child is receiving a title IV-E foster care maintenance payment under the title IV-E agreement. We added the phrase "for more than 24 hours" to the regulation so that it now reads "A title IV-E agency must report a child of any age who is in out-of-home care for more than 24 hours." We want to be clear how title IV-E agencies must report children in the out-of-home care reporting population, consistent with current AFCARS regulations, found in the Appendix to section 1355. Since we removed the appendix, we are adding it to the regulation. During AFCARS Assessment Reviews, states have inquired about this policy many times and we feel that it is clearer to specify this in regulation.

Consistent with existing AFCARS policy, the out-of-home care reporting population also includes a child who is in foster care under the joint responsibility of another public agency, such as the juvenile justice agency, and the title IV-E agency until title IV-E foster care maintenance payments cease to be made on behalf of the child (see the Child Welfare Policy Manual section 1.3, question 13).

We understand there has been confusion in the past both in the reporting and analysis of the current AFCARS foster care reporting population related to children who are under the responsibility of another public agency or an Indian tribe pursuant to a title IV-E agreement. As noted in paragraph (a)(1)(ii), title IV-E agencies must include children for whom title IV-E foster care maintenance payments are provided under a title IV-

E agreement between the title IV–E agency and a public agency or an Indian tribe. We would like to clarify that only those children who are provided a title IV–E foster care maintenance payment under the title IV–E agreement are included in the out-of-home care reporting population; it does not include all the children in the other public agency or Indian tribe’s placement and care responsibility. In paragraph (a)(1)(ii) we refer to only title IV–E agreements that meet the requirements of section 472(a)(2) of the Act; not all interagency agreements or contracts with the other public agency or Indian tribe for services or payments meet these requirements. Section 472(a)(2) of the Act allows for payment of title IV–E foster care maintenance on behalf of an eligible child if there is a title IV–E agreement with another public agency or Indian tribe even though the child is not under the placement and care responsibility of the reporting title IV–E agency. This clarification reflects a continuation of the AFCARS reporting requirements and is not a change in the out-of-home care reporting population. To further clarify the children in the out-of-home care reporting population, we modified the regulation in section 1355.44(d)(6) *Child and family circumstances at removal* to identify these children reported in AFCARS and we discuss in the preamble for that section.

Comment: Several state title IV–E agencies expressed concerns that the proposal expands the reporting population and will be burdensome for agencies to report all data elements on the reporting population; one state expressed concern that the reporting population would impact their CFSR measures; and one state commented that the expansion of the reporting population imposes an unrealistic mandate on state child welfare agencies to be responsible and penalized for data collected by other agencies.

Response: We retained the requirement for title IV–E agencies to report a child until the title IV–E agency no longer has placement and care responsibility. We expect that title IV–E agencies would have the information that we require to be reported if they have responsibility for the child, regardless of where the child is placed. The revision to the out-of-home care reporting population has no impact on the population of children for the CFSR measures because only the children in foster care will be included in the outcome measures. We continue to believe that the benefits of data reporting on the out-of-home care reporting population will allow ACF to

develop a comprehensive picture of a child’s experience in the title IV–E agency’s placement and care with all removals, living arrangements, permanency plans, and exits from out-of-home care and the ability to better inform our monitoring efforts. We will provide technical assistance to agencies on any remaining clarifications regarding state specific questions related to the reporting population.

Section 1355.42(b) Adoption and Guardianship Assistance Reporting Population

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

In paragraph (b)(1) we require that the title IV–E agency must report data as described in section 1355.45 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 require the title IV–E agency to report information required by section 1355.45 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.

In paragraph (b)(1)(ii), we collect the information in section 1355.45 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.

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.

Comment: Many commenters objected to reporting ongoing information on children who are in this reporting population, stating that adopted children do not have open service cases even when there is a subsidy attached. Additionally, many commenters felt that collecting information on any child who is in a legal guardianship under a title IV–E guardianship assistance agreement reaches beyond our statutory authority and would require a significant change in the application and report programs and laws and policies in many states. Several other groups agreed with this opinion and raised concerns about the burden on workers and duplication to information in the out-of-home care data file (section 1355.44(h)). Some national advocacy/public interest groups representing children and adoption agency interests

were supportive of the separate data file proposed in the 2015 NPRM, and some suggested including children for whom there are finalized adoptions and guardianships without title IV–E assistance agreements.

Response: We carefully considered the comments and have retained the adoption and guardianship assistance reporting population as proposed for the reasons we identified in the NPRM and given the growing dominance of this population as a component of the title IV–E beneficiary population. Overall, we believe there is a basic good governance principle at stake in having data about children who are receiving Federal benefits, especially considering the tremendous growth in the title IV–E adoption and guardianship assistance population over the last several years. While there is no statutory mandate to collect information for children under a title IV–E guardianship assistance agreement, section 479(c)(3)(C)(i) of the Act authorizes AFCARS to collect data on the “characteristics of children . . . removed from foster care”, which encompasses the title IV–E guardianship assistance population. We continue to believe it is essential to collect the same information on children under title IV–E guardianship agreements as for title IV–E adoption agreements because we have the same need for the information for children supported by title IV–E funding.

Section 1355.43 Data Reporting Requirements

This section contains the AFCARS data reporting requirements.

Section 1355.43(a) Report Periods and Deadlines

In paragraph (a), we specify that: (1) There are two six-month report periods based on the federal fiscal year, October 1 to March 31 and April 1 to September 30 and; (2) the title IV–E agency must submit the AFCARS data files to ACF within 45 days of the end of the report period (*i.e.*, by May 15 and November 14).

Comment: A national organization representing state child welfare agencies recommended that we maintain the 45 day window for submitting data. They believe the 30 day requirement proposed in the 2015 NPRM would compromise data accuracy and integrity because some data may be excluded and there would not be enough time for agencies to check for errors in 30 days, particularly for state-supervised, county-administered states. Eight states and three other commenters opposed the shortened timeframe for the same reasons.

Response: We modified the regulation to allow title IV–E agencies up to 45 days after the end of the report period to transmit the AFCARS file to accommodate commenter concerns. However, we wish to emphasize that the purpose of this 45 day transmission period is to extract the data and ensure the file is in the proper format for transmission. Data accuracy and integrity is to be completed by the IV–E agency on a continuous basis throughout the year. This is consistent with current AFCARS guidance.

Section 1355.43(b) Out-of-Home Care Data File

In paragraph (b), we provide instructions on how the title IV–E agency must report information for the out-of-home care reporting population.

In paragraph (b)(1), we require a title IV–E agency to submit the most recent information for data elements in the *General information* (section 1355.44(a)) and *Child information* (section 1355.44(b)) sections of the out-of-home care data file.

In paragraph (b)(2), we require the title IV–E agency to submit the most recent and historical information for most data elements in the following sections of the out-of-home care data file, unless the exception in paragraph (b)(3) applies:

- § 1355.44(c) Parent or legal guardian information
- § 1355.44(d) Removal information
- § 1355.44(e) Living arrangement and provider information
- § 1355.44(f) Permanency planning
- § 1355.44(g) General exit information
- § 1355.44(h) Exit to adoption and guardianship information

Comment: In general, states, a national organization representing state child welfare agencies, and other national/advocacy organizations and individuals were supportive of the move to a historical data set because of the benefits in understanding outcomes for children and their experiences in out-of-home care. However, many commented that they are concerned that the final rule will be a challenge for states to implement because of a significant burden to title IV–E agencies to collect and report new additional historical data with existing resources. In addition, they expressed concern with the magnitude of historical data that would be required to be reported as it would need to be tracked at local levels in order to produce six-month report period data files.

Several national advocacy organizations and others made suggestions to expand historical

reporting to other data elements, while others, mostly state title IV–E agencies, suggested we limit the data to “core elements” that have utility and validity at the national level. A national organization representing state child welfare agencies suggested that we allow AFCARS revisions to occur in stages, by first creating historical data files and then adding data elements that are truly necessary in a federal database.

Response: We are retaining the requirement that title IV–E agencies report certain historical data for the original reasons we proposed. In general, we removed several data elements and included other data elements as appropriate, which we explain in the section-by-section preamble. We acknowledge that there are a few states that currently do not have a comprehensive electronic case management system or central database that contains the child’s information across all counties. However, based on AFCARS Assessment Reviews, we believe that many of the historical data elements are available in the state’s information system or electronic case record. We continue to believe that the benefits of historical data reporting will allow ACF to develop a comprehensive picture of a child’s experience in the title IV–E agency’s placement and care with all entries, living arrangements, permanency plans, and exits from out-of-home care. We believe there will be many benefits from receiving historical data, including: eliminating information gaps that exist in current AFCARS data which raise questions about the child’s experiences and make the data more difficult to analyze; building upon ACF’s ability to conduct sophisticated analyses of what happens to a child or groups of children in foster care; and providing better data to inform the current CFSR and other outcome monitoring efforts such as time in foster care, foster care re-entries and the stability of foster care placements. Finally, we did not revise the regulation to allow AFCARS revisions to occur in stages. Issuing one final rule on AFCARS with all revisions is the efficient way to revise AFCARS, since revisions to AFCARS have been proposed since the 2008 NPRM. We will provide technical assistance via webinars and other media channels to facilitate AFCARS implementation as well as offer one-on-one assistance to title IV–E agencies.

Comment: Several states noted that there was not enough detail on the technical specifics related to the structure of the data set and asked for more specificity to better understand how title IV–E agencies will need to

modify their systems. States, organizations, and others asked technical clarification questions and several recommended that states have access to these data files. Finally, there were a few technical clarification questions about the state specific system issues.

Response: While we are not regulating the technical specifications for reporting historical data, we anticipate that title IV–E agencies will submit a data file in much the same way that they submit it now, only with more information. Most of the information that will be historical is currently stored in a state’s electronic case file, based on our current knowledge of agency systems through our AFCARS Assessment Reviews. We will work through these technical pieces during implementation, which is consistent with the approach we took for the National Youth in Transition Database (NYTD). We intend to issue technical guidance as noted throughout the preamble regarding file specifications. Also, we will provide technical assistance via webinars and other media to implement AFCARS as well as providing one-on-one assistance with title IV–E agencies.

In paragraph (b)(3), we require that the title IV–E agency report the date of removal, exit date, and exit reason for each child who had an out-of-home care episode prior to the final rule. This means that title IV–E agencies do not need to report complete historical and current information for these children. We did not receive any comments.

Section 1355.43(c) Adoption and Guardianship Assistance Data File

In paragraph (c), we require that the title IV–E agency report the most recent information for the applicable data elements in § 1355.45 that pertains to each child in the adoption and guardianship assistance reporting population on the last day of the report period. We did not receive comments on the 2015 NPRM specific to this paragraph.

Section 1355.43(d) Missing Information

In paragraph (d), we specify how the title IV–E agency must report missing information.

Comment: Several states and a national organization representing state child welfare agencies were concerned about the burden on workers of having to manually fill in blank information and stated that data systems should be able to automatically mark as blank.

Response: We would like to take this opportunity to explain what is meant by “missing” information as workers will not “manually fill in blank

information.” The requirements in this paragraph relate to the technical aspects of creating the AFCARS data file and prohibit defaulting to a valid response option when the worker did not enter information into the case management system and it is therefore missing. This prohibition is longstanding ACF practice and consistent with the statutory mandate in section 479(c)(2) of the Act that any AFCARS data collected must be reliable and consistent over time. If the worker did not enter information into the case management system necessary for reporting on a particular data element (for example, it is missing), then the agency must report the data element as blank. We did not make substantive changes to the final rule in response to comments.

Comment: Several commenters asked how “blank” information is distinguished from missing data and if missing information could be used to determine penalties.

Response: “Blank” is a valid response option only when specified in individual data elements in section 1355.44. When “blank” is not a valid response option, and no information was entered into the information system for a data element, then that is considered a missing data error under section 1355.46(b)(1). This is consistent with ACF’s longstanding practice. Errors under section 1355.46(b) are subject to the penalty provisions of section 1355.47.

Section 1355.43(e) Electronic Submission

In paragraph (e), we require a title IV–E agency to submit its data files to ACF electronically, in a format according to ACF’s specifications.

Comment: Several commenters requested details for data file submissions, the type of technologies title IV–E agencies must use to submit AFCARS data, and made a recommendation to use the same electronic submission process used for the NYTD.

Response: We have intentionally left the specific details for electronic submissions out of the regulation. We have learned through our experience with the existing AFCARS that it is prudent not to regulate the technical specifications for transmitting data because 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. We currently provide guidance on submission of technical requirements and specifications through official ACF policy and technical bulletins and we will continue to do so

in providing guidance on the final rule. We appreciate the suggestion with regard to the NYTD process, and we will determine whether we can use a similar process upon implementation of the final rule.

Section 1355.43(f) Record Retention

In paragraph (f), we require that title IV–E agencies must retain all records necessary to comply with the data requirements in sections 1355.41 through 1355.45. As we stated in the 2015 NPRM (80 FR 7146), 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.

Comment: Four states expressed concerns with the proposed record retention timeframes, stating that they extend beyond the state’s record retention and destruction laws, may require a legislative change to meet this retention schedule, and potential costs to procure new storage hardware or expand data centers.

Response: This is a clarification of current AFCARS requirements. Currently, title IV–E agencies must maintain the child’s history up to the time the child would no longer be eligible for services due to age in order to report the date of the first removal, the number of removals, and the date of discharge from the prior removals. Based on our AFCARS and SACWIS reviews, we understand that all agencies have electronic case records and that title IV–E agencies maintain all the information in their systems up to the time the child would no longer be eligible for services due to age. We understand that the typical age will be between 18 and 21, depending on the state or tribe’s foster care program and we will work with agencies on this at implementation. We want to be clear that title IV–E agencies must retain all information on a child that is required to be reported to AFCARS electronically and not purge the data since AFCARS data files will now contain certain historical information on children in the out-of-home care reporting population. We are retaining the data element without changes in the final rule because title IV–E agencies must report historical information on a child in out-of-home care to be in compliance.

Section 1355.44 Out-of-Home Care Data File Elements

This section includes all of the data element descriptions for the out-of-home care reporting population.

Section 1355.44(a) General Information

In paragraphs (a)(1) through (a)(3), we require that title IV–E agencies collect and report the following general information: (1) The title IV–E agency submitting the AFCARS data; (2) the report period date; and (3) the local county, jurisdiction or equivalent unit that has responsibility for the child. We received no substantive comments on the general information data elements in paragraphs (a)(1) through (a)(3) or recommendations for changes. However, we clarified in the regulation text that the information must be submitted in a format according to ACF’s specifications.

In paragraph (a)(4), we require that the title IV–E agency report the child’s record number, which 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.

Comment: A couple of commenters noted that maintaining one encrypted record number for each child would be useful, for example, in reducing duplicate entries and erroneous eligibility determinations. However, a couple of state title IV–E agencies questioned why the agency must maintain the same number since agencies must include the complete placement history in each AFCARS transmission noting the administrative burden associated with maintaining the same number. Another commenter indicated there could be difficulties in maintaining the same child record number if the child was previously placed in a different county.

Response: Our proposal for a consistent, unique, encrypted child record number for AFCARS reporting purposes is consistent with current practice. Ensuring that the child record number is consistent throughout the child’s entire out-of-home care experience ensures that the agency reports the child’s entire history. It also assists us in the analysis of the NYTD data, which also requires the use of an encrypted child record number. We are retaining this requirement and will provide technical assistance around this data element, including assistance related to maintaining record numbers across counties, to any agency requesting it at implementation.

Section 1355.44(b) Child Information

In paragraph (b), we require that the title IV–E agency report information about the child in out-of-home care

including demographic, health, parenting, and other pertinent information about the child. We made several revisions to this section from the 2015 NPRM and integrated ICWA-related data elements that were proposed in the 2016 SNPRM, revised data elements as suggested by commenters, moved data elements, and removed some proposed data elements that we describe below:

- Removed the data element requiring agencies to report whether or not the child was born in the United States. State title IV–E agencies and a national organization representing state child welfare agencies were opposed, stating: this level of specificity is not relevant to child welfare practice, could adversely impact work with families, and is not necessary in the AFCARS; it will be difficult to draw conclusions from this element; and, it does not address other situations, for example, whether the child is a naturalized citizen or one of the many U.S. citizens who are born on foreign soil. We still believe it is important to track information related to parental immigration detention or deportation because we understand that this contributes to children entering foster care across the nation. In fact, the Applied Research Center recently estimated that up to 5,100 children were in foster care after their parents were detained or deported. Therefore, we added a circumstance at removal in paragraph (d) to address this instead.

- Removed data elements requiring agencies to report information related to the child’s qualifying disability under IDEA. Several state title IV–E agencies and a national organization representing state child welfare agencies expressed confusion with the conditions in this data element and the health, behavioral or mental health conditions stating that the conditions were cumbersome and overlapped, which would lead to confusion among workers and commenters suggested the conditions be reconciled. Thus, we removed the data element on IDEA qualifying disability and revised the data element on health, behavioral or mental health conditions because we still want to track child disabilities, but we do not need to know the disability that qualified a child for IDEA (discussed below).

Section 1355.44(b)(1) Child’s Date of Birth

In paragraph (b)(1), we require the title IV–E agency to report the child’s birthdate. If the actual date of birth is unknown because the child has been abandoned, the agency must provide an estimated date of birth.

Comment: One commenter suggested that we expand the definition of “abandoned” to include circumstances where the child was left with others and the identity of the parent(s) is known, but the parent(s) has not returned and therefore the child’s date of birth is not known.

Response: We have provided a specific definition of abandoned as follows: 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. We will retain the data element as proposed because an estimated date of birth is to be used in very restrictive circumstances when a parent’s identity is not known, and not for an instance when a parent may be temporarily unavailable to provide the actual date of birth.

Section 1355.44(b)(2)(i) Child’s Gender

In paragraph (b)(2)(i), we require that the title IV–E agency report the child’s gender. We did not receive any relevant comments on this data element, however, we made a minor revision to rename the data element “Child’s gender.”

Section 1355.44(b)(2)(ii) Child’s Sexual Orientation

In paragraph (b)(2)(ii), we require that the title IV–E agency report the child’s self-reported sexual orientation for youth age 14 and older. The title IV–E agency must report whether the child self-identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “decline” if the child declined to provide the information. The title IV–E agency must report “not applicable” for youth age 13 and under.

Comment: We requested input on whether to require title IV–E agencies to collect LGBTQ-related data on youth in AFCARS. State title IV–E agencies, national advocacy/public interests groups and other organizations submitted comments on this topic. Commenters who supported collecting LGBTQ-related data were primarily advocacy organizations representing LGBTQ interests and generally asserted that such children/youth are over-represented in the child welfare system, but we do not have a full picture of their experiences in foster care. Supportive commenters also noted that such youth often have unique service needs, are at an increased risk for poor outcomes, are more likely to be placed in group settings and experience more placements. Many of these same commenters suggested that we require agencies to collect information about a child’s gender identity or gender

expression, or the assigned gender of the child or caregiver at birth, which would allow agencies to understand data about gender transition over the course of a child’s life. One commenter suggested adding “two spirited” to address American Indian and Alaska Native children’s identities. In contrast, other commenters, primarily state IV–E agencies and a national organization representing state child welfare agencies, suggested that we should not collect data related to sexual orientation in AFCARS. However, they expressed appreciation for ACF’s interest in supporting and protecting LGBTQ youth in foster care and agreed that it is important to work toward a mechanism for collecting information related to a youth’s sexual orientation, gender identity and expression. State commenters pointed to the following reasons for their objection to collecting the data: It is unlikely that the data will be reliable and consistent because the youth would self-report which could result in an undercount of LGBTQ children in foster care; the sensitive and private nature of the data and sexual identity issues and questioned the implications of having this information in a government record and it being used in a discriminatory way; and collecting the data may pose safety concerns because the LGBTQ community is still vulnerable to discrimination in many parts of the country. State commenters also expressed the importance of proper staff training to collect information for a data element on sexual orientation.

Response: We were persuaded by the commenters who suggested we include a data element on a child’s self-reported sexual orientation. In this final rule, we require title IV–E agencies to indicate whether the child self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “decline” if the child declined to report this information. These response options are consistent with the Youth Risk Behavior Surveillance System (YRBSS) questionnaire from the Centers for Disease Control and Prevention. We did not add a response option of “two spirited” to be consistent with the YRBSS. By requiring this information to be reported, we hope to move closer toward our goal to better support children and youth in foster care who identify as LGBTQ and ensure that foster care placement resources and services are designed appropriately to meet their needs. We are aware of situations where youth in foster care have been unsupported in their foster

care placements when their foster caregivers became aware of their sexual orientation. We did not add data elements requiring agencies to report information about a child's gender identity or gender expression, or the assigned gender of the child. We understand the concerns expressed by commenters; however, we anticipate that adding this data element is the first step in addressing the needs of this population, and also will assist title IV–E agencies in recruiting and training foster care providers in meeting the needs of these youth. In regard to the concern that youth should not be obligated to report this sensitive and private information to their caseworker, the youth must self-report this information and if they do not feel comfortable disclosing such information, they may decline to report the information. In regard to the concern about having this information in a government record, information in state and tribal systems is protected by confidentiality requirements. We require title IV–E agencies to report “not applicable” for children age 13 and under to align with other statutory case planning requirements that apply to youth age 14 and older, for example the child's case plan must be developed in consultation with the child age 14 and older and the child's case planning team (at the child's option) (sections 475(1)(B) and 475(5)(C)(iv) of the Act) and must document the child's rights, including the right to receive a credit report annually. Additionally, the child must sign an acknowledgement that he/she received these rights and that they were explained in an age appropriate way (section 475A of the Act). We will provide technical assistance to agencies on collecting this information as needed.

Section 1355.44(b)(3) Reason To Know a Child Is an Indian Child as Defined in the Indian Child Welfare Act

In paragraph (b)(3), we require that the state title IV–E agency report whether the state title IV–E agency researched whether there is reason to know that a child is an “Indian Child” as defined in ICWA by: Inquiring with the child, the child's biological or adoptive parents (if not deceased), the child's Indian custodian (if the child has one), and the child's extended family; indicating whether the child is a member or eligible for membership in a tribe; and indicating whether the domicile or residence of the child, parent, or the Indian custodian is on an Indian reservation or in an Alaska Native Village. This is similar to paragraph (i)(3) as proposed in the 2016

SNPRM, however we moved data elements related to ascertaining the tribal membership status of the child's parents to section 1355.44(c)(3) and (c)(4), and we added, in response to comments discussed later, a data element for inquiring with the child's extended family in paragraph (b)(3)(iv).

Comment: Tribes, tribal organizations, child welfare organizations, and some states expressed that researching to determine whether a child may be an Indian child under ICWA is necessary to determine tribal status and for implementation of ICWA. Commenters stated that failure to research whether a child is an Indian child risks Indian children not being identified, and risks delay, expensive repetition of court proceedings, and placement instability if it is later discovered that a child is an Indian child under ICWA. Several states said that information on identifying whether a child is an Indian child as defined in ICWA is currently collected, although states varied in how they collect this information with some stating that it is collected through case narratives (electronic or paper). A state objected to expending resources required to report data in AFCARS that is already collected in case narrative. Several states and the national organization representing state child welfare agencies suggested simplifying the data element, stating that the primary focus should be on whether the agency made an inquiry, of whom, and whether that triggered notice per ICWA to a federally recognized tribe. One state suggested including a response option noting whether a particular data element is “not applicable due to age or developmental ability.”

Response: We did not make changes based on these comments to simplify the data elements. We retained the data elements to reflect requirements in BIA's regulation at 25 CFR 23.107(a). BIA's regulation requires state courts to ask each participant in an emergency, voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The data will help identify of which sources title IV–E agencies most often inquire about whether a child is an Indian child as defined in ICWA and for which sources title IV–E agencies may need resource or training to support inquiry. Further, we are not revising the response options to allow for a “not applicable” response option. The requirement is for the state title IV–E agency to report whether or not it inquired of the specific individuals listed, including the child, whether the child is a member or eligible for membership in an Indian

tribe. If the state title IV–E agency was unable to inquire with the child, the agency would respond “no.”

Comment: A state commented that these data elements ask for responses of “yes” or “no” that removes a level of specificity and obscures some incomplete data, such as there is no way to indicate when there are multiple tribes involved.

Response: We understand the suggestion to be a technical issue for when states design their systems to report the required information and does not require a change in the final rule. We will work with state title IV–E agencies as they implement the final rule as needed.

Comment: A state expressed that this data element doesn't explicitly note there is a single parent by indicating the response option of “no” and stated that the elements are gender specific.

Response: We understand the suggestion to be a technical issue for when states design their systems to report the required information. We will work with state title IV–E agencies as they implement the final rule.

Comment: One state suggested adding a data element that records when a tribe confirms that the child is a member or eligible for membership.

Response: We did not revise the final rule in response to these suggestions. The final rule contains the data elements we believe are most critical in relation to children to whom ICWA applies.

Comment: A tribe stated that the language “inquired” is vague and was confused what the agency is inquiring about in this section.

Response: We modified the language of the data element to require the state title IV–E agency to indicate whether the state title IV–E agency researched whether there is a reason to know that the child is an Indian child as defined in ICWA. In each paragraph (b)(3)(i) through (b)(3)(vii), the state title IV–E agency must respond to these threshold questions that indicate whether the state title IV–E agency knows or has “reason to know” that a child is an Indian child and thus is subject to the protections under ICWA.

Comment: Tribes and several national advocacy organizations suggested adding the phrase “extended family” to the list of persons to whom the state may have inquired stating that the extended family would have useful information regarding whether the child may be an Indian child.

Response: We agree with the suggestion and added the requirement for the state title IV–E agency to also report whether it inquired with the

child's extended family in paragraph (b)(3)(iv).

Comment: Tribes and organizations representing tribal interests recommended replacing "on an Indian reservation" with "within a predominantly Indian community" to be more inclusive to tribal communities. A state suggested adding individual data elements to inquire about the residences of each child, parent, and Indian custodian to determine whether any of them are domiciled on a reservation.

Response: We did not revise the final rule in response to these suggestions because the data element in paragraph (b)(5)(vii) follows the language used in several sections of BIA's regulation (*e.g.*, 25 CFR 23.107 and 23.113) about the "domicile or residence . . . on a reservation or in an Alaska Native village."

Section 1355.44(b)(4) Application of ICWA and (b)(5) Court Determination That ICWA Applies

In paragraph (b)(4), we require that the state title IV-E agency indicate whether it knows or has reason to know that a child is an Indian child as defined in ICWA. If the state title IV-E agency indicates "yes," the state title IV-E agency must indicate the date it first discovered information that indicates that the child is or may be an Indian child as defined by ICWA in paragraph (b)(4)(i) and all federally recognized Indian tribes that are or may potentially be the Indian child's tribe(s) in paragraph (b)(4)(ii).

In paragraph (b)(5), we require that the state title IV-E agency indicate whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2), by indicating "yes, ICWA applies," "no, ICWA does not apply," or "no court determination." If the state title IV-E agency indicated "yes, ICWA applies," the state title IV-E agency must report the date that the court determined that ICWA applies in paragraph (b)(5)(i), and the Indian tribe the court determined to be the Indian child's tribe for ICWA purposes in paragraph (b)(5)(ii). This is similar to paragraph (i)(5) as proposed in the 2016 SNPRM.

Comment: States commented that some state laws offer protections that exceed the minimum federal standards in ICWA. For example, some states require ICWA protections for children who are members of state recognized tribes, children who are descendants but not enrolled, or eligible for enrollment

in a tribe, or for children who are members of tribes in Canada.

Response: We encourage states to collect data they need to implement and evaluate state child welfare laws but only require collecting and reporting the ICWA related data through AFCARS as outlined in this rule.

Comment: One commenter was concerned about reporting the court finding because the state may not know whether the tribe was asked or verified the child's membership status. Another commenter recommended that this element be removed because of uncertainty in how this element is different from asking if the state agency has reason to know the child is covered by ICWA.

Response: We did not make any changes to the final rule to remove this data element. As we indicated in our rationale in the 2016 SNPRM, data elements related to whether ICWA applies are essential because application of ICWA triggers procedural and substantive protections and this data will provide a national number of children in the out-of-home care reporting population to whom ICWA applies. However, we revised the final rule to reflect the language in the BIA's regulation at 25 CFR 23.107, which does not require a court order but instead a "court determination." We also revised the final rule for the state title IV-E agency to indicate the date that the court determined that ICWA applies (paragraph (b)(5)(i)), rather than the date of the court order.

Comment: One tribe suggested that the state title IV-E agency should be required to continue to report data that accurately reflects tribal involvement even when a court order does not include the information. The commenter felt this is important to capture to ensure that courts are diligent about engaging the tribe and avoid opportunities to misrepresent the true number of ICWA cases involved in State court.

Response: We agree that tribal involvement is an essential component of ensuring the courts are diligent about engaging tribes. However, we did not add the suggested data element because we must balance the need to have the information with the burden and cost it places on state agencies to do so.

Comment: One commenter asked whether ACF will compare the name of the tribe indicated in this data element, with the name of the tribe listed in other data elements, and whether it will be considered an error if the name of the tribe is different for each element. The commenter suggests that the data element instead ask whether the title

IV-E agency verified that agency records regarding the name of the Indian tribe matched state records.

Response: ACF will develop and issue error specifications in separate guidance and will work with state title IV-E agencies during implementation to address these types of technical issues with reporting the data.

Section 1355.44(b)(6) Notification

In paragraph (b)(6), if a state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), we require that the state title IV-E agency report: Whether the Indian child's parent or Indian custodian was sent legal notice of the child custody proceeding more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a); whether the Indian child's tribe(s) (if known) was sent legal notice of the child custody proceedings more than 10 days prior to the first child custody proceeding; and the name(s) of the tribe(s) sent notice. The first two requirements are similar to paragraph (i)(8) as proposed in the 2016 SNPRM and the third requirement is the same as paragraph (i)(9) as proposed in the 2016 SNPRM.

Comment: Two states suggested requiring the state to report the date that the tribe, mother, father, and Indian custodian were notified of the child's removal as that will provide information on whether the 10 day legal notice requirements were met. One state commented that because they do not know 10 days in advance when a child is going to be removed that we instead require the state to report the date that the notice was sent. Another state suggested adding a data element asking when a notification was made to the tribe and when/if the tribe provided a response, and another state suggested removing notification elements until data exchanges are improved with the court to make this efficient. One state suggested removing the response option "the child's Indian tribe is unknown" and for the state to report the Indian child's tribe's name.

Response: We did not make any changes to the final rule to remove the suggested response option or to require agencies to provide the date of notification. We determined that the actual date of the notification is not essential, but instead, as we proposed, whether the state sent the notice within the statutory 10 day notification requirement. We are retaining the response option "the child's Indian tribe is unknown" as we are aware that there may be instances where ICWA applies because a state knows or has reason to

know a child is an Indian child yet the name of the child's tribe is unknown. We proposed in the 2016 SNPRM and retained in the final rule the requirement for the state to indicate the name of the Indian child's tribe that was sent proper legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912. We have, however, removed the requirement for the state title IV-E agency to report whether the state title IV-E agency replied with additional information that the Indian child's tribe(s) requested, if such a request was made.

Comment: A state noted the proposed data element does not accommodate a situation when there are potentially multiple tribes that were sent the notification.

Response: We are retaining the requirement in the final rule for the state to indicate whether the Indian child's tribe(s) was given proper legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). We will provide technical assistance to states that need assistance in reporting multiple tribes.

Comment: The national organization representing state child welfare agencies supports the notification data elements that align with ICWA mandates. They noted that states have different methods to notify the parties, such as through a court process, the state's attorney general's office, or by the state agency. The organization recommends simplifying the data elements to require the agency to report to whom the agency gave proper notice, *i.e.*, parents, custodians, and tribes.

Response: We understand the suggestion to be a technical issue for when states design their systems to collect the required information that would not require a change to the final rule. States may design a drop down menu or another mechanism appropriate to their system to report the notice requirements as long as the state can report whether the state sent the notice to the mandated parties more than 10 days prior to the proceeding.

Comment: A tribe recommended that we also require states to report that the state sent the notifications when parental rights will be terminated for an Indian child.

Response: We are retaining the notification requirements for the state to report whether it provided the 10 day notifications in reference to the first child custody proceeding. The BIA defines child-custody proceeding for ICWA purposes to mean and include any action, other than an emergency

proceeding, that may culminate in one of the following outcomes: Foster-care placement, termination of parental rights, pre-adoptive placement, and adoptive placement. Therefore, if the first child custody proceeding is in reference to a TPR, the agency must report that information to AFCARS.

Comment: Two organizations suggested that we require states to report whether a state court or agency used the list of tribes published by the Bureau of Indian Affairs to notify a tribe of the first child custody hearing.

Response: We determined that it is not essential for states to specify in AFCARS whether they sent the notice to the tribe as it is listed in the BIA publication. As we indicated in the preamble to the 2016 SNPRM, the timing of the notice is an essential procedural protection provided by ICWA. Hence, we proposed and issued in the final rule the requirement for states to report whether proper legal notice of the child custody proceedings was sent more than 10 days prior to the first child custody proceeding. This is consistent with the requirements under the ICWA statute at 25 U.S.C. 1912(a) and the BIA regulations at 23.11(c).

Comment: Two organizations suggested that we require the state to report whether legal notice was provided for the first child custody hearing to the same grandparents and other adult relatives who were notified about a child's placement into foster care as required by title IV-E.

Response: We tailored the ICWA data elements that we proposed and issued in the final rule to be consistent with the requirements under the ICWA statute and the BIA regulations, and relative notification of the first child custody hearing is not required.

However, we added a requirement in 1355.44(b)(3)(iv) for the state to report whether the state title IV-E agency researched whether there is a reason to know that the child is an Indian child as defined in ICWA by indicating whether the state agency inquired with the child's extended family. We believe this could respond to the intent of the commenter's suggestion, which is to ensure that an Indian child's relatives are made aware when a child in their family is placed into foster care.

Comment: We received several comments regarding the proposed data element requiring the state to report in instances where the tribe(s) requested additional information, whether the state title IV-E agency replied with the additional information that the Indian tribe(s) requested. One state commented that the data element is unclear and asked whether the timeframe was at any

time during the six month report period or whether it only applied to the first child custody proceeding. Another state commented that it does not collect data on whether the tribe(s) requested additional information or whether the agency replied to the request. The national organization representing state child welfare agencies also recommended removing the element because they did not believe the proposed data file element provides essential information on children for whom ICWA applies. A tribe recommended adding the date of the tribal request for additional information and the date the agency responded to the tribe's request for additional information.

Response: We agree with the suggestions to remove the data element in proposed (i)(10) in the 2016 SNPRM that required the state to indicate whether the state title IV-E agency replied with the additional information that the Indian tribe(s) requested. We have removed this data element from the final rule.

Section 1355.44(b)(7) Request To Transfer to Tribal Court and (b)(8) Denial of Transfer

In paragraph (b)(7), if the state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), we require that the state title IV-E agency report whether either parent, the Indian custodian, or Indian child's tribe requested, orally on the record or in writing, that the state court transfer the foster care or termination of parental rights proceeding to the jurisdiction of the child's tribe at any point during the report period. This is similar to paragraph (i)(6) as proposed in the 2016 SNPRM, except that the language was updated to be consistent with 25 CFR 23.115.

In paragraph (b)(8), if the state title IV-E agency indicated "yes" to paragraph (b)(7), we require that the state title IV-E agency report whether the state court denied the request to transfer the case to tribal jurisdiction and if so, the reason for the denial from a list of three options, as outlined in ICWA statute: (1) Either of the parents objected to transferring the case to the tribal court; or (2) the tribal court declined the transfer to the tribal court; or (3) the state court determined good cause exists for denying the transfer to the tribal court. This is similar to paragraph (i)(7) as proposed in the 2016 SNPRM, except that we updated the language to be consistent with 25 CFR 23.118.

Comment: A tribe commented that “good cause” findings should be made as outlined in the BIA’s Guidelines and suggested that we add a data element that captures the specific “good cause” finding used to decline each transfer.

Response: We have not made any changes to the final rule to incorporate recommendations for the noted BIA’s Guidelines. Rather in the final rule, if the state court determined that transfer is not appropriate, the state must report which reason from among a list of three options, as outlined in ICWA statute (25 U.S.C. 1911(b)) and BIA’s regulation at 25 CFR 23.117: (1) Either of the parents objected to transferring the case to the tribal court; or (2) the tribal court declined the transfer to the tribal court; or (3) the state court determined good cause exists for denying the transfer to the tribal court.

Comment: The national organization representing state child welfare agencies supports capturing data from the court order indicating a transfer of the case to the tribal court of the Indian child’s tribe and an indication on the reason for denial (when applicable). However, they suggested simplifying the data elements to ask only whether a tribe requested to transfer the case to tribal court and if yes, whether the transfer was ordered. We also received suggestions from states on revising the element. One state recommended changing the data element to capture the most recent transfer request regardless of when the request occurred as long as it is during the current removal episode.

Response: ACF is not persuaded by the comments to revise the data elements regarding transferring cases from state court to tribal jurisdictions. We are retaining the two proposed data elements with modifications to be consistent with the BIA regulation at 25 CFR 23.115. That regulation states that the parents, Indian custodian, or the Indian child’s tribe may request, orally on the record or in writing, that the state court transfer the child custody proceeding to tribal jurisdiction. It does not require that the request be contained in a court order. Therefore we are removing the requirement for the agency to report only when there is a specific court order requesting a transfer of jurisdiction and adopting the same BIA regulatory language so that we are consistent. Further, we clarified the instructions for this element in the final rule to require the state to report if there was a request at any point during the report period.

Comment: Several organizations representing tribal interests suggested that we require the state to report the

date that the state court approved transfer of jurisdiction to the tribe.

Response: We appreciate the suggestion and understand the value for determining timely implementation of ICWA and case transfer between jurisdictions, however, we did not change the final rule to add this data element. Rather, we retained the two transfer data elements we proposed in the 2016 SNPRM and modified them to be consistent with the BIA regulations. As we indicated in the 2016 SNPRM, we require two transfer data elements to provide an understanding of how many children in foster care with ICWA protections are or are not transferred to the Indian child’s tribe, the reasons why a state court did not transfer the case, and aid in identifying tribal capacity needs and issues that may prevent tribes from taking jurisdiction.

Comment: One tribe suggested that the phrase “a court order” be expanded to include “or other entry of the Court”, as at times the state court may not enter an order transferring the case at the same hearing as when a petition to transfer is submitted to a court.

Response: We have removed the term “court order” from paragraphs (b)(7) and (b)(8) to be consistent with the BIA regulation at 25 CFR 23.115 through 23.117. That regulation states that the parents, Indian custodian, or the Indian child’s tribe may request, orally on the record or in writing, that the state court transfer the child custody proceeding to tribal jurisdiction. The BIA regulation does not require that the request or the order for transfer be contained in a court order.

Section 1355.44(b)(9) Child’s Race

In paragraph (b)(9), we require that the title IV–E agency report the race of the child. The options are: American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White, declined, abandoned, and unknown because the child or parent or legal guardian does not know or is unable to communicate the child’s race, or at least one race of the child.

Comment: Two states and one other commenter did not agree that we should include “race-abandoned” as a response option in this data element because it is not a race. One commenter also noted that including “race-abandoned” and “race-unknown” as response options are confusing.

Response: We provide the agency with the option of not reporting a specific race in two situations when the race is not known: When the child is abandoned and therefore the race of the child is unknown (race-abandoned) or

that the race is unknown because the child or parent or legal guardian does not know or is unable to communicate the child’s race (race-unknown). The response option of race-abandoned allows us to differentiate when there is no parent available to provide race information from when the child or parent does not know or is unable to communicate it. A child’s race can be categorized as unknown only if a child or his parents do not actually know the child’s race. If the title IV–E agency has not asked the child or parent for the child’s race, the agency may not report unknown as the response. 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.

Comment: Two commenters representing tribal interests suggested that we amend the racial category of American Indian or Alaska Native to include whether the child has origins in any of the original peoples of North or South America and if yes, whether the child is a member of, or eligible for, membership in a federally recognized Indian tribe. Both commenters also recommended that we delete the language, “maintains tribal affiliation and community attachment” in the race definition of American Indian or Alaska Native.

Response: The language used reflects the OMB Revised Standards for the Classification of Federal Data on Race and Ethnicity, standardizing federal data collection. We agree that requiring state title IV–E agencies to collect and report data that could identify a child as an Indian child as defined in ICWA is of paramount importance. Therefore, while we did not revise this data element, we require additional information on the child’s tribal membership or eligibility for tribal membership in paragraphs (b)(3), (b)(4), and (b)(5).

Section 1355.44(b)(10) Child’s Hispanic or Latino Ethnicity

In paragraph (b)(10), we require that the title IV–E agency report the Hispanic or Latino ethnicity of the child. The agency must respond “yes,” “no,” “declined,” “abandoned,” or “unknown” because the child, parent or legal guardian does not know or is unable to communicate the child’s ethnicity.

Comment: One commenter suggested that we expand the definition of “abandoned” to include circumstances where the child was left with others and the identity of the parent(s) is known,

but the parent(s) has failed to return and therefore the child's Hispanic or Latino ethnicity is not known.

Response: We have provided a specific definition of abandoned as follows: 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. We will retain the data element as proposed as it is to be used in very limited circumstances when a parent's identity is not known, and therefore not available to identify the child's ethnicity, and not any time a parent may be temporarily unavailable.

Section 1355.44(b)(11) and (b)(12) Health Assessment Date and Timely

In paragraphs (b)(11) and (12), we require the title IV–E agency to report whether the child had a health assessment during the current out-of-home care episode, and if so, the date of the child's most recent health assessment and if it was within the timeframes established by the title IV–E agency.

Comment: State title IV–E agencies and a national organization representing state child welfare agencies raised concerns about collecting information on timeliness and frequency of health assessments. They indicated that health assessment requirements would differ based on the agency's schedule and individual child circumstances, such as age and medical condition; therefore, it would be difficult to compare data across title IV–E agencies. They stated that to answer the question of timeliness, the system must know the assessment schedule and dates of assessments, doubling the data entry requirements. States suggested that this information would be better assessed as part of a qualitative assessment that focuses on child well-being outcomes or case reviews, rather than a national data set. One state recommended that we require agencies to report health assessment information according to an established federal timeline.

Response: We appreciate the comments, but did not remove the requirement for reporting on health assessments because we still believe it is important to ensure that the title IV–E agency is identifying and addressing the health needs of children in foster care. As we indicated in the 2015 NPRM, collecting this information will allow us to ensure children in foster care are receiving health assessments in accordance with the title IV–E agency's established schedule per the statutory requirements in section 422(b)(15)(A) of the Act. It also provides us an opportunity to ensure that the child's

health needs are identified, reviewed, and addressed by a medical professional through routine health assessments. These data elements may also serve as a proxy for other well-being indicators. We also did not impose a requirement that title IV–E agencies report health assessment information according to an established federal timeline because section 422(b)(15)(A) does not provide ACF with the authority to impose a federal timeframe on title IV–E agencies. Instead, agencies describe and adhere to the timeframes described in their Child and Family Services Plan.

Comment: One national advocacy/public interest group supported including this data, but suggested clarifying the language to read “timely health assessment as defined by the state.” Another national advocacy/public interest group pointed out that the term “health assessment” has varying implications and suggested that ACF provide guidance on the difference between health screenings and health evaluations.

Response: In reference to the suggestion to clarify that the assessments are timely based on title IV–E agency specific definitions, paragraph (b)(11) asks whether the date reported in paragraph (b)(12)(ii), if applicable, is “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.” Hence, the information that the title IV–E agency indicates should be in the context of this title IV–B plan requirement regarding the ongoing oversight of health care services, with which agencies are already complying. The title IV–E agency must report the most recent health screenings that are conducted according to the agency's established schedule. ACF provided guidance in ACF–CB–PI–10–11 that agency schedules for initial and periodic health screenings “should mirror or incorporate elements of existing professional guidelines for physical, mental, and dental health screenings and standards of care.” In regard to the request to distinguish between a health screening and a health evaluation, we will provide technical assistance to states if they need assistance in determining how to report on a child's health assessment, which could be either a screening or an evaluation, depending on the agency's process.

Comment: State title IV–E agencies felt that the language of the data elements was vague and questioned how to report whether a health assessment is “timely” based on the agency's “own established schedule.”

Several states asked whether these data elements included all initial or follow-up assessments during the out-of-home care episode and pre-placement screenings.

Response: We appreciate the commenters' questions and revised the regulation to clarify the instructions, based on the commenters' concerns. We revised the regulation to require first that the agency report whether the child had a health assessment during the current out-of-home care episode in paragraph (b)(11)(i). The assessment could include an initial health screening or any follow-up health screening per section 422(b)(15)(A) of the Act. If so, the title IV–E agency must report the date the child's most recent health assessment during the out-of-home care episode and whether it is within the timeframes for initial and follow-up health screenings established by the title IV–E agency per section 422(b)(15)(A) of the Act (paragraphs (b)(11)(ii) and (b)(12)). This revision is to make clear that the agency is to report on the timeliness of the most recent health assessment. If the agency indicates that there was no health assessment done, there is no requirement to report the date and timeliness of the assessment.

Comment: A state title IV–E agency asked how a blank response is distinguished from missing data and how to report if a child is not in care long enough to receive a health assessment or the timeliness straddles reporting periods.

Response: In reference to the blank response query, consistent with ACF's longstanding practice, “blank” is a valid response option only when specified in individual data elements. In paragraph (b)(11)(i), the agency must report either “yes” or “no;” “blank” is not an appropriate response and is considered a missing data error under section 1355.46(b)(1). “Blank” is an appropriate response for paragraphs (b)(11)(ii) and (b)(12) only if the response to paragraph (b)(11)(i) is “no.” Thus, if a child has not been in foster care long enough to have an assessment, the agency would report no in paragraph (b)(11)(i) and blank for paragraphs (b)(11)(ii) and (b)(12).

Comment: Several national advocacy/public interest groups suggested additional data elements, such as specific dates of the initial health assessment; initial dental evaluations and other preventative dental care; whether children in foster care are receiving Early and Period Screening, Diagnosis, and Treatment (EPSDT) services under Medicaid; and for title IV–E agencies to report on each aspect of the title IV–B Health Care

Coordination and Oversight Plan under section 422(b)(15)(A) of the Act (for example, how children's medical information will be updated, steps to ensure continuity of health services, and protocols for the oversight of prescription medicines).

Response: As we indicated in the 2015 NPRM, collecting health, behavioral or mental health related information will allow us to ensure children in foster care are receiving health assessments in accordance with the title IV–E agency's established schedule per the statutory requirements in section 422(b)(15)(A) of the Act. Therefore, we will not require agencies to report additional health assessment information because we do not have a need for those details at the national level.

Section 1355.44(b)(13) Health, Behavioral or Mental Health Conditions

In paragraph (b)(13), we require the title IV–E agency to report whether the child was diagnosed by a qualified professional as having one or more health, behavioral or mental health conditions from a list of eleven conditions prior to or during the child's current out-of-home care episode. If so, the agency must report whether it's an existing condition or a previous condition (a previous diagnoses that no longer exists as a current condition). The title IV–E agency must also report if the child had an exam or assessment, but none of the conditions apply, or if the agency has not received the results of the exam or assessment. When the child has not had an exam or assessment, the agency must indicate so.

Comment: State title IV–E agencies, a national organization representing state child welfare agencies, and many other national advocacy/public interest groups indicated that the qualifying disabilities of the proposed element *IDEA Qualifying Disability* and the conditions for health, behavioral or mental health conditions overlapped which would confuse workers and lead to inaccurate and misleading data at a national level. Some national advocacy/public interest groups also suggested including specific additional conditions, such as oppositional defiant disorder, major depressive disorder, attention deficit hyperactivity disorder, and traumatic brain injury.

Response: We were persuaded by the number of commenters who expressed concern about the overlapping health, behavioral or mental health conditions and the *IDEA qualifying disabilities* and revised the final rule so that there is one element that addresses a child's health, behavioral or mental health conditions.

We removed the data element *IDEA Qualifying Disability* in the final rule. We combined some of the conditions we proposed for the *IDEA Qualifying Disability* data element with the *Health, behavioral or mental health conditions* that we modified to update with current common diagnoses suggested by several commenters, separated out conditions that are currently reported together, as suggested by commenters, and revised to more closely align with definitions for diagnoses from the National Institutes of Health (NIH). We describe these revisions below. We believe that this revised list will provide us with better data on the child's health characteristics and meet the requirement of section 479A(a)(7)(A)(v) of the Act regarding reporting clinically diagnosed conditions for certain children in foster care.

Paragraph (b)(13)(i) is "Intellectual disability" and is unchanged from the 2015 NPRM because we did not receive comments specifically asking for a revision to this definition.

Paragraph (b)(13)(ii) is "Autism spectrum disorder" that we combined from the *IDEA qualifying disability* data element proposed in the 2015 NPRM and revised to be more closely aligned with the definition from the *NIH Neurological Disorders and Stroke*.

Paragraph (b)(13)(iii) is "Visual impairment and blindness" that we combined from the *IDEA qualifying disability and Health, behavioral or mental health conditions* data elements proposed in the 2015 NPRM.

Paragraph (b)(13)(iv) is "Hearing impairment and deafness" that we combined from the *IDEA qualifying disability and Health, behavioral or mental health conditions* data elements proposed in the 2015 NPRM.

Paragraph (b)(13)(v) is "Orthopedic impairment or other physical condition" that we combined from the *IDEA qualifying disability and Health, behavioral or mental health conditions* data elements proposed in the 2015 NPRM.

Paragraph (b)(13)(vi) is "Mental/emotional disorders" that we combined from the *IDEA qualifying disability and Health, behavioral or mental health conditions* data elements proposed in the 2015 NPRM.

Paragraph (b)(13)(vii) is "Attention deficit hyperactivity disorder" that we included as a separate condition, based on comments suggesting that it not be included with another condition. The *definition is based on the definition from the NIH National Institutes of Mental Health*.

Paragraph (b)(13)(viii) is "Serious mental disorders" that we included as a

separate condition that comprises several disorders previously proposed under the *IDEA qualifying disability and Health, behavioral or mental health conditions* data elements. The definition is also based in part on the definitions for bipolar disorder and psychotic disorders from the NIH National Library of Medicine.

Paragraph (b)(13)(ix) is "Developmental delay" that we combined from the *IDEA qualifying disability* data element proposed in the 2015 NPRM and revised to include delays related to language/speech and motor skills.

Paragraph (b)(13)(x) is "Developmental disability" and is unchanged from the 2015 NPRM because it is based on statute.

Paragraph (b)(13)(xi) is "Other diagnosed condition" that we combined from several conditions proposed in the *IDEA qualifying disability and Health, behavioral or mental health conditions* data elements proposed in the 2015 NPRM.

Comment: A national organization representing state child welfare agencies and a few states commented that reporting over time whether a child's condition is existing, previous, or does not apply could make the data file cumbersome, confuse aggregate data at the federal level, and place burden on workers who may not have the training or expertise on detailed, technical health care information. They felt that what was collected in AFCARS for conditions is reasonable because it informs the relevant issues at a high level. They made suggestions for other mechanisms to report the data, such as data sharing agreements with other agencies.

Response: We have not removed the requirement for agencies to report whether a child's condition is existing, previous, or does not apply. We continue to believe, as we stated in the 2015 NPRM, that it is important to capture comprehensive information on a child's diagnosed health, behavioral and mental health conditions beyond the current AFCARS report period, which this data element will allow. Collecting 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, which current AFCARS data does not allow. We will provide technical assistance on reporting this information as needed.

Comment: Two states asked for clarification as to who is considered a "qualified professional."

Response: As stated in the 2015 NPRM preamble (80 FR 7149), a qualified professional is determined by applicable laws and policies of the state or tribal service area and may include a doctor, psychiatrist, or, if applicable in the state or tribal service area, a licensed clinical psychologist or social worker. This is consistent with current AFCARS practice.

Comment: Two states were confused by the response options on whether a qualified professional has conducted an exam or assessment and recommend we only provide two response options for the agency to indicate whether or not the child has a diagnosed condition, or if it's unknown.

Response: We did not revise the final rule based on the comments to allow for an "unknown" response option. We intentionally did not propose a response option of "unknown" because it is too broad for a meaningful analysis and has a high potential to be overused. These responses as well as the response options for previous or existing condition are designed to give us information regarding a child's health, behavioral or mental health conditions that vary over time without having to track other more complicated historical information such as start and end dates of conditions. We believe that this will provide us with better data on the child's health characteristics and meet the requirement of section 479A(a)(7)(A)(v) of the Act regarding reporting clinically diagnosed conditions for certain children in foster care. Additionally, we will provide technical assistance on reporting this information as needed.

Comment: Six states sought clarification on when to mark conditions as "previous."

Response: The agency reports the response option of "previous" when a child was diagnosed for a condition that no longer exists as decided by a medical professional.

Comment: One state suggested that agencies should collect start and end dates of diagnoses to allow for a more robust analysis and would give agencies the ability to determine when a diagnosis was applicable if the diagnosis changes during the report period.

Response: We did not make changes to the final rule based on this comment as the response options of existing condition, previous condition, and does not apply will provide us an adequate history on the occurrence of a child's conditions at the federal level without the dates of diagnosis.

Section 1355.44(b)(14) School Enrollment, (b)(15) Educational Level, and (b)(16) Educational Stability

In paragraph (b)(14), the title IV-E agency must report whether the child is a full-time student at and enrolled in (or in the process of enrolling in) elementary or secondary education, or is a full or part-time student at and enrolled in post-secondary education or training, or college, or whether the child is not enrolled in any school setting. We made a minor revision to this data element in the final rule to include part-time students in the response options "post-secondary education or training" or "college."

In paragraph (b)(15), the title IV-E agency must report 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. We made a minor change to this data element in the final rule to add a response option of "GED" if the child has completed a general equivalency degree or other high school equivalent.

In paragraph (b)(16), the title IV-E agency must report if the child is 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 and if so, reason(s) for the change in enrollment (paragraphs (b)(16)(i) through (b)(16)(vii)).

Comment: In general, a national organization representing state child welfare agencies and states expressed concerns with state title IV-E agencies gathering data elements related to educational information because they stated it would create a burden for workers and would not result in accurate or useful data at the federal level since educational information, such as enrollment information, varies among jurisdictions and states. Three state commenters suggested forming a data exchange with the Department of Education instead of state title IV-E agencies collecting education information proposed through AFCARS.

Response: We considered the comments concerned about the increased burden, however we are retaining the educational data elements related to school enrollment, educational level, and educational stability because, as we stated in the 2015 NPRM, these data elements address the requirements in section 471(a)(30) of the Act relating to an assurance for title IV-E eligible children being full-time elementary or secondary school students or completed secondary

school, section 475(1)(C)(ii) of the Act relating to the child's health and education records and grade level performance while in foster care, and section 475(1)(G) of the Act relating to the case plan requirement to develop an educational stability plan for a child in foster care. We have learned through AFCARS Assessment Reviews and technical assistance that several title IV-E agencies already collect information on school enrollment, the highest level of education completed, and the reasons for changes in school enrollment. These data elements provide important information about this issue. As we explained in the 2015 NPRM, we believe that it is beneficial to collect information on the highest educational achievement of the child so that we can analyze trends in the relationship between a child's age and his or her educational achievement. Information on a child's recently completed grade level measures educational progress and aligns with statutory changes made by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110-351). 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. In reference to the suggestion for a data exchange with the Department of Education to collect a child's education information rather than collect it through AFCARS, we determined that approach would not yield consistent information. The Department of Education collects different and varied data from states, none of which is at the child level, as is the case with AFCARS. We will provide technical assistance as needed to title IV-E agencies to ensure accuracy of reporting.

Comment: In response to paragraph (b)(14), a national organization representing state child welfare agencies and state title IV-E agencies expressed concerns about consistency in reporting school enrollment information due to variations in the definitions of elementary, secondary, post-secondary education or training, college, not school-age, and not enrolled among jurisdictions. They suggested removing the data element. Other states and national advocacy/public interest groups suggested reporting children enrolled in any "formal education program" to capture children in half and full-day kindergarten programs in

states where compulsory attendance begins at first grade.

Response: We did not remove the requirement for agencies to report on student enrollment or make changes to the definitions of “elementary” or “secondary” based on the comments because the data element is based on the statutory requirement in section 471(a)(30) of the Act. That provision specifies that title IV–E agencies must assure that each child who has attained the minimum age for compulsory school attendance under state law and with respect to whom there is eligibility for a payment under the title IV–E plan is a full-time elementary or secondary school student or has completed secondary school. The provision also defines an “elementary or secondary school student” as “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 fulltime basis due to the medical condition of the child, which incapability is supported by regularly updated information in the case plan of the child.”

Comment: In response to paragraph (b)(14), state title IV–E agencies and national advocacy/public interest groups suggested that agencies report “part-time” post-secondary education.

Response: We agreed with the commenters to include “part-time” enrollment in addition to full-time and revised the definitions for the response options “post-secondary education or training” and “college” to include part-time enrollment. Now, the regulation specifies that enrollment in “post-secondary education or training” refers to full or part-time enrollment in any post-secondary education or training, other than an education pursued at a college or university and enrollment in “college” refers to a child that is enrolled full or part-time at a college or university. We understand that many older foster youth who are enrolled in post-secondary education or training or college attend part-time and therefore, we wish to capture both enrollment options for these older youth.

Comment: In response to paragraph (b)(15), three states expressed concern with the proposal to report the highest educational level completed by the child as of the last day of the report period, noting that a child who is in kindergarten on the last day of the report period will be reported as “not school-age.”

Response: We understand the commenter’s concern, however, we are retaining the requirement for the agency to report the highest educational level completed by the child as of the last day of the report period. We are not seeking information on the child’s current educational level. As we explained in the 2015 NPRM, we proposed to collect information on the child’s highest educational level which measures educational progress and aligns with section 475(1)(C)(ii) of the Act relating to the child’s health and education records and grade level performance while in foster care.

Comment: In response to paragraph (b)(15), national advocacy/public interest groups suggested additions to paragraph (b)(15) that included, adding early childhood response options, adding general equivalency degree (GED) or other high school equivalent, and adding different levels of higher education to include one year and two year degrees/certificates.

Response: We agree with the commenters who recommended adding GED as a response option, so we added it to the regulation which now reads: “Indicate “GED” if the child has completed a general equivalency degree or other high school equivalent.” We did not add response options recommended by other comments because we do not need the suggested detail about different levels of early childhood education or higher education for children in foster care at the national level.

Comments: In response to paragraph (b)(16), a national organization representing state child welfare agencies and three state title IV–E agencies suggested removing the data element on educational stability stating that the data would be unreliable and not useful because the reasons for new school enrollments are often more complex than the six response options presented. They also suggested that a child’s educational stability would be better assessed through a qualitative review and recommended that we collect only whether a change in a child’s school occurred. One commenter was concerned that due to the complexity of this data element, workers would be likely to select “other,” reducing the accuracy of the responses.

Response: We did not make changes to the regulation based on these comments because we continue to believe that a child’s educational stability is an important issue and this data element is a step to gathering more information on this issue. As we stated in the 2015 NPRM, we seek this information because it will conform to section 475(1)(G) of the Act which is a case plan requirement to ensure the development of a plan for the educational stability of a child in foster care. We will provide technical assistance to title IV–E agencies as needed to ensure that this data element is reported accurately.

Comment: In response to paragraph (b)(16), national advocacy/public interest groups recommend requiring agencies to report all school changes during a report period. They also recommended adding more data elements to gather information about whether or not school changes were in the best interests of a child, including whether the placement supports the child’s permanency plan, whether it was a school discipline transfer, and whether there was a lack of living options near the original school.

Response: We are retaining the language proposed in the 2015 NPRM in the final rule and did not add the response options recommended by the commenters for several reasons. We do not need details at the national level about multiple school changes during a report period or other more detailed reasons for a school change. As we indicated in the 2015 NPRM, 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. We believe the response options in paragraphs (b)(16)(i) through (b)(16)(vii) will allow us to identify those barriers and to determine ways to best address them.

Section 1355.44(b)(17) Pregnant or Parenting

In paragraph (b)(17)(i), the title IV–E agency must report whether the child is pregnant as of the end of the report period. We revised this data element in the final rule. In the 2015 NPRM, we proposed to require the agency to report whether the child is or was previously pregnant.

In paragraph (b)(17)(ii), the title IV–E agency must report whether the child has ever fathered or bore a child. We revised this data element in the final rule. In the 2015 NPRM, we proposed to

require the agency to report the number of children of the minor parent.

In paragraph (b)(17)(iii), the title IV–E agency must report whether the child and his/her child(ren) are placed together in foster care. We revised this data element in the final rule. In the 2015 NPRM, we proposed to require the agency to report the number of children living with the minor parent.

Comment: Several states and a national organization representing state child welfare agencies generally objected to collecting information on children in foster care who are parents or pregnant for various reasons including: It is relevant in the NYTD (see 45 CFR 1356.83(g)(52)) not AFCARS; it will only be applicable to a small number of children and will not result in accurate reporting; it could impose an extensive data collection burden on case workers since there is no minimum age imposed on who the agency is to report, it is difficult to know a pregnancy begin date, and it would inappropriately apply to youth who are not of child-bearing age.

Response: We require information on children in foster care who are pregnant or parenting to be reported in AFCARS because state-by-state data on this topic is required to be included in the annual report to Congress per section 479A(a)(7)(B) of the Act. The NYTD does not provide case level information on all children in foster care; therefore this type of data is not available in the NYTD. We revised the proposed data elements on pregnancy and minor parents and combined them into one data element that will meet the data needed in section 479A(A)(7)(B) of the Act for the report to Congress. We now require agencies to meet this requirement through one yes/no element, thus reducing the reporting burden for these elements. We moved away from our 2015 NPRM proposal that required agencies to report the total number of biological children either fathered or borne by the child because we do not need that level of information. Lastly, while we still require agencies to report whether the child in foster care is placed with his/her children, we limited the scope to any point during the report period, and not for each living arrangement. We will provide technical assistance to title IV–E agencies as needed to ensure that this data element is reported accurately.

Comment: Several commenters suggested that agencies report more information about children in foster care who are pregnant or parenting, such as data on fathers and parenting responsibilities of youth in care, and situations when the child is placed

separately in foster care from the minor parent.

Response: We revised the data elements on children who are pregnant or parenting for purposes of meeting the data reporting requirement in section 479A(a)(7)(B) of the Act for the Annual Report to Congress. These suggestions would go beyond the data we need for that report and therefore, are not needed at the federal level.

Section 1355.44(b)(18) Special Education

In paragraph (b)(18), we require the title IV–E agency to report on the child’s special education, status by indicating whether the child has an Individualized Education Program (IEP) or an Individualized Family Service Program (IFSP).

Comment: A state title IV–E agency, the association representing state title IV–E agencies, and others recommended that we simplify data reporting regarding a child’s special education status. They did not believe it would be useful to distinguish between an IEP and IFSP for comparison across states due to the variability across jurisdictions. Since only children from birth through age three will have an IFSP, the age of the child will indicate which type of plan is in place for the child. One state asked when the state should report about a child’s IEP/IFSP.

Response: We made revisions to the final rule in response to these comments. Agencies will be required to indicate “yes” or “no” as to whether the child has an IEP/IFSP. The agency reports this information as of the end of the report period.

Comment: One state asked if children with an IEP for advanced placement should be included in the element.

Response: Yes, if the IEP meets the definition in section 614(d)(1) of Part B of Title I of the IDEA and implementing regulations.

Comment: Several commenters suggested additional data elements such as specifics on the types of special needs services provided to a child, whether a representative from the agency attended the child’s IEP/IFSP meetings, and to provide an option to identify children who are receiving services and accommodations in compliance with section 504 of the Rehabilitation Act.

Response: We did not make changes to the final rule in response to these comments because the overwhelming number of comments we received asked us to simplify this element. In addition, we wanted to note that it would not be appropriate for us to require agencies to report about a child’s services under

section 504 of the Rehabilitation Act as it is a civil rights statute which prohibits discrimination against individuals with disabilities, which we did not propose in the 2015 NPRM. This data element relates to special education as defined in 20 U.S.C. 1401(29), which means specifically designed instruction, at no cost to the parent(s), to meet the unique needs of a child with a disability (80 FR 7151, Feb. 9, 2015).

Section 1355.44(b)(19) Prior Adoption

In paragraph (b)(19), the title IV–E agency must report whether the child experienced a prior legal adoption, including any public, private, or independent adoption in the United States or adoption in another country, and a tribal customary adoption, prior to the current out-of-home care episode. If so, in paragraph (b)(19)(i), the title IV–E agency must report the date it was finalized, and in paragraph (b)(19)(ii), the title IV–E agency must report whether the child’s prior adoption was an intercountry adoption.

Comment: Several states, a national organization representing state child welfare agencies, and others objected to us collecting data on all of the child’s prior adoptions including the detailed information on the type of the prior adoption, and where the child was previously adopted. The commenters concerns were that agencies capture information on prior adoptions ad hoc based on the willingness of the person to provide the information; that this level of detail may not exist; that the reliability of collecting every prior adoption is questionable; that it would be overly burdensome to research all of the child’s prior adoptions and questioned the usefulness of the information and our authority to collect it. Several states suggested instead that we collect only the date of the most recent prior adoption and whether or not the child was adopted within the state.

Response: We were persuaded by the objections noted about these data elements and revised the final rule to address some of the concerns We are statutorily mandated to collect information about the number of children who enter foster care after an adoption was legalized per section 479(d) of the Act. As such, we did not remove the prior adoption data elements entirely, but revised them to require the title IV–E agency to report information for the most recent prior adoption only. We also revised the data element on the type of each prior adoption to instead require the title IV–E agency to report if a prior adoption was an intercountry adoption and revised the name of the

data element. This is to address reporting on disrupted intercountry adoptions required under section 422(b)(12) of the Act which is currently provided in the state's annual title IV-B plan update. We removed the data element proposed in the 2015 NPRM asking for the jurisdiction name of each prior adoption.

Comment: Associations representing tribal interests suggested including customary tribal adoptions to bring awareness and data to this issue.

Response: We agree and revised the final rule to include that title IV-E agencies report whether the child experienced a prior legal adoption, including a tribal customary adoption, before the current out-of-home care episode.

Comment: National advocacy/public interest groups suggested that we collect more information on prior adoptions, such as the child's birth country, whether the previous adoption assistance agreement was terminated and the previous adoptive parents are still receiving subsidies, whether the previous adoption was open or closed, the reasons why the adoption disrupted/dissolved, and categorizing adoption dissolutions and disruptions separately.

Response: We considered these comments, but did not make any changes to the final rule based on this comment and instead reduced the information required on prior adoptions to collect information needed to satisfy statutory requirements in section 479(d) and 422(b)(12) of the Act. In addition, we took into consideration the overwhelming response from state agencies that our proposal to collect more details on prior adoptions would be burdensome and outweighs its utility.

Comment: States questioned how they would report on prior adoptions if they did not know or could not ascertain the information. They were concerned about missing data counting towards a penalty.

Response: We have revised the requirements for reporting on prior adoptions so that the agency only has to report the most recent prior adoption. As such, we do not expect that agencies will have difficulty in ascertaining whether the child was adopted prior to entering foster care. If the information is unknown because the child was abandoned, then the title IV-E agency would report "abandoned" for paragraph (b)(19).

Section 1355.44(b)(20) Prior Guardianship

In paragraph (b)(20)(i), the title IV-E agency must report whether the child

experienced a prior legal guardianship and if so, to report the date that the prior legal guardianship became legalized in paragraph (b)(20)(ii). We revised our 2015 NPRM proposal to only require the title IV-E agency report the date of the most recent prior guardianship and eliminated reporting on the type and jurisdiction of each prior guardianship.

Comment: Several states objected to us collecting all of the child's prior legal guardianships, and the detailed information on the type of the prior guardianship and where the child had a prior legal guardianship. The commenters concerns were that agencies capture information on prior guardianships ad hoc based on the willingness of the person to provide the information; that this level of detail may not exist; that the reliability of collecting every prior guardianship is questionable; that it would be overly burdensome to research all of the child's prior guardianships; and questioned how useful the information is and our authority for collecting it.

Response: We were persuaded by the objections noted and revised the final rule to address the concerns about reporting each prior legal guardianship and the type and jurisdiction of each prior guardianship. We are statutorily mandated to collect information about the number of children who enter foster care after a legalized guardianship per section 479(d) of the Act. As such, we did not remove the prior legal guardianship data element entirely, but revised it to require the title IV-E agency to report the date of the most recent prior legal guardianship only if the child experiences a prior legal guardianship. In addition, we removed the data elements proposed in the 2015 NPRM on the type and jurisdiction of each prior guardianship.

Section 1355.44(b)(21) Child Financial and Medical Assistance

In paragraph (b)(21), we require the title IV-E agency to report whether the child received financial and medical assistance, other than title IV-E foster care maintenance payments. If so, in paragraphs (b)(21)(i) through (b)(21)(xiii), the title IV-E agency must indicate whether each type of federal or state/tribal assistance applies: SSI or Social Security benefits; Title XIX Medicaid; Title XXI SCHIP; State/Tribal adoption assistance; State/Tribal foster care; Child support; Title IV-E adoption subsidy; Title IV-E guardianship assistance; Title IV-A TANF; Title IV-B; SSBG; Chafee Foster Care Independence Program; Other.

Comment: States, a national organization representing state child welfare agencies, and others opposed our proposal to require the title IV-E agency to report specific federal assistance per diem payment amounts for each of the child's living arrangements and expressed concern about the increased burden and potential inaccuracies in reporting the data. One commenter indicated that collecting this information would be burdensome for counties.

Response: In response to these concerns, we were persuaded to revise the financial assistance data elements by removing the data element related to federal assistance per diem payment amounts for every living arrangement and consolidated the financial and medical assistance response options into one data element. We must still collect the extent and nature of assistance per section 479(c) of the Act; therefore, in paragraph (b)(21) we require title IV-E agencies to report whether or not the child is receiving each of 13 types of state/tribal and federal financial and medical assistance during the report period.

Comment: One commenter questioned whether this data element includes a situation where a child returns home but remains in the agency's custody and whether the data element applies to financial and medical assistance that the child received during the reporting period but prior to coming into the agency's custody.

Response: The title IV-E agency must report the assistance that applies beginning when the child enters the reporting population and continues until the child is no longer in the agency's placement and care responsibility. Therefore, yes the agency must report the assistance that applies if the child is placed at home and remains under the placement and care responsibility of the title IV-E agency.

Section 1355.44(b)(22) Title IV-E Foster Care During Report Period

In paragraph (b)(22), we require the title IV-E agency to report whether a title IV-E foster care maintenance payment was paid on behalf of the child at any point during the report period. We received no comments on this data element.

Section 1355.43(b)(23) Through (b)(25) Siblings

In paragraph (b)(23), we require the title IV-E agency to report the total number of siblings that the child under the placement and care responsibility of the title IV-E agency has, if applicable.

In paragraph (b)(24), we require the title IV–E agency to report the number of siblings of the child who are in foster care as defined in section 1355.20.

In paragraph (b)(25), we require the title IV–E agency to report the number of siblings of the child who are in the same living arrangement as the child, on the last day of the report period.

Comment: In general, several states and a national organization representing state child welfare agencies agreed that the issue of sibling placement is important at the practice level when planning for children, but is better captured as a qualitative data set. Commenters noted it may not be possible for the caseworker to know whether the child has siblings and if so how many, because agencies encounter multiple overlapping sibling groups, uncertain parentage, and mixed biological, legal, and step-parent relationships. They had concerns and questions about the 2015 NPRM proposal on siblings (which were in the sections 1355.43(e) and 1355.44 of the 2015 NPRM) including the definition of siblings, reporting sibling record numbers, and the reliability and consistency of the data. They commented that it would not provide meaningful valid information for national review, pointed out that there are many varied reasons for siblings not being placed together, and that our proposal would not take into account the complexity of what may constitute a family in the eyes of a child. Some states questioned the value of trying to match sibling record numbers and believe this requirement is onerous and of limited value. Some commenters recommended that if data on siblings must be gathered in AFCARS, we should collect the number of siblings of the child, the number of siblings who are also in care, and the number of siblings who are in the same placement with the child. Another commenter recommended that we collect the number of siblings placed with the child at the start of the placement and at any point during the child's time in this placement to determine if the child was placed with siblings when initially removed from home.

Response: We carefully reviewed the comments and suggestions and while we understand the concerns raised, we determined that it is important to continue require title IV–E agencies to report information about siblings. We acknowledge that there are many issues that make collecting data on siblings difficult. As we noted in the preamble to the 2015 NPRM, section 471(a)(31)(A) of the Act requires title IV–E agencies to 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. However, we were persuaded to revise the sibling data elements to address commenter concerns and simplify reporting. We addressed one of the major concerns raised by commenters by removing the data elements requiring the agency to report the sibling's child record numbers, which indicated which siblings were or were not placed with the child. Now, title IV–E agencies must report the total number of siblings of the child, the number of siblings that are also in foster care as defined in section 1355.20, and the number in the same living arrangement on the last day of the report period. We recognize the frequent movement of children makes it difficult to capture sibling information, so we will only require reporting as of the last day of the report period for the data element on siblings who are in the same living arrangement.

Comment: States asked for a clearer definition of sibling and questioned, for example whether to report if the child in foster care has step-siblings with which the child has no contact.

Response: We define a sibling to the child as his or her brother or sister by biological, legal, or marital connection. We acknowledge that title IV–E agencies may confront issues that may make collecting data on siblings difficult; however, we are not providing further specifics on the definition of sibling. The definition is broad and would include reporting the total number of step-siblings which constitutes a legal connection.

Section 1355.44(c) Parent or Legal Guardian Information

In paragraph (c), the title IV–E agency must report information on the child's parent(s) or legal guardian(s). In the 2015 NPRM we proposed to require the title IV–E agency to report the date of the first judicial finding that the child has been subject to child abuse or neglect, if applicable. We received comments from states requesting that we remove this data element stating that is excessive information, has limited value in measuring outcomes, and it does not add substantive value to the data file. States also questioned the usefulness of this data element due to varying state practices and believed it would be best left to a qualitative review process to determine how timeframes for permanency are being met by agencies rather than collecting information that may or may not be applicable. Another state and a

university expressed confusion in how to report a judicial finding for multiple removals and a private citizen suggested revising the name of the data element to use broader judicial terminology for states that do not have judicial findings of abuse or neglect. We were persuaded by the commenters and removed this element.

Section 1355.44(c)(1) and (c)(2) Year of Birth Parent or Legal Guardian

In paragraphs (c)(1) and (c)(2), the title IV–E agency must report the birth year of the child's parent(s) or legal guardian(s). We did not receive comments on these data elements.

Section 1355.44(c)(3) and (c)(4) Tribal Membership for Mother and Father

In these paragraphs, state title IV–E agencies must indicate whether the mother and father are members of an Indian tribe. In the 2016 SNPRM we proposed that state title IV–E agencies gather information about the parents' tribal membership in sections 1355.43(i)(3)(ii) and (i)(3)(iv). We determined that this information is better integrated in section 1355.44(c) with other data elements on parent and legal guardian information. We retained the requirement in the 2016 SNPRM that these elements apply only to state title IV–E agencies because they collect information related to the potential application of ICWA. We did not receive substantive comments to the 2016 SNPRM on this specific data element and have retained it in the final rule.

Section 1355.44(c)(5) Termination/Modification of Parental Rights

In paragraph (c)(5), the title IV–E agency must report whether the parents' rights were terminated or modified on a voluntary or involuntary basis. A voluntary termination means the parent(s) voluntarily relinquished their parental rights to the title IV–E agency, with or without court involvement. This is a new data element that we added in response to a state commenter who asked for clarification on how the agency should report voluntary surrenders, stating that the type of termination of parental rights (TPR) and the pertinent dates can be different for each parent. In the 2016 SNPRM, we proposed to require that the state title IV–E agency report whether the rights of the Indian child's parents or Indian custodian were involuntarily or voluntarily terminated in paragraph (i)(19). However, this information is already required in paragraph (c)(5).

In paragraph (c)(5)(i), the title IV–E agency must report each date the title IV–E agency filed a petition to

terminate/modify parental rights regarding the child's biological, legal, and/or putative parent(s), if applicable.

Comment: An organization representing tribal interests commented that the data element for the TPR petition filing date should be consistent with ACF's policy that allows tribes to use alternative methods for helping a child achieve a permanent placement, such as modification or suspension of parental rights (Child Welfare Policy Manual section 9.2, question 12).

Response: We agree that the regulation should be consistent with the noted policy and revised the regulation to require the title IV-E agency to report the dates the agency filed a petition for a "modification" of parental rights or a termination of parental rights.

Comment: Two states commented that we should eliminate the data element for the TPR petition filing date stating it does not provide substantive value to the data file. They suggested that we should limit reporting to the most recent petition filing date if the child is currently available for adoption or was available during the reporting period. A university asked whether we need the TPR filing petition date for national policy development or program monitoring. A state supported the TPR petition filing date element to analyze the length of time it takes for a child to achieve permanency through adoption but questioned the purpose of reporting each petition date when multiple petitions are filed.

Response: We are retaining the requirement for the title IV-E agency to report each date the agency filed a petition to terminate or modify parental rights of the child's biological, legal, and/or putative parent(s), if applicable. The petition date and date of the termination or modification of parental rights in paragraph (c)(5)(ii) will allow us to determine the time between when the agency files a petition to terminate or modify parental rights and the actual date of the termination or modification. Additionally, AFCARS Assessment Reviews have shown that TPR filing petition dates are typically in the state electronic case files. Regarding multiple petitions, we require title IV-E agencies to report each petition date in the event that multiple petitions are filed for putative parents. As we stated in the 2015 NPRM, we require title IV-E agencies to report 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. We will work with title IV-E agencies during implementation and provide technical bulletins for reporting the termination and modification of parental rights petition dates.

Comment: Two states commented that the petition and termination/modification dates should be tied to the individual parent.

Response: We agree and will work with title IV-E agencies during implementation if there is any additional clarification needed.

Comment: Two states asked how to report the petition dates if the child was previously adopted and whether it is limited to the current removal episode.

Response: We'd like to clarify. If a child was adopted, later enters the out-of-home-care reporting population, and the agency files a petition to terminate or modify parental rights, the agency must report the petition filing date for the adoptive parent because that is the parent of the child. We will work with title IV-E agencies during implementation if further clarification is needed.

In paragraph (c)(5)(ii), the title IV-E agency must report the date that parental rights are voluntarily or involuntarily terminated/modified for each biological, legal and/or putative parent, if applicable.

Comment: An organization representing tribal interests commented that this data element should include language consistent with ACF's policy that allows tribes to use alternative methods for helping a child achieve a permanent placement, such as modification or suspension of parental rights (Child Welfare Policy Manual section 9.2, question 12).

Response: We agree that the regulation should be consistent with the noted policy and revised the regulation to require the title IV-E agency to report the dates of a "modification" of parental rights or a termination of parental rights.

Section 1355.44(c)(6) Involuntary Termination/Modification of Parental Rights Under ICWA

If the state title IV-E agency indicated in paragraph (c)(5) that the TPR was involuntary and if a state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies"

to paragraph (b)(5), we require that the state title IV-E agency indicate:

- Whether the state court found beyond a reasonable doubt, that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f) (paragraph (c)(6)(i));
- whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses (QEW) in accordance with 25 U.S.C. 1912(f) (paragraph (c)(6)(ii)); and
- whether prior to TPR, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d) (paragraph (c)(6)(iii)).

These are similar to paragraph s (i)(20) and (i)(21) of the 2016 SNPRM except that we updated the language consistent with 25 CFR 23.121.

Comment: The national organization representing state child welfare agencies and state title IV-E agencies suggested revisions to simplify this section, such as reporting only whether a court made findings that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage for termination of parental rights and if yes, did a QEW support this finding or only report court order information for involuntary TPRs. Another state suggested that we re-order and simplify the voluntary TPR data elements. A commenter also suggested that we ask whether a TPR was voluntary or involuntary.

Response: We did not make changes to the final rule in response to these comments to simplify these elements. As we indicated in the 2016 SNPRM preamble, termination standards are important protections for Indian children as defined in ICWA given that Congress specifically created minimum federal standards for removal of an Indian child to prevent the breakup of Indian families and to promote the stability and security of families and Indian tribes by preserving the child's links to their parents and to the tribe through the child's parent(s). Further, distinguishing between involuntary and voluntary terminations of parental rights is important in ICWA given specific protections that must be provided in each context (25 U.S.C. 1912(e), (f) and 25 U.S.C. 1913). The final rule now requires state and tribal title IV-E agencies to report whether a TPR is voluntary or involuntary in paragraph (c)(5). Furthermore, we integrated the

ICWA-related data elements into certain sections of the final rule, thereby moving the data elements on TPR proposed in the 2016 SNPRM to paragraph (c) and added a new data element on active efforts at involuntary TPR (paragraph (c)(6)(iii)).

Comment: A state recommended that we require states to list the reasons for involuntary TPR, using the reasons from its state statute, such as whether a parent is palpably unfit or abuses chemicals.

Response: We did not make changes in response to these suggestions. States information systems differ and include information useful for their own internal purposes, but not mandated by AFCARS. We encourage states to consider collecting data that helps states to evaluate and implement state law, but we do not require that they report those data to AFCARS.

Comment: A state and tribe suggested adding data elements asking about alternatives to TPR, such as tribal customary adoption, where the parental rights are modified and not severed, and the adoptive parent is granted the same rights and responsibilities as they would under a contemporary adoption.

Response: We'd like to clarify. As we explained in the preamble to the 2016 SNPRM, the state title IV-E agency must report information regarding voluntary and involuntary terminations/modification of parental rights, which include tribal customary adoptions.

Comment: Tribes and organizations representing tribal interests recommend that we add numerous data elements, including:

- Whether the court made a determination in a court order that active efforts at TPR had been made by the state title IV-E agency and whether active efforts were provided by any party seeking TPR.
- whether the tribe was notified when a state seeks TPR for an Indian child.

Response: We agree with the suggestion to require state title IV-E agencies to report on active efforts at involuntary TPR. Active efforts are required under the ICWA to prevent the breakup of the Indian family in two instances: Prior to removal and prior to involuntary TPR. Specifically in paragraph (c)(6)(iii), we require state title IV-E agencies to report for involuntary TPR whether prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). This language is consistent with the BIA regulation at 25 CFR 23.120 which requires that a court

concluded that active efforts were made, and does not require a court order. We decline to require state title IV-E agencies to report the date on which the tribe was notified when a state seeks involuntary TPR for an Indian child and provide our reasoning in the preamble section on *Notification* in paragraph (b).

Section 1355.44(c)(7) Voluntary Termination/Modification of Parental Rights Under ICWA

If the title IV-E agency indicates in paragraph (c)(5) that the TPR was voluntary, and the state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), the state title IV-E agency must indicate whether the consent to termination of parental or Indian custodian rights was executed in writing and recorded before a court of competent jurisdiction with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) and (c). This is similar to sections 1355.43(i)(22), (i)(23) and (i)(24) as proposed in the 2016 SNPRM, however, we updated the language consistent with 25 CFR 23.125.

Comment: One state recommended including a mechanism or process to ensure that an Indian child retains tribal membership after voluntary TPR because it's important for a child to know his/her lineage and tribal membership, which offers benefits such as health services and educational resources for higher education.

Response: We agree that it is important to recognize such mechanisms and revised the regulation to refer to either a "modification" of parental rights or a termination of parental rights. However, AFCARS is not the appropriate vehicle for establishing a mechanism or process regarding maintaining tribal membership because AFCARS is a data reporting system.

Section 1355.44(d) Removal Information

In paragraph (d), we require that the title IV-E agency report information on each of the child's removal(s) from home.

Section 1355.44(d)(1) Date of Child's Removal

In paragraphs (d)(1)(i) through (d)(1)(iii), we require the title IV-E agency to 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. We received no

comments on this data element and have retained the 2015 NPRM proposed language in the final rule.

Section 1355.44(d)(2) Removal Transaction Date

In paragraph (d)(2) we 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 did not receive relevant comments on this data element and have retained the 2015 NPRM proposed language.

Section 1355.44(d)(3) Removals Under ICWA

In paragraph (d)(3), if a state title IV-E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), we require that the state title IV-E agency indicate:

- Whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a) (paragraph (d)(3)(i));
- whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a) (paragraph (d)(3)(ii)); and
- whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) indicates that prior to each removal reported in paragraph (d)(1) that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d) (paragraph (d)(3)(iii)).

These are similar to sections 1355.43(i)(12) and (i)(14) as proposed in the 2016 SNPRM.

Comment: The national organization representing state child welfare agencies was in support of a data element asking about court determinations of active efforts because members believe this is the best data element to capture information on active efforts to prevent the breakup of the Indian family. One tribal commenter noted that in some state courts, local practice has been to stipulate to active efforts, rather than creating a record that demonstrates active efforts.

Response: We retained the requirement regarding court determinations that active efforts were made to prevent the breakup of the Indian family with modifications to be consistent with BIA regulations at 25 CFR 23.120. We now require state title IV–E agencies to indicate in paragraph (d)(3)(iii) whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) indicates that prior to each removal active efforts were made to prevent the breakup of the Indian family and that these efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).

Comment: We received several concerns and suggestions about the requirement for the state title IV–E agency to report whether the court found that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child and that the evidence presented included testimony by a QEW. Two tribes suggested that states be required to report whether the QEW meets the standards per the BIA’s Guidelines. The national organization representing state child welfare agencies noted that states experience challenges in meeting the requirement in ICWA for QEWs, stating there are not enough QEWs to meet the need for court proceedings. One state noted that there is no way to report that a court does not require a QEW to testify even if the agency knows that a QEW should testify.

Response: We did not make changes to the final rule in response to these comments. We are retaining the requirement that the state must report whether evidence presented included the testimony of a QEW for the specified court finding but updated the language to reflect the BIA regulation at 25 CFR 121(a). As we noted in the preamble to the 2016 SNPRM, the removal data elements will provide data on the extent to which Indian children as defined in ICWA are removed in a manner that conforms to ICWA’s standards, informs ACF about the frequency of and evidentiary standards applied to removals of Indian children, helps identify needs for training and technical assistance related to ICWA, and highlights substantive opportunities for building and improving relationships between states and tribes. Removing the requirement for agencies to report whether a QEW provided testimony would diminish our ability to achieve these purposes. We require the state title IV–E agency to report whether the evidence presented for foster care placement as indicated in paragraph

(d)(3)(i) included the testimony of a QEW in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a) (paragraph (d)(3)(ii)). Thus, we are not asking whether or not the state title IV–E agency knows that ICWA requires a QEW’s testimony, rather we are requiring the state title IV–E agency to indicate whether the evidence presented included the testimony of a QEW.

Comment: We received comments suggesting additional data elements related to: Emergency removals per section 1922 of ICWA, such as whether the court determined that the state properly removed the Indian child and how long the emergency removal lasted; and foster care voluntary removals, such as whether a court order indicates that the voluntary consent to a foster care placement was made in writing and recorded in the presence of a judge.

Response: We did not revise the final rule in response to these suggestions. We understand the value of collecting data related to voluntary foster placements and emergency removals of children to whom ICWA applies. We encourage states to consider collecting this information, if consistent with their own practice models, but we decline to require collecting and reporting it to AFCARS. At this time, we seek to understand the scope of all removals of children to whom ICWA applies and therefore we’ve required broad data elements we believe are most critical in relation to Indian children as defined in ICWA.

Section 1355.44(d)(4) Environment at Removal

In paragraph (d)(4) we require the title IV–E agency to report the type of environment (household or facility) from a list of seven that the child was living in at the time of each of the child’s removals reported in paragraph (d)(1).

Comment: One state recommended adding whether a legal guardian is a child’s relative as a response option because in the proposal, both “legal guardian” and “child’s relative” are defined to exclude the other choice, even though the legal guardian may be a child’s relative. Other homelessness advocacy groups suggested adding “homeless” as a separate response option because they feel that data on homelessness is very important and relevant to collect to get a more detailed picture of where youth running away from system involvement are running to.

Response: We agree with the suggestion to add “relative legal guardian” as a response option to distinguish between a guardian who is

or is not related to the child. We did not add a separate response option for “homelessness” because it is included in the response option of “other.” However, we added “homelessness” as a circumstance of removal at paragraph (d)(6)(xxxiv).

Comment: Three commenters representing tribal interests recommended adding a response option for “Indian custodian,” who is a person recognized under ICWA that may not be a relative, parent, or legal guardian.

Response: We specified in section 1355.41(c)(2) that for an Indian child as defined in ICWA, the term “legal guardian” in the specific data elements of §§ 1355.44(c)(1), (c)(2), (d)(4), and (d)(5), includes an Indian custodian as defined in ICWA at 25 U.S.C. 1903 if the Indian custodian has legal responsibility for the child.

Section 1355.44(d)(5) Authority for Placement and Care Responsibility

In paragraph (d)(5) we require the title IV–E agency to indicate, for each of the child’s removals, whether the title IV–E agency’s authority for placement and care responsibility of the child was based on a court order. We did not receive substantive comments to this data element and have mostly retained the language as proposed in the 2015 NPRM, clarifying only that we intended “guardian” to refer to “legal guardian”.

Section 1355.44(d)(6) Child and Family Circumstances at Removal

In paragraph (d)(6), we require the title IV–E agency to report all of the circumstances surrounding the child and family at each removal reported in paragraph (d)(1) from a list of 35 circumstances. The agency must report all child and family circumstances that are present at the time of each removal, including the circumstances that contributed to the decision to place the child into foster care.

We modified the regulation by revising the name of two circumstances at removal. In paragraph (d)(6)(xi) we revised the name of the circumstance from “caretaker’s alcohol abuse” to “caretaker’s alcohol use” and in paragraph (d)(6)(xii) we revised the name of the circumstance from “caretaker’s drug abuse” to “caretaker’s drug use.” We did not change the definition of the data element. These language changes are based on language guidelines (<https://www.whitehouse.gov/ondcp/changing-the-language-draft>) recently released by the White House Office of National Drug Control Policy that are designed to reduce the harmful stigma associated

with substance use disorders and addiction.

We also modified the regulation by adding two circumstances at removal (paragraphs (d)(6)(xxxii) and (d)(6)(xxxiii)) so that we can identify children who are under a title IV–E agreement for title IV–E foster care maintenance payments. A commenter to the 2015 NPRM suggested that we add a data element allowing title IV–E agencies to specify children reported to AFCARS who are under title IV–E agreements. We have also received this suggestion from several states during AFCARS Assessment Reviews. We believe that the best way to address these comments is to add a circumstance at removal that title IV–E agencies may indicate if this situation applies for a child. We believe this will lead to more accurate reporting and analysis of the appropriate children. In addition, this will allow us to clearly identify when an Indian child is under the state title IV–E agency’s placement and care responsibility versus receiving a title IV–E foster care maintenance payment under a title IV–E agreement. We believe this information, along with the ICWA-related data elements state title IV–E agencies are now required to report will provide a clearer picture of the AFCARS out-of-home care reporting population. We included separate circumstances at removal for title IV–E agreements with another public agency and title IV–E agreements with an Indian tribe to better inform which title IV–E agreement the child is reported under and provide clarity for title IV–E agencies on who is to be included in the out-of-home care reporting population.

Comments: Several commenters suggested adding “sex trafficking victim” as a circumstance at removal.

Response: We agree with the suggestions to add “sex trafficking victim” as a circumstance and have added it as paragraph (d)(6)(xxviii). This will inform us whether the child is a sex trafficking victim at the time the child entered the out-of-home care reporting population. The requirements to collect sex trafficking information in paragraphs (d)(7) and (d)(8) relate to a child who was a victim prior to or while in foster care, which is designed to meet statutory reporting requirements.

Comment: One commenter suggested adding “prenatal substance exposure” as a circumstance at removal.

Response: We did not add “prenatal substance exposure” as a child and family circumstance at removal because we already have response options “prenatal alcohol exposure” and “prenatal drug exposure.”

Comment: Advocacy organizations suggested adding immigration-related response options as child and family circumstances at removal stating that a child’s immigration status is important to understand the barriers and services to support this population. They also noted that an unintended consequence of immigration enforcement can be the separation of detained parents from their children.

Response: We were persuaded by commenters who suggested it was important to know when a circumstance at removal is that the parent was detained or deported for immigration reasons and added “parental immigration detainment or deportation” as a child and family circumstance at removal to paragraph (d)(6)(xxix). Commenters pointed out that this information is important in order to assess the critical services that may be required to support the child and the family. In addition, it is important to understand what barriers exist for the child and family. We removed the data elements from the 2015 NPRM proposal in paragraphs (b) and (c) to collect whether the child and parents were born in the U.S. for the reasons noted by many commenters who opposed them and instead require that agencies report this circumstance at removal. We did not add a data element on a child’s immigration status because that information is not needed at the federal level since agencies at the state, tribal, and local level determine a child’s eligibility for services.

Comment: Advocates and organizations representing the homeless suggested adding many separate circumstances at removal related to homelessness stating that data on homelessness is important and relevant to collect. Recommendations included types of homelessness habitations and particular family situations such as: “places not meant for human habitation” (*i.e.*, abandoned buildings); “couch-surfing”; “family is living in a shelter or on the streets”; “family home is overcrowded”; and “family home is hazardous condition.”

Response: We agree with the suggestions to add “homelessness” as a circumstance and have added it as paragraph (d)(6)(xxxiv). Such information can help agencies identify services and support for children and families. We define homelessness consistent with the definition used in the National Youth in Transition Database (NYTD) at 1356.83(g)(49).

Comment: Commenters expressed confusion on why we provided domestic violence as a child and family circumstance at removal stating that the

reason for removal would be harm to the child. Other commenters suggested that we should modify the domestic violence circumstance to require agencies to report intimate partner violence experienced or perpetrated by a child of any age and not only those who are eighteen years of age and older.

Response: We appreciate the suggestions to revise this circumstance at removal and revised it to make it more consistent with the definition of domestic violence in the Family Violence Prevention and Services Act (FVPSA). In response to the confusion on why we provided domestic violence as a child and family circumstance at removal, we noted in the 2015 NPRM that the agency must report all of the circumstances that are present at the time of the child’s removal, in addition to the circumstances or reasons for the child’s removal and placement into foster care.

Comment: In the 2015 NPRM we solicited comments on whether we should collect information on LGBTQ youth, and if so, what information. Several commenters pointed out the unique plight of LGBTQ youth in foster care stating that research indicates that LGBTQ youth are disproportionately represented within the child welfare system, experience high rates of family rejection, and experience unique challenges to their personal safety and stability.

Response: We support further understanding of LGBTQ youth in foster care and their experiences while in foster care. Such information can help agencies improve their supports and services to these young people. We included a circumstance at removal in paragraph (d)(6)(xxx) as to whether there is “family conflict related to the child’s sexual orientation, gender identity, or gender expression” to aid us in recognizing the needs and experiences of LGBTQ youth who enter foster care. Knowing whether family conflict regarding the child’s sexual orientation, gender identity, or gender expression was a circumstance at the child’s removal may allow the title IV–E agency to more accurately assess the child and plan for the child’s safety, permanency, and well-being while in foster care.

Comment: National advocacy/public interest groups suggested that we add educational neglect and unaccompanied minor as child and family circumstances at removal.

Response: We agree it is important to capture whether educational neglect is a child and family circumstance at removal and included it. We defined “educational neglect” based on the

American Humane Association definition as “alleged or substantiated failure of a parent or caregiver to enroll a child of mandatory school age in school or provide appropriate home schooling or needed special educational training, thus allowing the child or youth to engage in chronic truancy.” We did not include “unaccompanied minor” as one of the circumstances at removal since the child’s immigration status is irrelevant to their placement in foster care. We did, however, include a circumstance at removal of “parental immigration detention or deportation” to paragraph (d)(6)(xxix).

Section 1355.44(d)(7) Victim of Sex Trafficking Prior To Entering Foster Care

In paragraph (d)(7), we require the title IV–E agency to report whether the child had been a victim of sex trafficking before the current out-of-home care episode. If so, in paragraphs (d)(7)(i) and (d)(7)(ii) we require the title IV–E agency to indicate whether the agency reported each instance to law enforcement and the dates of each report.

Comment: One commenter asked if the agency should report this information for a time prior to the title IV–E agency’s involvement with the child or family.

Response: Yes, the responses to paragraphs (d)(7)(i) and (d)(7)(ii) require the title IV–E agency to report about victims of sex trafficking prior to entering foster care and prior to any agency involvement. We have retained the proposed rule language with minor edits.

Section 1355.44(d)(8) Victim of Sex Trafficking While in Foster Care

In paragraph (d)(8), we require the title IV–E agency to report whether the child was a victim of sex trafficking while in out-of-home care during the current episode. If so, in paragraphs (d)(8)(i) and (d)(8)(ii) we require the title IV–E agency to indicate whether the agency reported each instance to law enforcement and the dates of each report. We have retained the proposed rule language with minor edits.

Comment: A commenter sought clarification on whether the agency should report a date the report was made to law enforcement if an agency other than the title IV–E agency made the report.

Response: No, the agency reports on whether or not the title IV–E agency itself made the report to law enforcement. We modified the regulation to make this clearer.

Comment: Many commenters asked if it will be possible for the agency to report data on multiple instances of sex trafficking that may have occurred during the report period. Another commenter suggested that we include sex trafficking as a child and family circumstance at the time of removal.

Response: We agree with the suggestion to add sex trafficking as a response option in paragraph (d)(6) *Child and family circumstances at removal*. Because this information is to be reported as it relates to each removal episode and is not information that is to be overwritten, we have moved it to, the “removal” section of the final rule and specified that each instance of sex trafficking, report to law enforcement, and date must be reported. In addition, we modified the language and location of these elements to allow agencies to report multiple instances of sex trafficking. We believe these changes clarify many of the questions raised by commenters.

Comment: Organizations representing tribal interests noted that there are federal laws and policy barriers that prevent tribes from submitting any criminal or civil data to certain national databases, therefore tribes should be allowed to indicate they were not authorized or allowed to report information about sex trafficking to law enforcement.

Response: Title IV–E agencies are only required to report in AFCARS whether or not they reported a child that they identified as a sex trafficking victim to law enforcement. Therefore, in the instance where the tribe was prohibited by federal law or otherwise to make a report to law enforcement and therefore did not make a report the tribe would indicate “no.” This data element is not a mandate on the tribe to make a report of sex trafficking to law enforcement, but to indicate in AFCARS whether or not they made a report.

Comment: We received several other suggestions. One organization suggested we provide greater guidance and clarity about child victims of sex trafficking when they run away from foster care; several commenters suggested including additional elements, including health and mental health services a child receives related to sex trafficking, whether a sex-trafficking victim was criminally charged, had been homeless, missing or a runaway. Further, several commenters suggested that we include this information in a different data collection system, the National Child Abuse and Neglect Data System (NCANDS).

Response: We examined the suggestions to add data elements

regarding victims of sex trafficking, but have not made further changes. We do not have a specific use for the additional detailed information the commenters requested as we are requiring reporting on sex trafficking victims to meet statutory requirements for reporting this information to Congress per section 105 of Public Law 113–183 and for including this information in AFCARS per section 479(c)(3)(E) of the Act. In addition, the statute mandates that this specific sex trafficking victim data we are requiring title IV–E agencies to report be included in AFCARS and not NCANDS. However, effective May 29, 2017, Child Abuse Prevention and Treatment Act (CAPTA) state grant recipients must report, to the maximum extent practicable, the number of children determined to be victims of sex trafficking (section 106(d)(17) of CAPTA).

Section 1355.44(e) Living Arrangement and Provider Information

In paragraph (e), we require that the title IV–E agency report information on each of the child’s living arrangements for each out-of-home care episode. We revised some of the proposed data elements as suggested by commenters, integrated data elements relating to ICWA placement preferences proposed in the 2016 SNPRM, and removed others as follows:

- Removed a data element requiring agencies to report the total number of children who are living with their minor parent in each living arrangement. We instead require agencies to report whether the child and his/her child(ren) are placed together at any point during the report period in paragraph (b).
- Removed the data element requiring agencies to report the assistance that supports each of the child’s living arrangements. We merged this list of assistance with the data element *Child financial and medical assistance* in paragraph (b).
- Removed a data element requiring agencies to report the total per diem amount of the title IV–E foster care maintenance, adoption assistance, or guardianship assistance payment that the child is eligible for or received in response to comments. Commenters stated that reporting a child’s eligibility for a funding source, and the amount for which the child is eligible, when a payment has not actually been made creates the potential for inaccurate data. In addition a national organization representing state child welfare agencies commented that reporting these data elements outweighs its usefulness.
- Removed the requirement the title IV–E agency report whether the child is

receiving the following types of services if placed in a non-foster family home living arrangement: Specialized education, treatment, counseling, and other services. Some commenters noted that collecting this service data would be difficult and costly, other commenters pointed out that this requirement is not well defined, and it is unclear how ACF would use this data.

Section 1355.44(e)(1) Date of Living Arrangement

In paragraph (e)(1), we require the title IV–E agency to report the dates of placement for each of the child’s living arrangements for each out-of-home care episode. We received no comments and have retained the 2015 NPRM proposed rule language.

Section 1355.44(e)(2) Foster Family Home

In paragraph (e)(2), we require the title IV–E agency to report whether each of the child’s living arrangements is a foster family home. We received no comments and have made only minor conforming changes to this paragraph.

Section 1355.44(e)(3) Foster Family Home Type

In paragraph (e)(3), we require the title IV–E agency to report whether each type of foster family home, from a list of six, applies for each foster family home reported. These are: Licensed home, therapeutic foster family home, shelter care foster family home, relative foster family home, pre-adoptive home, or kin foster family home.

Comment: Several commenters supported the inclusion of a response option of “kin foster family home” but were concerned that workers will be confused about who should be included in this category and misreport data. Many agencies define “kin” to include relatives by blood, marriage or adoption, in addition to what is frequently referred to as “fictive kin” and this could lead to worker confusion about when to indicate the response option “relative foster family home” versus “kin foster family home.” Thus, commenters suggested that we revise the definition of “kin foster family home” to specifically note that the child is not related to the foster parent(s) by biological, legal or marital connection. Commenters made similar comments for the data elements *Child’s relationships to the foster parent(s)* in paragraph (e)(13) and *Child’s relationship to the adoptive parent(s) or guardian(s)* in paragraph (h)(2).

Response: We agree with the suggestion to modify the definition of “kin foster family home” so it now

specifies that the child is not related to the foster parent by a “biological, legal or marital connection.” The revised definition reads: “The home is one 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 between the child or the child’s family and the foster parent(s) and there is not a legal, biological, or marital connection between the child and foster parent.” We also made a similar modification to the definition of “kin” in the data elements *Child’s relationships to the foster parent(s)* in paragraph (e)(13) and *Child’s relationship to the adoptive parent(s) or guardian(s)* in paragraph (h)(2). The remaining foster family home type definitions are retained as proposed in the 2015 NPRM.

Section 1355.44(e)(4) Other Living Arrangement Type

In paragraph (e)(4), we require the title IV–E agency to report whether a child who is not placed in a foster family home is placed in one of the following thirteen living arrangements: 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 retained the response options as proposed in the 2015 NPRM.

Comment: A commenter requested definitions for each of the other living arrangement types.

Response: Each response option for the types of other living arrangements is explained in detail in paragraph (e)(4) of the regulation text. For example “residential treatment center” is defined as a facility that has the purpose of treating children with mental health or behavioral conditions; “supervised independent living” is defined as where the child is living independently in a supervised setting; and “medical or rehabilitative facility” is defined as where an individual receives medical or physical health care, such as a hospital.

Comment: One commenter suggested that title IV–E agencies have the option of classifying a “group home-family operated” as a type of foster family home. Also, a national organization representing state child welfare agencies commented that “group home family operated” and “group home staff operated” are different across jurisdictions and may be confusing to agencies.

Response: We recognize there are variations in how agencies license and approve group homes and will provide technical assistance to title IV–E agencies on a case by case basis on how to categorize group home living arrangements in their jurisdiction for AFCARS reporting purposes.

Comment: One commenter asked if medical and rehabilitative facilities include children in a hospital for illness. The commenter also asked if psychiatric hospitals include acute care (e.g., three to five days).

Response: Yes, a “medical or rehabilitative facility” is one where a child receives medical or physical health care, and includes a hospital. Paragraph (e) includes options for where a child is currently placed and a time frame is irrelevant as the title IV–E agency must to report all living arrangements regardless of length of stay. We will work with title IV–E agencies on reporting children in these facilities as needed upon implementation.

Section 1355.44(e)(5) Private Agency Living Arrangement

In paragraph (e)(5), we require the title IV–E agency to report whether each of the child’s living arrangements is licensed, managed, or run by a private agency. We received no comments on this data element and have retained the 2015 NPRM proposed rule language.

Section 1355.44(e)(6) Location of Living Arrangement

In paragraph (e)(6), we require that the title IV–E agency report the jurisdiction of the child’s living arrangement, specifically whether the child is placed within or outside of the reporting agency’s jurisdiction. The agency must also indicate if the child ran away or his or her whereabouts are unknown. We received no comments on this data element and have retained the 2015 NPRM proposed rule language with minor clarifying edits.

Section 1355.44(e)(7) Jurisdiction or Country Where Child Is Living

In paragraph (e)(7), we require the title IV–E agency to report the name of the state, tribal service area, Indian reservation or country where the title IV–E agency placed the child for each living arrangement, for children placed outside their jurisdiction. We received no substantive comments on this data element but added a sentence that IV–E agencies must report the information in a format according to ACF’s specifications to conform with this revision throughout the rule. We will

work with title IV–E agencies on how to report this information.

Section 1355.44(e)(8) Available ICWA Foster Care and Pre-Adoptive Placement Preferences

In paragraph (e)(8), if the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), we require that the state title IV–E agency indicate which of the foster care and pre-adoptive placements from a list of five are willing to accept placement of the Indian child. The five placements options are: A member of the Indian child’s extended family; a foster home licensed, approved, or specified by the Indian child’s tribe; an Indian foster home licensed or approved by an authorized non-Indian licensing authority; an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child’s needs; and a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child’s tribe, in accordance with 25 U.S.C. 1915(c). This is similar to paragraph (i)(15) as proposed in the 2016 SNPRM.

Comment: The national organization representing state child welfare agencies suggested we eliminate the requirement for the state to report on the availability of foster care placements that meet ICWA placement preferences stating that it is not essential. One state, citing burden, also recommended that we eliminate this data element because other information collected on foster care placement preferences is more salient. Another state sought clarification on whether this data element is asking a broad question about the availability of foster care providers or if it is child specific and suggested simplifying the information to only indicate with whom the child is placed and not availability. Another suggested revising the element to indicate all that apply rather than asking for yes/no responses. One tribe was concerned that the language “were available to accept placement” is subjective. They suggested revising the language as follows: “were pursued to accept placement pursuant to subsection 13(xi).”

Response: We were not persuaded to remove the data element indicating the availability of foster care placements that meet ICWA’s preferences nor make any of the other recommended changes in the final rule. No tribes, national tribal organization, or national child welfare organizations suggested

removing or modifying data elements related to the availability of homes that meet ICWA foster or pre-adoptive placement preferences. However, we modified the term ‘available’ to ‘willing’ to be consistent with the adoption placement preference data element at paragraph (h), although we presume that any home that meets ICWA placement preferences that is willing to foster the Indian child is also available, and that a home that meets ICWA placement preferences but is unwilling to foster the Indian child is unavailable. The option to use terminology “check all that apply” versus responding with “yes” or “no” is an implementation issue that does not require a regulation change and we will provide technical assistance on this as needed.

The availability of foster care placements that meet ICWA’s preferences is critical for meeting the purposes of ICWA. This information is essential for ACF to determine whether resources are needed for recruitment to increase the availability of AI/AN homes that can meet ICWA’s placement preferences. Under the BIA’s regulations at 25 CFR 23.132, whether a home is available is not a subjective state title IV–E agency determination. Rather it is evidence offered by the state title IV–E agency to the court that there is good cause to deviate from ICWA’s placement preferences in a particular case where there is also evidence that the state title IV–E agency conducted a diligent search to identify a placement that meets the preferences (25 CFR 23.132).

Comment: One state commented that at the time of placement, the agency does not exhaust all possible relative placements for any child, so they are unclear which relatives ACF expects to be included, noting that their information system would have to be modified to include placement preference elements.

Response: We’d like to clarify the data element, as it does not require the state to report whether they exhausted all relative placements. The state is to indicate “yes” or “no” whether there was a member of the Indian child’s extended family willing to provide a foster care or pre-adoptive placement. Such a member would meet the placement preferences of ICWA in 25 U.S.C. 1915(b).

Section 1355.44(e)(9) Foster Care and Pre-Adoptive Placement Preferences Under ICWA

In paragraph (e)(9) if the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), we require that the state title IV–E agency indicate whether

each of the Indian child’s placements (indicated in paragraph (e)(1)) meets the placement preferences of ICWA at 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed from a list of six response options. This is similar to paragraph (i)(16) as proposed in the 2016 SNPRM, except that we changed the response option of “none” to “placement does not meet ICWA placement preferences.”

Comment: The national organization representing state child welfare agencies suggested we reduce the data elements by asking only whether the child was placed in compliance with the placement preferences and if no, whether a court make a finding of good cause to deviate from the placement preferences.

Response: We did not make any changes in response to the comment to only require reporting on whether or not the child is in a foster care or pre-adoptive placement that meets the ICWA placement preferences. We seek information on the specific placement because the requirements around placement preferences in ICWA are a key piece of the protections mandated by ICWA. Placement preferences serve to protect the best interests of Indian children and promote the stability and security of families and Indian tribes by keeping Indian children with their extended families or in Indian foster homes and communities. Factors unique to Indian children, including the availability of American Indian foster homes, influence decisions about the placement of Indian children.

Comment: One state recommended that we add a response option for “group home approved or operated by Indian tribe/organization.”

Response: We considered this suggestion but decline to make a change because our response options reflect the foster care placement preference language in ICWA at 25 U.S.C. 1915(b).

Comment: A tribe suggested including if the tribe agreed with the application of the placement preferences.

Response: We are not making a change as a result of this comment. If the tribe has established by resolution a different order of preference than that specified in ICWA, the tribe’s placement preferences apply subject to requirements of 25 U.S.C. 1915(c) and 25 CFR 23.131 and these placements are captured in AFCARS.

Comment: Several organizations suggested that we clarify whether the placements were tribally licensed or approved homes or another Indian family guardian home approved by the state.

Response: We considered this suggestion but decline to make additional changes because our response options reflect the foster care placement preference language in ICWA in 25 U.S.C. 1915(b).

Section 1355.44(e)(10) Good Cause Under ICWA

In paragraph (e)(10), if a state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), and the state title IV–E agency indicated “placement does not meet ICWA placement preferences” in paragraph (e)(9), we require the state title IV–E agency to indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences (25 U.S.C. 1915(b)), or the Indian child’s tribe, if the placement preferences for foster care and pre-adoptive placements were not followed. This is similar to paragraph (i)(17) as proposed in the 2016 SNPRM, except that we updated the language consistent with 25 CFR 23.132.

Comment: The national organization representing state child welfare agencies suggested that we remove the language “as indicated on court order” from this data element because it could be interpreted in different ways and may not accurately reflect the court orders finding of good cause.

Response: We modified the regulation text so that the final rule does not include a requirement for the state to report only if the court order included the good cause determination. This is consistent with the BIA’s regulations at 25 CFR 23.132(c). The data element as revised requires states to indicate whether the court determined by clear and convincing evidence on the record or in writing, a good cause to depart from the ICWA placement preferences under 25 U.S.C. 1915(a) or to depart from the placement preferences of the Indian child’s tribe under 25 U.S.C. 1915(c). This provides states with multiple options for obtaining the information.

Section 1355.44(e)(11) Basis for Good Cause

In paragraph (e)(11), if a state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), and the state title IV–E agency indicated “yes” to paragraph (e)(10), we require that the state title IV–E agency indicate the state court’s basis for the determination of good cause to depart from the ICWA placement preferences from a list of five response options. This is similar to paragraph (i)(18) as proposed in the

2016 SNPRM except that we updated the language consistent with 25 CFR 23.132.

Comment: A tribe stated that they are not clear what the response option of “other” indicates and recommended that we clarify the response option. One state recommended adding a list of “extraordinary physical or emotional needs of the Indian child” to the good cause reasons.

Response: We removed the “other” option and modified the list of reasons for the state court’s basis for the determination of good cause to depart from ICWA placement preferences in ICWA to be consistent with 23.132(c) of the BIA regulations. The final regulation no longer includes the response option of “other.”

Section 1355.44(e)(12) Marital Status of the Foster Parent(s)

In paragraph (e)(12), we require the title IV–E agency to report information regarding the marital status of the each of the foster parent(s) where the child is placed. While we received no comments on this data element, we revised the final rule to be consistent with reporting the marital status of adoptive parents and legal guardians in paragraph (h). As we also explain in paragraph (h), several commenters recommended that we revise the marital status response options. As such, the response options will be as follows: Married couple, unmarried couple, separated, and single adult. We replaced the response options of “single male” and “single female” with “single adult.”

Section 1355.44(e)(13) Child’s Relationships to the Foster Parent(s)

In paragraph (e)(13), we require the title IV–E agency to report the type of relationship between the child and the foster parent(s) for each foster family home in which the child is placed, from one of seven options: Paternal grandparent(s), maternal grandparent(s), other parental relative(s), other maternal relative(s), non-relative(s), kin, or sibling(s).

Comment: One commenter suggested that we modify the term “kin” when describing the relationship between the child and foster parent to make clear that the child is not related to the foster parent(s) by biological, legal or marital connection. Commenters made similar comments for the data elements *Foster family home type* in paragraph (e)(3) and *Child’s relationship to the adoptive parent(s) or guardian(s)* in paragraph (h)(2).

Response: We appreciate the suggestion and modified the term “kin” to indicate that there is not a legal,

biological, or marital connection between the child and foster parent. We also made a similar modification to the definition of “kin” in the data elements *Foster family home type* in paragraph (e)(3) and *Child’s relationship to the adoptive parent(s) or guardian(s)* in paragraph (h)(2).

Comment: One commenter suggested that we add aunt and uncle as response options for the child’s relationship to the foster parents.

Response: If a child is placed with an aunt or uncle, the level of information we are seeking is whether it was a maternal or paternal relative, and are not seeking more detailed information than that. We did not make changes in response to the suggestion.

Section 1355.44(e)(14) and (e)(20) Year of Birth for Foster Parent(s)

In paragraphs (e)(14) and (e)(20), we require the title IV–E agency to report the year of birth of each of the child’s foster parent(s). We received no comments on this data element and have retained the language as proposed in the 2015 NPRM.

Section 1355.44(e)(15) and (e)(21) Foster Parent(s) Tribal Membership

In paragraphs (e)(15) and (e)(21), we require the title IV–E agency to report whether the foster parent(s) is a member of an Indian tribe. These are new data elements not previously proposed in the 2015 NPRM or 2016 SNPRM. Additionally, we are collecting the same information in paragraph (h) regarding adoptive parents and legal guardians. It was clear as we analyzed the comments to the 2016 SNPRM that including data elements that inquire about the tribal membership of the foster parent(s) is information that is in line with our goals to expand the information we collect on foster care providers for children in out-of-home care. We believe that this information will provide more insight on meeting the requirements in ICWA on foster care placement preferences and will inform recruitment of foster care providers that meet the needs of AI/AN children in out-of-home care.

Section 1355.44(e)(16) and (e)(22) Race of Foster Parent(s)

In paragraphs (e)(16)(i) through (e)(16)(vii) and (e)(22)(i) through (e)(22)(vii), we require the title IV–E agency to report the race of each of the foster parent(s) which the child has been placed.

Comment: Organizations representing tribal interests recommended we include whether: (1) The foster parent have origins in any of the original peoples of North and South America; (2)

whether the foster parent is a member of a federally recognized Indian tribe and; if so, (3) the name of the tribe.

Response: The response options are consistent with the OMB Revised Standards for the Classification of Federal Data on Race and Ethnicity, and therefore, we are unable to make a change. These definitions can be found at: http://www.whitehouse.gov/omb/inforeg/re_guidance2000update.pdf. While we did not revise this data element, at section 1355.44(e)(16) and (e)(22) we require the state title IV–E agency report whether the foster parent(s) is a member of an Indian tribe in paragraphs (e)(15) and (e)(21).

Section 1355.44(e)(17) and (e)(23) Hispanic or Latino Ethnicity for Foster Parent(s)

In paragraphs (e)(17) and (e)(23), we require the title IV–E agency to report the Hispanic or Latino ethnicity of the foster parent(s), if applicable. We received no comments on this data element.

Section 1355.44(e)(18) and (e)(24) Gender of Foster Parent(s) and (e)(19) and (e)(25) Foster Parent(s) Sexual Orientation

In paragraphs (e)(18) and (e)(24), we added a requirement for the title IV–E agency to indicate whether each foster parent self identifies as “male” or “female.”

In paragraph (e)(19) and (e)(25), we added a requirement that the title IV–E agency report whether the foster parent(s) self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the second foster parent declined to identify his/her status.

Comment: While we requested input in the 2015 NPRM on whether to require title IV–E agencies to collect LGBTQ-related data in AFCARS on children, we received comments about collecting sexual orientation data on foster and adoptive parents from state title IV–E agencies, national advocacy/public interest groups and other organizations. Those that supported collecting data on the foster parents’ sexual orientation were primarily advocacy organizations representing LGBTQ interests and generally noted that the LGBTQ community remains an untapped resource for finding permanent families for children and youth in foster care. They stated that some of these prospective parents face barriers when they attempt to foster or adopt because they identify as LGBTQ. They further commented that including this information in AFCARS will promote

routine discussions between prospective foster parents and title IV–E agencies, normalize conversations around sexual orientation, and signal increased acceptance of LGBTQ caretakers. State title IV–E agencies expressed some of the same concerns with collecting sexual orientation data on foster parents as they did for children in foster care: Privacy concerns and implications of having this information in a government record; concerns that the data may be used in a discriminatory way; and they expressed the importance of proper staff training for data elements on sexual orientation.

Response: We were persuaded by the commenters who suggested data elements in AFCARS on a foster parent’s sexual orientation and require agencies to report when a foster parent self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined.” We anticipate that these data elements will assist title IV–E agencies in recruiting, training, and retaining an increased pool of foster care providers who can meet the needs of children in foster care. We specifically added a decline response option to respond to the privacy issues raised by commenters. Information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality. Several state and county agencies, advocacy organizations and human rights organizations have developed guidance and recommended practices for how to promote these conditions in serving LGBTQ youth in adoption, foster care and out-of-home placement settings. ACF provides state and tribal resources for Working With LGBTQ Youth and Families at the Child Welfare Information Gateway. The following links are provided as general examples of such guidance (Minnesota and California examples). ACF will provide technical assistance to agencies on collecting this information. Additionally, for the same reasons, we made corresponding changes in paragraph (h) related to the adoptive parent or legal guardian. We also made a minor change in reporting the foster parent’s gender, in that we require the title IV–E agency to indicate whether each foster parent self identifies as “male” or “female” and made the same change for the adoptive parent or legal guardian.

Section 1355.44(f) Permanency Planning

In paragraph (f), we require that the title IV–E agency report information related to permanency planning for children in foster care. We made several

revisions to this section from the 2015 NPRM to remove some proposed data elements that we describe below:

- We removed the requirement for agencies to report concurrent planning information based on the comments from a national organization representing state child welfare agencies and several states. They suggested that this information is better captured at the case level and noted that since that concurrent planning is an optional practice that not all title IV–E agencies use, the information would not be useful at a national level.

- We removed the requirement for agencies to report the reason(s) for permanency plan changes based on comments from a national organization representing state child welfare agencies and many state title IV–E agencies stating that the data element is too subjective, the response options are overly broad, the data element will not capture plans that change more than once during a report period, and the data is too qualitative for AFCARS and better analyzed at the case level. The commenters also said that reporting this information would be burdensome and training workers and monitoring data quality would be challenging.

- We removed the requirement for agencies to report the purpose of each in person, face-to-face visit based on comments that this data element is not well defined, and that many visits involve multiple purposes and will not be well distinguished.

- We removed the requirement for agencies to report whether the caseworker visited with the child alone. Several commenters were in support of this data element, however, the statutory requirement is for agencies to report whether a face-to-face visit has occurred within the calendar month and whether it occurred in the child’s residence. In addition, commenters indicated that collecting information on if a worker visits alone would be time consuming and it is not always appropriate for the caseworker to visit the child alone.

- We removed the requirement that agencies indicate whether the contents of the transition plan apply based on comments that while the existence of the plan and its timing is knowable, reporting the provisions contained in the transition plan is unnecessary because the quality and relevance of a transition plan cannot be determined quantitatively.

Section 1355.44(f)(1) and (2) Permanency Plan and Date

In paragraph (f)(1), we require that the title IV–E agency report each

permanency plan for the child and in (f)(2) the date each plan(s) was established during each out-of-home care episode. There are six options: Reunify with parent(s) or legal guardian(s), live with other relatives, adoption, guardianship, and another planned permanent living arrangement.

Comment: Two states sought clarification on how these elements apply to children who have runaway and whether the response options should be consistent with CFSR.

Response: We require the permanency plan response options to be consistent with the law at section 475(5)(C) of the Act. The permanency plan options in the CFSR are broader and encompasses the discrete response options from AFCARS because AFCARS applies to all youth in the out-of-home care reporting population, which includes 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.

Comment: Other commenters, including national advocacy/public interest groups and a private citizen, offered several suggestions, including: Adding data that addresses whether the child was consulted or participated in developing the permanency plan; about the visitation and services the agency provided during visits for children with a permanency plan of reunification; and adding a permanency plan response option for “waiting for adoption.” One commenter questioned the usefulness of this data at a federal level.

Response: We reviewed these suggestions, however we did not make changes in response to the commenter’s suggestions. This level of detail and specific case level information go beyond designating a child’s permanency plan and are not needed at the federal level to meet the requirements of section 479(c)(3) of the Act. Additionally, we currently collect the child’s most recent case plan goal in AFCARS.

Section 1355.44(f)(3) and (4) Periodic Review and Permanency Hearing Dates

In paragraphs (f)(3) and (4), the title IV–E agency must report the date of each periodic review and the date of each permanency hearing (per section 475(5)(C) of the Act). We did not receive substantive comments on these data elements and have retained them as proposed in the 2015 NPRM.

Section 1355.44(f)(5) Juvenile Justice

In paragraph (f)(5), we require the title IV–E agency to report whether a juvenile judge or court found the child to be a status offender or adjudicated delinquent during the report period.

Comment: Four states expressed concerns with our proposal for agencies to report specifically whether the court identified the child to be an “adjudicated delinquent” or a “status offender.” They cited concerns about training workers to ensure data quality and difficulty in distinguishing the proposed response option “adjudicated delinquent” from “status offender.” One organization representing state child welfare agencies suggested that agencies simply report whether or not the court found a child to be either a status offender or an adjudicated delinquent because distinguishing between the two is not necessary and will vary by and within jurisdictions.

Response: We were persuaded by the commenters who said we did not need to distinguish the specific type of juvenile justice involvement for each child. As such, we revised the data element to require title IV–E agencies to report yes/no whether or not a court found the child to be a status offender or adjudicated delinquent, no longer requiring the agency to distinguish between the two.

Section 1355.44(f)(6) and (7) Caseworker Visit Dates and Location

In paragraphs (f)(6) and (f)(7), we require the title IV–E agency to report information on visits between the child’s caseworker and the child. In paragraph (f)(6), we require the title IV–E agency to report the date of each in-person, face-to-face visit between the caseworker and the child. In paragraph (f)(7), we require the title IV–E agency to report the location of each in-person visit between the caseworker and the child.

Comment: A state asked if this data element pertains to visits during the reporting period, the removal episode, or the child’s lifetime involvement with child welfare services.

Response: We’d like to clarify that the title IV–E agency must collect and report the date and other required information for each in-person, face-to-face caseworker visit during each six month report period. Therefore, if the worker visits the child in-person, face-to-face each month during the six month report period, the agency will report the six dates and locations of the visits.

Comment: One commenter questioned why we require the agency to report caseworker visit information for every case worker visit to a child.

Response: We require agencies to collect and report the date and location of each in-person, face-to-face caseworker visit to meet the requirements in section 424(f) of the Act, which requires that 90 percent of children in foster care are visited on a monthly basis by their workers, and that the majority of the visits occur in the residence of the child.

Comment: Several commenters recommended that we require agencies to also report: What went on during the caseworker visit; the types of services provided by the caseworker during the visit; and whether coaching or mental health treatment was provided during the visit. One commenter suggested that we also collect information on a child’s visits with biological parents.

Response: We are retaining the requirements for the title IV–E agency to report the date and location of each in-person, face-to-face caseworker visits to meet the statutory requirements in section 424(f) of the Act. Therefore, we did not make any additional changes to include the suggested information as we do not have a specific use for it and will not require the agency to collect information not required by the law.

Section 1355.44(f)(8) and (f)(9) Transition Plans

In paragraph (f)(8), we require the title IV–E agency to report whether the child has a transition plan that meets the requirements of section 475(5)(H) of the Act. If the child has a transition plan, the title IV–E agency must report the plan date in paragraph (f)(9).

Comment: A national organization representing state child welfare agencies and states objected to reporting the content of the transition plan. They indicated that while the existence of the plan and its timing is knowable, reporting the provisions contained in the transition plan is unnecessary because the quality and relevance of a transition plan cannot be determined quantitatively. Other national advocacy/public interest groups supported collecting data we proposed on transition plans.

Response: We were persuaded by the comments and removed the data element.

Commenters: One state asked whether agencies must report transition plans that are developed before the 90-day period before the youth turns age 18 (or greater age).

Response: Yes, agencies must report a transition plan developed before the 90-day period. We amended the regulation text to make it clear that agencies should report all plans developed in

response to the statute, even if it is before the 90 day period.

Commenters: An organization representing tribal interests suggested that we collect information about whether Indian children have information on and access to tribal specific resources and services for youth and young adults.

Response: While there is not requirement for transition plans to be this detailed, agencies should be responsive to the individualized needs of a specific Indian child.

Section 1355.44(f)(10) Active Efforts

In paragraph (f)(10), if a state title IV-E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), we require the state title IV-E agency to indicate whether the active efforts in each paragraph (f)(10)(i) through (f)(10)(xiii) “applies” or “does not apply.” The state title IV-E agency must indicate all of the active efforts that apply once the child enters the AFCARS out-of-home care reporting population per section 1355.42(a) through the child’s exit per paragraph (g)(1) of this section and the active efforts made to prevent removal prior to the child entering the out-of-home care reporting population. This is similar to paragraph (i)(13) as proposed in the 2016 SNPRM, however, we updated the language consistent with BIA’s regulation at 25 CFR 23.2.

Comment: Many commenters suggested that the response options be updated consistent with BIA’s Guidelines and BIA’s regulations at 25 CFR 23.2 and several commenters suggested allowing state title IV-E agencies to incorporate active efforts as defined under state law.

Response: We agree and revised the final rule to be consistent with the BIA regulations at 25 CFR 23.2, which contains the regulatory definition of active efforts. Section 1355.41(c) specifies that terms in ICWA for specified data elements mean the same as in ICWA at 25 U.S.C. 1903 and 25 CFR 23.2. As such, the state title IV-E agency must report if any of the active efforts listed in paragraphs (f)(10)(i) through (f)(10)(xiii) were provided prior to and during the child’s stay in out-of-home care. The state title IV-E agency may report active efforts as defined under state law under the response option of “other active efforts tailored to the facts and circumstances of the case”, as appropriate.

Comment: Tribes and organizations representing tribal interests commented that data on active efforts is important to report to AFCARS because it impacts the individual child’s case and is a key

protection provided in ICWA. However, several commenters and the national organization representing state child welfare agencies do not support requiring the state title IV-E agency to report information on active efforts as it was proposed in the 2016 SNPRM. They recommended removing the data element because state title IV-E agencies already mirror the best practices that strengthen and ensure the safety of families by limiting the need to remove children from their homes and separating from parents, guardians or caregivers for early outreach and engagement to provide support and services for families before a removal is warranted. Several commenters believe that collecting information on the specific active efforts that were provided is more appropriate for a case review than for AFCARS data collection because these responses do not get to the quality of those efforts. Several commenters expressed concerns with the functionality of this data element for national reporting. One commenter expressed an issue with an absence of court orders expressly describing the active efforts and therefore state title IV-E agencies will not be able to accurately report this information.

Response: We are not persuaded by these comments to revise the final rule because the “active efforts” requirement is a vital part of ICWA’s requirements. The preamble to the BIA’s final regulation at 25 CFR 23.2 details at length the reasons for and benefits of active efforts including that ICWA’s active efforts requirement continues to provide a critical protection against the removal and TPR of an Indian child from a fit and loving parent by ensuring that parents who are or may readily become fit parents are provided with service necessary to retain or regain custody of their child. Data about the frequency with which each active effort type is made will help develop policy, resources, and technical assistance to support states to employ a range of efforts that can meet the needs of Indian children in out-of-home care. Lastly, we revised the data element language to reflect BIA’s regulation at 23.2 and 23.120(a).

Comment: One commenter requested clarification on whether the response options are based on the court identifying that the state title IV-E agency did one or more of the active efforts listed or whether it is the state title IV-E agency making a determination as to which active efforts were made.

Response: The state must report the active efforts which the state title IV-E agency made throughout the child’s stay

in out-of-home care, which may or may not be documented in a court order.

Comment: Commenters requested clarification on the terminology used in the active efforts examples, such as what ACF considers to be part of an “extended family,” how ACF defines the “most natural setting safely possible,” and how “regular visits” and “trial home visits” differs from regular caseworker contacts.

Response: The list of active efforts in paragraphs (f)(10)(i) through (f)(10)(xiii) are examples of active efforts drawn from BIA’s definition of “active efforts” in 25 CFR 23.2. The BIA does not define the terms used in the examples and therefore, we will not define the terminology further. Consistent with BIA’s regulation at 25 CFR 23.2, to the extent possible, active efforts should be provided in a manner consistent with the prevailing social and cultural conditions of the Indian child’s tribe, and in partnership with the child, parents, extended family, and tribe.

Comment: A commenter recommended adding data elements to capture whether the state title IV-E agency conducted or caused to be conducted a diligent search for the Indian child’s extended family members for assistance and possible placement, and if no extended family members are identified, whether the state title IV-E agency conducted a diligent search for other ICWA-compliant placement options.

Response: We did not make changes to the response options based on this comment because we wanted to be consistent with the BIA’s regulation and examples of “active efforts” in 25 CFR 23.2. However, we added “extended family” to paragraph (f)(10)(v) to match the addition of this in paragraph (b).

Comment: One commenter suggested that if siblings are not kept together, that the state title IV-E agency must report why the siblings were separated. The commenter stated that collecting this information would strengthen the data and create new opportunities to address the needs of Indian children in out-of-home care. Two commenters suggest that because we proposed in the 2015 NPRM data elements related to siblings for all children in the out-of-home care reporting population, this data element should be removed. The commenter stated that keeping siblings together captures a goal that agencies attempt to achieve for all families.

Response: Although information about siblings is collected elsewhere in the final rule for all children in the out-of-home care reporting population, we did not make changes to the response options in paragraph (f)(10) based on

this comment because this data element is consistent with BIA's regulation at 25 CFR 23.2.

In the 2016 SNPRM, we proposed that title IV-E agencies report the date active efforts began in paragraph (i)(11), however after reviewing the comments we removed this proposed data element.

Comment: The national organization representing state child welfare agencies recommended that ACF remove this data element because state agencies follow practice standards for early outreach and engagement to provide support and services for families before a removal is warranted. In addition, the organization recommended overall that we remove data elements that may be unreliable, potentially invalid, and that place unnecessary burdens. We also received a state comment requesting clarification and another state noted they did not currently collect this information.

Response: We agree with the suggestion to remove the date active efforts began and revised the final rule accordingly. The BIA's regulation at 23.107 specifies that ICWA applies when it is known or there is reason to know a child is an Indian child as defined in ICWA and that treatment as an Indian child continues until it is determined on the court record that the child does not meet the definition of an Indian child in ICWA.

Section 1355.44(g) General Exit Information

In paragraph (g), we require that the title IV-E agency must report when and why a child exits the out-of-home care reporting population.

Section 1355.44(g)(1) Date of Exit

In paragraph (g)(1), we require the title IV-E agency to report the date for each of the child's exits from out-of-home care, if applicable. We did not receive relevant comments on this data element and retained the 2015 NPRM proposed rule language.

Section 1355.44(g)(2) Exit Transaction Date

In paragraph (g)(2), we require the title IV-E agency to report the transaction date for each exit date 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 did not receive relevant comments on this data element and have retained the 2015 NPRM proposed rule language.

Section 1355.44(g)(3) and (4) Exit Reason and Transfer to Another Agency

In paragraphs (g)(3) and (4), we require the title IV-E agency to report the reason for each of the child's exit(s) from out-of-home care, and if the exit reason is "transfer to another agency," the agency type.

Comment: We received several suggestions to modify the exit reason response options to: Identify the manner of a child's death; change how a child who exits foster care for jail or prison is reported; add exit reasons to identify when a youth becomes ineligible for extended foster care; and when a youth voluntarily leaves extended foster care. A few states disagreed with some of our proposed response options for exit reason.

Response: We made a minor change to remove the response option "other" proposed in the 2015 NPRM because based on our experience, we believe that the response options adequately reflect the reasons why children exit out-of-home care and we do not need a response option of "other." We do not need to revise or add other reasons because these exit reasons are designed to capture information about when and where a child exits out-of-home care, and are not intended to identify other specifics about the child's exit.

Comment: For the response option "transfer to another agency" in paragraph (g)(3), a commenter asked for clarification about the phrase "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."

Response: We recognized that this language as proposed in the 2015 NPRM can be confusing because of variation in title IV-E agency policies and procedures for transfers and title IV-E agreements. Therefore, we revised the response option "transfer to another agency" in the regulation to be less specific than we proposed in the 2015 NPRM to read as follows: 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. This revision will permit ACF to provide targeted technical assistance for case specific circumstances.

Section 1355.44(h) Exit to Adoption and Guardianship Information

In paragraph (h), we require that the title IV-E agency report information on the child's exit from out-of-home care to a finalized adoption or legal guardianship.

Comment: Several national advocacy/public interest groups recommended that we add the following elements: "sex assigned at birth of adoptive parent(s) or legal guardian(s)," "gender identity of adoptive parent(s) or legal guardian(s)," "sex of adoptive parents/legal guardians," and "sexual orientation of adoptive parent(s) or legal guardian(s)."

Response: In response to these suggestions, we removed the response options "single female" and "single male" and replaced them with "single adult." We added new data elements on the gender of the adoptive parent(s) or legal guardian(s) with the other demographic information on adoptive parents and legal guardians. This will provide the gender of each adoptive parent or legal guardian separately from their marital status. The new data elements are in paragraphs (h)(7) for the first adoptive parent or legal guardian and (h)(13) for the second adoptive parent or legal guardian. These revisions are similar to revisions we made in response to comments regarding foster parent demographic information in paragraph (e).

Section 1355.44(h)(1) Marital Status of the Adoptive Parent(s) or Guardian(s)

In paragraph 1355.43(h)(1), the title IV-E agency must report the marital status of the adoptive parent(s) or legal guardian(s).

Comment: We received several recommendations to revise the marital status response options, as well as a recommendation to remove this data element stating that there is no need for this level of detail at the national level. The commenters recommended revisions to the marital status response options here and the foster parent marital status response options in paragraph (e) or to include other response options, such as "separated" and "married, but adopting individually."

Response: We examined the suggestions and modified the marital status response options. We added the response options of "separated" and "married, but adopting or obtaining legal guardianship individually." Since we added the response option "married, but adopting or obtaining legal guardianship individually," we no longer need, and removed for the final rule, the instruction we included in the 2015 NPRM that instructed title IV-E agencies to "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."

Section 1355.44(h)(2) Child's Relationship to the Adoptive Parent(s) or Guardian(s)

In paragraph (h)(2), we require the title IV–E agency to report the relationship(s) between the child and his or her adoptive parent(s) or legal guardian(s) from eight options: Paternal grandparent(s), maternal grandparent(s), other paternal relative(s), other maternal relative(s), sibling(s), kin, non-relative(s), and foster parent(s).

Comment: Several commenters supported the inclusion of “kin” as a response option for this data element, but asked for clarification on the definition. Another commenter suggested that we not include “kin” as an option because it is confusing, overlaps with “non-relative” and is a colloquial term with varied meanings. Commenters stated that many agencies define “kin” to include relatives by blood, marriage or adoption, in addition to what is frequently referred to as “fictive kin” and this could lead to worker confusion about when to indicate the response option “kin” verse the other response options for relatives. Commenters made similar comments for the data elements *Foster family home type* in paragraph (e)(3) and *Child's relationships to the foster parent(s)* in paragraph (e)(13).

Response: We agree with the suggestion to modify the definition of “kin” so it now specifies that the child is not related to the adoptive parent or legal guardian by a “biological, legal or marital connection.” The revised definition reads: “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) and there is not a legal, biological, or marital connection between the child and foster parent.” We also made a similar modification to the definition of “kin foster family home” in the data element *Foster family home type* in paragraph (e)(3) and *Child's relationships to the foster parent(s)* in paragraph (e)(13).

Section 1355.44(h)(3) and (h)(9) Date of Birth of Adoptive Parent(s) or Guardian(s)

In paragraphs (h)(3) and (h)(9), we require the title IV–E agency to report each adoptive parent or legal guardian's birthdate. We received no comments on these data elements and have retained the language as proposed in the 2015 NPRM.

Section 1355.44(h)(4) and (h)(10) Adoptive Parent(s) Tribal Membership

In paragraphs (h)(4) and (h)(10), we require the title IV–E agency to report whether the adoptive parent(s) or legal guardian is a member of an Indian tribe. These are data elements not previously proposed in the 2015 NPRM or 2016 SNPRM. Additionally, we are collecting the same information in paragraph (e) regarding foster parents. It was clear as we analyzed the comments to the 2016 SNPRM that including data elements that inquire about the tribal membership of the adoptive parent(s) or legal guardian is information that is in line with our goals to expand the information we collect on adoptive parents and guardians of children who exit out-of-home care to adoption or legal guardianship. We believe that this information will provide more insight on meeting the requirements to meet placement preferences under ICWA and will inform recruitment of providers that meet the needs of AI/AN children who exit out-of-home care to adoption or legal guardianship.

Section 1355.44(h)(5) and (h)(11) Race of Adoptive Parent(s) or Guardian(s)

In paragraphs (h)(5)(i) through (h)(5)(vii) and (h)(11)(i) through (h)(11)(vii), we require the title IV–E agency to report the race of each adoptive parent or legal guardian.

Comment: Groups representing tribal interests recommended that we include whether the adoptive parent/legal guardian has origins in any of the original peoples of North and South America and if so whether the adoptive or guardian parent a member of a federally recognized Indian tribe and the name of the tribe, and if the child maintains tribal affiliation and community attachment.

Response: The response options for race are consistent with the OMB Revised Standards for the Classification of Federal Data on Race and Ethnicity, and therefore, we are unable to make a change. These definitions can be found at: http://www.whitehouse.gov/omb/inforeg/re_guidance2000update.pdf. While we did not revise this data element, we require at paragraphs 1355.44(h)(4) and (h)(10) that title IV–E agencies report whether the adoptive parent(s) or legal guardian is a member of an Indian tribe in paragraphs (h)(4) and (h)(10).

Section 1355.44(h)(6) and (h)(12) Hispanic or Latino Ethnicity of Birth of Adoptive Parent(s) or Guardian(s)

In paragraphs (h)(6) and (h)(12), we require the title IV–E agency to report

the Hispanic or Latino ethnicity of each adoptive parent or legal guardian. We received no comments on these data elements.

Section 1355.44(h)(7) and (h)(13) Gender of Adoptive Parent(s) or Guardian(s), and (h)(8) and (h)(14) Adoptive Parent(s) or Guardian(s), Sexual Orientation

In paragraphs (h)(7) and (h)(13), we require the title IV–E agency to indicate whether each adoptive parent(s) or legal guardian(s) self identifies as “male” or “female.”

In paragraph (h)(8) and (h)(14), we require that the title IV–E agency report whether the adoptive parent(s) or legal guardian(s) self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don't know,” “something else,” or “declined” if the second adoptive parent(s) or legal guardian(s) declined to identify his/her status.

Comment: Although we requested input on whether to require title IV–E agencies to collect LGBTQ-related data in AFCARS for youth, we received comments from state title IV–E agencies, national advocacy/public interest groups and other organizations specifically commented on collecting whether a caretaker identifies as LGBTQ. Those that supported collecting LGBTQ-related data on adoptive parents or legal guardians were primarily advocacy organizations representing LGBTQ interests and generally noted that the LGBTQ community remains an untapped resource for finding permanent families for children and youth in foster care. They stated that some of these prospective parents face barriers when they attempt to adopt or obtain legal guardianship because they identify as LGBTQ. They further commented that including this information in AFCARS will promote routine discussions between prospective adoptive parents or legal guardians and title IV–E agencies, normalize conversations around sexual orientation, and signal increased acceptance of LGBTQ caretakers. State title IV–E agencies expressed some of the same concerns with collecting LGBTQ-related data on adoptive parents or legal guardians as they did for children in foster care: Privacy concerns and implications of having this information in a government record; concerns that the data may be used in a discriminatory way; and they expressed the importance of proper staff training for data elements on sexual orientation.

Response: We were persuaded by the commenters and we include data elements in AFCARS on an adoptive

parent's or legal guardian's self-reported gender and sexual orientation. We anticipate that these data elements will assist title IV-E agencies in recruiting, training, and retaining an increased pool of providers who can meet the needs of children who exit out-of-home care to adoption or legal guardianship. We specifically added a decline response option to respond to the privacy issues raised by commenters. Additionally, for the same reasons, we made corresponding changes in paragraph (e) related to the foster parent(s). As previously stated, information on sexual orientation should be obtained and maintained in a manner that reflects respectful treatment, sensitivity, and confidentiality. Several state and county agencies, advocacy organizations and human rights organizations have developed guidance and recommended practices for how to promote these conditions in serving LGBTQ youth in adoption, foster care and out-of-home placement settings. ACF provides state and tribal resources for Working With LGBTQ Youth and Families at the Child Welfare Information Gateway. The following links are provided as general examples of such guidance (Minnesota and California examples). ACF will provide technical assistance to agencies on collecting this information. We also made a minor change in reporting the adoptive parents' or legal guardians' gender, in that we require the title IV-E agency to indicate whether each self identifies as "male" or "female" and made the same change for foster parent(s) in paragraph (e).

Section 1355.44(h)(15) and (16) Inter/Intrajurisdictional Adoption or Guardianship

In paragraphs (h)(15) through (h)(16), we require the title IV-E agency to report information on the jurisdiction where the child was placed for the adoption or legal guardianship.

Comment: One commenter indicated that collecting information on private or international adoptions will impose additional workload on staff and will require policy, training, and information system changes.

Response: We do not expect that reporting these data elements would require additional work or training for the title IV-E agency since they apply only to children who are under the placement and care responsibility of the title IV-E agency when they exit foster care to adoption or guardianship. The title IV-E agency would have been reporting the children while in foster care, and thus would know where they placed these children, and whether it is in another country or by a private

agency through an arrangement with the title IV-E agency. As we stated in the 2015 NPRM, similar information on adoptions is already collected in the current AFCARS.

Comment: A commenter was concerned that interjurisdictional and intrajurisdictional are too much alike and will continually be confused.

Response: We believe the regulation is clear. The response options for reporting where a child is placed for adoption or guardianship within the U.S. are limited to placements within or outside of the title IV-E agency's jurisdiction. We can provide technical assistance during implementation to agencies that need it.

Section 1355.44(h)(17) Adoption or Guardianship Placing Agency

In paragraph (h)(17), we require the title IV-E agency to report the agency that placed the child for adoption or legal guardianship. We received no comments on this data element and have retained the language proposed in the 2015 NPRM.

Section 1355.44(h)(18) Assistance Agreement Type

In paragraph (h)(18), we require the title IV-E agency to report the type of assistance agreement that the child has from five response options: Title IV-E adoption assistance agreement; State/tribal adoption assistance agreement; Adoption-Title IV-E agreement non-recurring expenses only; Adoption-Title IV-E agreement Medicaid only; Title IV-E guardianship assistance agreement; State/tribal guardianship assistance agreement; or no agreement. We originally proposed to collect information about whether a child was receiving a title IV-E adoption or guardianship assistance subsidy in a separate data file, which we explained in the preamble discussion for section 1355.45 that we removed for the final rule. Since we are still interested in knowing how a child is supported when he or she exits to adoption or guardianship, we now collect information on title IV-E assistance agreements and non-title IV-E assistance agreements in the out-of-home care data file. We also have a response option for "no agreement" if a child exits out-of-home care to adoption or guardianship without an assistance agreement. We did not receive comments on this data element as proposed in the 2015 NPRM as section 1355.44(c)(1).

Section 1355.44(h)(19) Siblings in Adoptive or Guardianship Home

In paragraph (h)(19), we require title IV-E agencies to report the number of

siblings of the child who are in the same adoptive or guardianship home as the child.

Comment: We received several comments to our 2015 NPRM proposal to collect information on siblings, which we also discussed in paragraph (b). In general, several states and a national organization representing state child welfare agencies agreed that the issue of sibling placement is important at the practice level when planning for children, but is better captured as a qualitative data set. Commenters noted it may not be possible for the caseworker to know whether the child has siblings and if so how many because agencies encounter multiple overlapping sibling groups, uncertain parentage, and mixed biological, legal, and stepparent relationships. They had concerns and questions about the 2015 NPRM proposal on siblings (which were in the sections 1355.43(e) and 1355.44 of the 2015 NPRM) including the definition of siblings, reporting sibling record numbers, and the reliability and consistency of the data. Specifically related to siblings placed together in adoption or guardianship, commenters had questions about whether and when to report the child record number for a sibling who exited to adoption or legal guardianship and one state commented that sibling information is not carried into TPR and adoption cases and so the agency would not be able to report if a child in out-of-home care is placed in the same setting as a sibling who is adopted. One commenter suggested that we simplify the reporting and require agencies to report if siblings who exited foster care were placed together in the same adoptive or guardianship home.

Response: We carefully reviewed the comments and suggestions and while we understand the concerns raised, we determined that it is important to continue to require title IV-E agencies to report information about siblings. As we noted in the preamble to the 2015 NPRM, section 471(a)(31)(A) of the Act requires title IV-E agencies to 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. However, we acknowledge that there are many issues that make collecting data on siblings difficult and we were persuaded to revise the sibling data elements to address commenter concerns and simplify reporting. Therefore, we revised the regulation to require the agency to report the number of the child's siblings who are in the same adoptive or guardianship home as

the child. We believe that this data element, along with the data elements in paragraph (b) related to siblings placed together in out-of-home care, are less complicated than the 2015 NPRM proposal and will yield useful information about siblings.

Section 1355.44(h)(20) Available ICWA Adoptive Placements

In paragraph (h)(20), if a state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), we require that the state title IV–E agency to indicate which adoptive placements from a list of four were willing to accept placement of the Indian child. This is the same as paragraph (i)(26) proposed in the 2016 SNPRM.

Comment: A few state and tribal commenters recommend this data element be removed. One state believes that while it is ‘nice to know’ which placements are ‘willing’, the more salient questions are whether the preferences were followed in regard to the child’s adoption and, if not, why not. Another commenter is concerned the language seems to leave the answer open to a very subjective interpretation of “were available/willing to accept placement” and answering “yes” or “no” does not document diligent or active efforts to ensure the child is adopted by an ICWA compliant placement. That commenter suggests replacing it with which ICWA placement preferences were pursued to accept a placement for adoption. One tribal commenter expressed concern about asking which ICWA placement preferences were willing to accept placement because if there are not enough willing Indian foster and adoptive homes, it may appear that tribes are disinterested in providing homes for Indian children.

Response: We were not persuaded to remove the data element indicating the availability of adoptive placements that meet ICWA’s placement preferences. The availability of adoptive placements that meet ICWA’s preferences is critical for meeting the purposes of ICWA. This information is essential for ACF to determine whether resources are needed for recruitment to increase the availability of AI/AN homes that can meet ICWA’s placement preferences for adoption. Under the BIA’s regulation at 25 CFR 23.130, whether a home is available is not a subjective state title IV–E agency determination but rather is evidence offered by the state title IV–E agency to the court that there is good cause to deviate from ICWA’s placement preferences in a particular case where there is also evidence that the state title

IV–E agency conducted a diligent search to identify a placement that meets the preferences (25 CFR 23.130).

Section 1355.44(h)(21) Adoption Placement Preferences Under ICWA

In paragraph (h)(21), if a state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), we require the state title IV–E agency indicate whether each placement reported in paragraph (h)(1) meets the placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed from a list of five response options. This is similar to paragraph (i)(27) as proposed in the 2016 SNPRM, except that we changed the response option “none” to “placement does not meet ICWA placement preferences.”

Comment: One commenter recommends adding a data element to collect information on whether the tribe supported the placement and adoption of the child.

Response: We are not making a change as a result of this comment. Rather, we are retaining the data elements as proposed to require that the state title IV–E agency report certain information on adoptive placement preferences, which are requirements in ICWA at 25 U.S.C. 1915(a), if the Indian child exited foster care to adoption. Collecting information on whether the tribe supported the placement and adoption of the child is not required by ICWA at 25 U.S.C. 1915(a).

Section 1355.44(h)(22) Good Cause Under ICWA

In paragraph (h)(22), if a state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), we require that if the state title IV–E agency indicated “placement does not meet ICWA placement preferences” in paragraph (h)(21), the state title IV–E agency indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences (25 U.S.C. 1915(a)) or to depart from the placement preferences of the Indian child’s tribe (25 U.S.C. 1915(c)). This is similar to paragraph (i)(28) as proposed in the 2016 SNPRM, except that we updated the language consistent with 25 CFR 23.132.

Comment: The national organization representing state child welfare agencies recommended removing this data element, or alternatively, modifying this data element to read “indicate whether there is a court order that indicates the court’s basis for the finding of good cause.”

Response: We are not persuaded to remove this data element for the reasons we set forth in the preamble to the 2016 SNPRM. However, the final rule does not include a requirement for the state to report only if the determination was made in a court order. We revised the data element to be consistent with the BIA’s regulations at 25 CFR 23.132(c). Now, states are to indicate whether the court determined by clear and convincing evidence on the record or in writing, a good cause to depart from the ICWA placement preferences under 25 U.S.C. 1915(a) or to depart from the placement preferences of the Indian child’s tribe under 25 U.S.C. 1915(c). This provides states with multiple options for obtaining the information.

Section 1355.44(h)(23) Basis for Good Cause

In paragraph (h)(23), if a state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), and the state title IV–E agency indicated “placement does not meet ICWA placement preferences” in paragraph (h)(22), we require that the state title IV–E agency indicate the state court’s basis for the determination of good cause to depart from ICWA placement preferences, from a list of five response options. This is similar to paragraph (i)(29) as proposed in the 2016 SNPRM except that we updated the language consistent with 25 CFR 23.132; removed the response option “other”; and added a response option “The presence of a sibling attachment that can be maintained only through a particular placement.”

Comment: The national organization representing state child welfare agencies recommends removing the courts basis for the finding of good cause so that states can focus on the one essential data file element to understand how many Indian children exited the child welfare system to a permanent adoption placement. Another commenter requested clarification regarding what an “other” good cause might be, and recommended that if “other” is selected, the worker must enter into a narrative field explanation of the court’s finding.

Response: We were not persuaded to remove the data element indicating the reasons for good cause not to place according to ICWA placement preferences. As we indicated in the preamble to the 2016 SNPRM, reporting information on good cause will help agencies better understand why the ICWA placement preferences are not followed. In addition, such information will aid in targeting training and resources needed to assist states in improving Indian child outcomes.

However, we integrated the ICWA-related data elements into other sections of the final rule, thereby moving the data elements on adoption placement preferences proposed in the 2016 SNPRM in paragraph (i) to paragraph (h) and modified the list of reasons for the state court's basis for the determination of good cause to depart from ICWA placement preferences in ICWA to be consistent with 25 CFR 23.132(c) of the BIA regulations. The possible reasons no longer include the option of "other" and now include the following options: Request of one or both of the child's parents; request of the Indian child; the unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915(a) but none has been located; the extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live; and the presence of a sibling attachment that can be maintained only through a particular placement.

Section 1355.45 Adoption and Guardianship Assistance Data File Elements

In this section, we require the title IV-E agency to report: (1) Information on the title IV-E agency submitting the adoption and guardianship assistance data file and the report date; (2) basic demographic information on each child, including the child's date of birth, gender, race and ethnicity; (3) information in the child's title IV-E adoption or guardianship agreement, including the date of adoption or guardianship finalization, and amount of subsidy, and 4) information about the agreement termination date, if applicable.

We retained many of the data elements proposed in the 2015 NPRM, but modified section 1355.45 of the final rule to remove the proposal to collect information regarding: Whether a child is born in the U.S., non-recurring costs, inter/intra-jurisdictional adoption or guardianship, inter-jurisdictional adoption or guardianship jurisdiction, adoption or guardianship placing agency information, and sibling information. These response options ensure that title IV-E agencies report only the essential core set of data elements that we describe below.

Section 1355.45(a) General Information

In paragraph (a), we require that the title IV-E agency report information

about the title IV-E agency, report date and child record number.

Section 1355.45(a)(1) Title IV-E Agency

In paragraph (a)(1), we require that the title IV-E agency indicate the title IV-E agency responsible for submitting AFCARS data to ACF. We received no comments on this element.

Section 1355.45(a)(2) Report Date

In paragraph (a)(2), we require that a title IV-E agency indicate the current report period. We received no comments on this element.

Section 1355.45(a)(3) Child Record Number

In paragraph (a)(3), we require that the title IV-E agency report the child's record number. We received no relevant comments on this element.

Section 1355.45(b) Child Demographics

In paragraph (b), we require that the title IV-E agency report information on the child's date of birth, gender, race and ethnicity.

Section 1355.45(b)(1) Child's Date of Birth

In paragraph (b)(1), we require the agency to report the child's birthdate. This data element will be used with paragraph (d) to determine whether the child is in either the "pre-adolescent child adoption" or "older child adoption" category. We received no comments on this element.

Section 1355.45(b)(2) Child's Gender

In paragraph (b)(2) we require the title IV-E agency to indicate whether the child is "male" or "female" as appropriate.

Comment: One state commented that all gender fields should include additional response option(s) to capture transgender, gender fluid, and other non-binary individuals.

Response: We revised the name of the data elements in sections 1355.44(e) and (h) to require title IV-E agencies to report the gender of the foster parent(s), adoptive parent(s), and legal guardian(s).

Section 1355.45(b)(3) Child's Race

In paragraph (b)(3), we require the title IV-E agency to indicate a child's race as determined by the child or the child's parent(s) or legal guardians from a list categories described in paragraphs (b)(3)(i) through (b)(3)(viii) of this section.

Comment: One group recommended asking about membership in a federally-recognized tribe. One commenter suggested that regional standards and

practices should be documented regarding Latinos that show over-representation and outcome disparities, stating that without specific efforts to collect data related to Indian, African American and Latino families, the information will continually be left out of scrutiny and interpretation of data will lack the substance necessary to identify successful efforts and areas that are lacking.

Response: The language used reflects the OMB Revised Standards for the Classification of Federal Data on Race and Ethnicity, standardizing federal data collection. We agree that requiring state title IV-E agencies to collect and report data that could identify a child as an Indian child as defined in ICWA is of paramount importance. Therefore, while we did not revise this data element, we require additional information on the child's tribal membership or eligibility for tribal membership in the out-of-home care population.

Section 1355.45(b)(4) Hispanic or Latino Ethnicity

In paragraph (b)(4), we require the title IV-E agency to indicate a child's ethnicity as determined by the child or the child's parent(s) or legal guardian(s). We received no comments on this element.

In paragraph (c) we require that the title IV-E agency report information on the type of assistance agreement, and the subsidy amount.

Comment: Several national organizations recommended that we require title IV-E agencies to report additional data elements including: when a successor adopter or guardian has been named in the agreement for Adoption Assistance or guardianship assistance, whether the successor became the adoptive parent or guardian, whether the caretaker has been informed of federal and/or state post-permanency services available outside of the adoption assistance or guardianship assistance funds subsidy and/or Medicaid specific benefits. Commenters recommend these additional data elements because they believe the data can provide more information about what work is needed to ensure successors are named in the agreements whenever possible, and to prevent unnecessary re-entry into foster care.

Response: We considered these suggestions, but did not make changes in response. States information systems differ and include information useful for their own internal purposes, but not mandated by AFCARS. We encourage states to consider collecting data that

helps states identify how to ensure successors are named in the agreements whenever possible, and to evaluate how to prevent unnecessary re-entry into foster care, but we do not require that they report those data to AFCARS.

Section 1355.45(c)(1) Assistance Agreement Type

In paragraph (c)(1) we require the title IV–E agency to report 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.

Comment: One state requested clarification regarding why title IV–E agencies must report information on only those children that have a title IV–E agreement. The state expressed concern that this limited information does not present a complete picture of adoptions across the state.

Response: We did not make changes in response to these suggestions. In the 2015 NPRM, we proposed 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, rather than both title IV–E and non-title IV–E agreements. This is in line with our responsibility regarding matters related to children receiving Federal benefits, such as Federal budget projections. We encourage states to consider collecting data that helps states to evaluate and implement state law, but we do not require that they report those data to AFCARS.

Section 1355.45(c)(2) Adoption or Guardianship Subsidy Amount

In paragraph (c)(2), we require the title IV–E agency to report 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.

Comment: One national organization commented that children under guardianship of others and adopted children do not have open service cases even when there is a subsidy attached. The financial information for continuation of subsidy is captured by many states in other systems. Reporting on the expanded population would require a significant change in the application and report programs and laws and policies in many states.

Response: We are not persuaded to make a change based on this comment. We currently do not collect data on

children receiving ongoing financial assistance after an adoption or guardianship is finalized, though those children typically receive benefits for many years, until age 18 and possibly up to age 21. When AFCARS was originally implemented, such children were a smaller portion of the caseload and program cost. However, in recent years, the adoption assistance caseload alone has grown dramatically, and now represents approximately 70 percent of title IV–E beneficiaries. As we explained in the 2015 NPRM, since title IV–E funds are reimbursed for adoption assistance and guardianship assistance costs, this information is essential for conducting budget projections and program planning for both title IV–E adoption assistance and guardianship assistance programs.

Section 1355.45(d) Adoption Finalization or Guardianship Legalization Date

In paragraph (d), we require the title IV–E agency to report the date that the title IV–E adoption was finalized or the guardianship became legalized. This data element will be used with paragraph (b) to determine whether the child is in either the “pre-adolescent child adoption” or “older child adoption” category. We received no comments on this element.

Section 1355.45(e) Agreement Termination Date

In paragraph (e), we require that if the title IV–E agency terminated the adoption assistance or guardianship assistance agreement or the agreement expired during the reporting period, the title IV–E agency to report the month, day and year that the agreement terminated or expired.

Comment: Several national organizations recommended that the title IV–E agency report the reason why guardianship and adoption agreements are terminated so that agencies can capture more information about dissolutions and identify what additional supports may be needed for the children involved, and recommended that such reasons include: Death of adoptive parent or guardian, incapacitation, dissolution, child reached age of majority, or other. One state requested that we explain the value of collecting Agreement Termination Dates, especially with not collecting why the agreements are closing.

Response: We considered these suggestions, but did not make changes in response to commenters because we determined that at a national level we do not have a use for or need for this

level of detail to determine how many agreements exist. We are collecting 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. States may include such additional data in their data system if it is useful for their own internal purposes, but not mandated by AFCARS.

Section 1355.46 Compliance

In section 1355.46, we specify the type of assessments we will conduct to determine the accuracy of a title IV–E agency’s data, the data that is 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.

Comment: Overall, states that commented believe these compliance standards may negatively affect the status of a state’s AFCARS Improvement Plan or SACWIS improvements, and that compliance with the new data requirements may require states to rebuild existing systems or may be incompatible with recent SACWIS improvements.

Response: We recognize that agencies will need to make revisions and improvements to their electronic case management systems for the final rule. We intend to close out all AFCARS Improvement Plans and we will work with title IV–E agencies to meet the final rule requirements. Enhancements to the title IV–E agency’s case management system to support the revised data collection requirements may be eligible for title IV–E administrative funds for development costs.

Comment: One commenter pointed out that there appears to be no administrative process for a state to challenge ACF’s initial assessment of data noncompliance.

Response: That is correct. Rather, we provide the title IV–E agency with an opportunity to appeal the “final” determination of compliance to the HHS Departmental Appeals Board (DAB) after the agency has had an opportunity to submit corrected data and come into compliance. This is covered in section 1355.47(d) “Appeals.”

Section 1355.46(a) Files Subject to Compliance

In paragraph (a), we specify that ACF will determine whether a title IV–E

agency's AFCARS data are in compliance with section 1355.43 and data file and quality standards described in paragraphs (c) and (d). We specify that 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.

Comment: Several commenters believe that the data and the multiple data file requirements are complex and thus compliance failures and penalties are unavoidable.

Response: We understand the commenters to be concerned that because of the revised data file standards, it will be more difficult for a state to submit compliant data. The standards we set forth are authorized by the law and in line with the requirement that the data submitted to us is reliable and consistent. We established the specific standards for compliance consistent with our current requirements (see Appendix E to part 1355 of current regulations). Furthermore, the statute allows a six-month period for corrective action during which time technical assistance will be available to assist title IV-E agencies in submitting compliant data. The approach is also consistent with the how we implemented the NYTD.

Section 1355.46(b) Errors

In paragraph (b), we outline the definitions of errors in paragraphs (b)(1) through (b)(5) regarding missing data, invalid data, internally inconsistent data, cross-file errors, and tardy transactions. We also provide for 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 1355.44) and adoption and guardianship assistance data file (per section 1355.45).

Comment: Several commenters requested clarification about what ACF will consider "errors" for elements, whether errors would be identified by internal consistency checks within the data file, and whether errors would be identified by review during a later AFCARS or SACWIS audit.

Response: We identify five errors in paragraph (b) that we will assess: Missing data, invalid data, internally inconsistent data, cross-file errors, and tardy transactions. Assessing these errors will help ACF determine if the title IV-E agency's 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 in separate guidance.

Comment: One commenter requested clarification about whether a title IV-E agency will be non-compliant if the data are incomplete or unavailable for the title IV-E kinship guardian assistance program or extension of foster care to age 21 programs.

Response: We'd like to clarify that the regulation text specifies that 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. However, this information is still important to ACF and we plan to ensure that title IV-E agencies submit quality data through such means as program improvement plans, targeted technical assistance, or data quality utilities.

Comment: One commenter stated that it is unreasonable that we are not publishing more detailed information on compliance standards in the regulation. Further, the commenter stated that changing internal consistency and cross-check standards "as needed," results in the compliance target becoming elusive.

Response: We understand the commenter is concerned that we have chosen not to promulgate details on error specifications and checks through notice and comment rulemaking. Instead, we plan to publish these error checks outside of formal rulemaking through official technical bulletins and policy. This provides us the flexibility to update and revise them as needed to keep pace with changing and advancing technology. This is consistent with the approach we have taken with the NYTD compliance checks.

Comment: A national organization representing state child welfare agencies, four states and two other organizations objected to the 30 day transaction date timeframe for paragraphs (d)(2) and (g)(2) stating that it is an insufficient timeframe for entering the removal and exit dates. They recommended that it remain at 60 days as in current AFCARS. They cited the burden of the shorter timeframe, commenting that it is unduly onerous and would be a challenge for local agencies to meet.

Response: We understand the concern; however, we retained our proposal for the 30 day timeframe because 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, we will assess the title IV-E agency out of compliance for the report period the event occurred only and we will not re-assess it in the next and future report periods. The penalty, thus, will only be applied to the applicable six-month report period. We have retained paragraphs (b)(1) through (b)(5) as proposed in the 2015 NRPM.

Section 1355.46(c) Data File Standards

In paragraph (c), we set the data file submission standards (timely submission, proper format, and acceptable cross-file) for ACF to determine that the title IV-E agency's AFCARS data is in compliance. In paragraph (c)(1), we require that the title IV-E agency submit AFCARS data within 45 days of the end of each six-month report period. In paragraph (c)(2), we require 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 information including title IV-E agency name, report period, the child's demographic information for the out-of-home care data file and the adoption and guardianship assistance data file.

Comment: Four title IV-E agencies do not support the deadline of 30 days after the end of the report period to submit the data file believing it will limit the agency's ability to provide an accurate data file. They stated that they would have less time to ensure that all data is entered, provide direction to the field on any needed data corrections, and test and validate the data file before submitting it to ACF. The commenters recommended staying with the current 45 day submission deadline.

Response: We modified the regulation to allow title IV-E agencies up to 45 days after the end of the report period to transmit the AFCARS data files. However, we wish to emphasize that the purpose of this transmission period is to extract the data and ensure the file is in the proper format for transmission. Agencies should review the information in the system, including information used in AFCARS reporting, on a regular and ongoing basis in accordance with the title IV-B quality assurance system requirements. This is consistent with current practice with AFCARS.

Comment: A handful of commenters were concerned about ACF's data quality requirements of 100 percent compliance with data format standards believing it is unlikely any title IV-E agencies will be able to meet these standards. In addition, there was

confusion by some commenters misunderstanding that we expected 100 percent freedom from “cross-file” errors.

Response: We proposed 100 percent compliance for data format standards only for proper format and on certain data elements specified in section 1355.46(c)(2) because the proper format is crucial to the proper transmission and receipt of the data file. The administrative elements (agency, date, etc.) and the basic demographic data elements specified in section 1355.46(c)(2) 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. The five data elements in the adoption assistance data file are basic administrative data elements and are directly linked to calculating adoption incentive payments under section 473A of the Act. Also, based on our experience with the existing AFCARS and with the 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 data format compliance standard for these basic and critical data elements specified in section 1355.46(c)(2) is appropriate. The approach is also consistent with how we implemented the NYTD. We will issue guidance on cross-file compliance during implementation.

Comment: One state suggested that ACF use a method similar to the NCANDS transmission method noting it is much simpler and more direct.

Response: The transmission method for AFCARS is outside the scope of the regulations as we did not regulate the specific method used by AFCARS, only that it must be electronic. However, we should note that the current AFCARS method is in compliance with federal security protocols for the proper submission of data files.

Comment: One commenter believes the data file structure needs to be clarified and the public should have the opportunity to comment. Another commenter asked if ACF will provide technical assistance or support to states that are unable to meet the AFCARS basic file standards.

Response: As we explained in the preamble to section 1355.46(b), we did not regulate the technical requirements for formatting or transmitting the AFCARS data files because of inevitable future advances in technology. Instead, we will issue technical requirements and specifications through official ACF policy and technical bulletins. Further,

we will consider what form of technical assistance may be needed by title IV–E agencies to meet the AFCARS data file submission standards. The approach is also consistent with the how we implemented the NYTD.

Section 1355.46(d) Data Quality Standards

In paragraph (d)(1), we specify the data quality standards for the title IV–E agency to be in compliance with AFCARS requirements. We received no substantive comments on this section.

In paragraph (d)(2), we specify the acceptable cross-file standards, which are that the data files must be free of cross-file errors that exceed the acceptable thresholds, as defined by ACF. In the 2015 NPRM, we proposed this as paragraph (c)(3) of this section. We did not receive comments on this paragraph. However, to match the requirement in paragraph (e)(2) of this section, we moved the acceptable cross-file requirement to paragraph (d) with the data quality standards. If each data file meets the data file standards of paragraph (c) of this section, ACF will then determine whether each data file meets the data quality standards in paragraph (d) of this section.

Section 1355.46(e) Compliance Determination and Corrected Data

In paragraph (e), we specify the methodology for determining compliance and a title IV–E agency’s opportunity to submit corrected data when ACF has initially determined that the title IV–E agency’s original submission does not meet the AFCARS standards. We received no specific comments on this section and have retained the proposed language with minor conforming edits.

Section 1355.46(f) Noncompliance

In paragraph (f), we specify that a title IV–E agency has not complied with the AFCARS requirements if the title IV–E agency either does not submit corrected data files, or does not submit corrected data files that meet the compliance standards in paragraphs (c) and (d) of this section. We received no specific comments on this section and have retained the proposed language with minor conforming edits.

Section 1355.46(g) Other Assessments

In paragraph (g), we explain 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. We received no specific comments on this section and have retained the

proposed language with minor conforming edits.

Section 1355.47 Penalties

In section 1355.47 we provide for how ACF will assess and take penalties for a title IV–E agency’s noncompliance with AFCARS requirements outlined in section 1355.46.

Section 1355.47(a) Federal Funds Subject to a Penalty

In paragraph (a), we specify the pool of funds that are subject to a penalty for noncompliance as required by law. We did not receive specific comments on paragraph (a) and have retained the proposed language with minor conforming edits.

Section 1355.47(b) Penalty Amounts

In paragraphs (b)(1) and (b)(2), we specify the penalty amounts for noncompliance and continued noncompliance as required by section 474(f)(2) of the Act.

Comment: Many of commenters, particularly title IV–E agencies, do not support the penalty provisions as proposed in section 1355.47 and suggested a variety of alternatives, including phasing in the penalties, providing incentives, reinvesting penalties back into data improvements, or waiving penalties. A couple commenters believed that the penalty structure did not allow for a graduated or proportional structure to assess penalties reflective of an individual agency’s level of compliance, or any consideration of past efforts to produce the required data. A few commenters supported penalties as a method to incentivize title IV–E agencies to fulfill their duties. One organization suggested applying the penalties to the optional title IV–E programs including kinship guardianship and extended foster care.

Response: We did not revise the penalty provisions in response to these comments because the penalties are required by law and the structure is consistent with section 474(f) of the Act. There is no provision in the law for incentives or reinvestment of penalties. The penalty structure applies to all title IV–E agencies and, we have retained our proposal not to apply the penalty to the optional title IV–E programs. We are allowing ample time for state and tribal title IV–E agencies to modify their systems to report quality data as required by the final rule.

Comment: A couple states oppose the timeframe for corrective action and penalties for subsequent reporting periods and one commenter suggested that we allow time for system

improvements as part of corrective action before ACF issues a penalty.

Response: We did not make any changes to address this comment because the statute specifies the time period for corrective action and thus we are unable to provide a lengthier timeframe for corrections to systems or otherwise.

Comment: A state commenter asked if there will be technical assistance and support offered to title IV–E agencies that are unable to meet basic file standards.

Response: We will continue to conduct AFCARS assessment reviews to address situations expressed by the commenter about quality data and engage state and tribal title IV–E agencies in technical assistance in all aspects of the implementation of AFCARS.

Section 1355.47(c) Penalty Reduction From Grant

In paragraph (c), we specify that we will collect an assessed penalty by reducing the title IV–E agency's title IV–E foster care funding following ACF's notification of the final determination of noncompliance. We did not receive any comments on paragraph (c).

Section 1355.47(d) Appeals

In paragraph (d), we specify that the title IV–E agency has an opportunity to appeal a final determination that the title IV–E agency is out of compliance and assessed financial penalties to the HHS Departmental Appeals Board (DAB). We did not receive any comments on paragraph (d).

VII. Regulatory Impact Analysis

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has determined that this final rule is consistent with these priorities and principles. In particular, ACF has 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 who exit to permanency and support other

statutory obligations to provide oversight of child welfare programs. ACF consulted with the Office of Management and Budget (OMB) and determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review.

ACF determined that the costs to title IV–E agencies as a result of this rule will not be significant as defined in Executive Order 12866 (have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). Federal reimbursement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a result of the revisions in this rule, depending on each agency's cost allocation plan, information system, and other factors. Estimated burden and costs to the federal government are provided below in the Burden estimate section, which we estimate to be \$40,749,492. As a result of this rule, title IV–E agencies will report historical data on children in out-of-home care and information on legal guardianships, and we will have national data on Indian children as defined in ICWA.

Alternatives Considered:

1. ACF considered whether other existing data sets could yield similar information. ACF determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in out-of-home care under the placement and care of the title IV–E agency or who are adopted under a title IV–E adoption assistance agreement.

2. We also received state comments to the 2016 SNPRM citing they have few Indian children in foster care, if any. ACF considered alternatives to collecting ICWA-related data through AFCARS, such as providing an exemption from reporting, but alternative approaches are not feasible due to:

- AFCARS data must be comprehensive per section 479(c)(3) of the Act and exempting some states from reporting the ICWA-related data elements is not consistent with this statutory mandate, and would render it difficult to use this data for development of national policies.

- Section 474(f) of the Act provides for mandatory penalties on the title IV–E agency for non-compliance on AFCARS data that is based on the total amount expended by the title IV–E agency for administration of foster care

activities. Therefore, we are not authorized to permit some states to be subject to a penalty and not others. In addition, allowing states an alternate submission process would complicate and/or prevent the assessment of penalties per § 1355.47, including penalties for failure to submit data files free of cross-file errors, missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records.

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 final rule does not affect small entities because it is applicable only to state and tribal title IV–E agencies.

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 final rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$146 million or more.

Congressional Review

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

Assessment of Federal Regulations and Policies on Families

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

Executive Order 13132

Executive Order 13132 requires that federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. Consistent with E.O. 13132 and *Guidance for Implementing E.O. 13132* issued on

October 28, 1999, the Department must include in “a separately identified portion of the preamble to the regulation” a “federalism summary impact statement” (Secs. 6(b)(2)(B) & (c)(2)). The Department’s “federalism summary impact statement” is as follows—

- “A description of the extent of the agency’s prior consultation with State and local officials”—ACF held consultation calls for the 2015 NPRM on February 18 and 20, 2015 and public comment period was open from February 9, 2015 to April 10, 2015 where we solicited comments via *regulations.gov*, email, and postal mail. ACF held consultation calls for the 2016 SNPRM on April 15, 22, 25, and 29, 2016 and the public comment period was open from April 7, 2016 to May 9, 2016 where we solicited comments via *regulations.gov*, email, and postal mail.

- “A summary of the nature of their concerns and the agency’s position supporting the need to issue the regulation”—As we’ve discussed in the preamble to this final rule, many commenters to the 2015 NPRM supported many of the revisions we proposed for AFCARS; however, some commenters expressed concern with the burden of additional data elements. Many commenters to the 2016 SNPRM supported collecting ICWA-related data in AFCARS and stated that it will better inform practice for AI/AN children. However, they also expressed concern with the burden of additional data elements and suggested that we pare down the overall number of data element to a core set that collects essential information related to ICWA.

- “A statement of the extent to which the concerns of State and local officials have been met” (Secs. 6(b)(2)(B) & 6(c)(2))—As we discuss in the section-by-section discussion preamble, we streamlined many data elements that we proposed in the 2015 NPRM. We also sought to reduce duplication by integrating the ICWA-related data elements proposed in the 2016 SNPRM into other sections of AFCARS. We expand on these comments in the section-by-section discussion.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 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. PRA rules require that ACF estimate the total burden created by this final rule

regardless of what information is available. ACF provides burden and cost estimates using the best available information. Information collection for AFCARS is currently authorized under OMB number 0970–0422; however, this final rule significantly changes the collection requirements by requiring title IV–E agencies to report historical data and data related to ICWA. This final rule contains information collection requirements in proposed § 1355.44, the out-of-home care data file, and § 1355.45, the adoption and guardianship assistance data file, that the Department has submitted to OMB for its review. This final rule requires:

- State and tribal title IV–E agencies to report information on children who are in the out-of-home care reporting population per § 1355.42(a);
- State and tribal title IV–E agencies to report information on children who are in the adoption assistance reporting population per § 1355.42(b); and
- State title IV–E agencies to report ICWA-related information in the out-of-home care data file.

Comments to the 2015 NPRM: State title IV–E agencies and the national organization representing state child welfare agencies felt that our burden estimates were low, but very few states provided estimates on burden hours or costs to implement the 2015 NPRM as a comparison. The comments were primarily about technical or programmer costs to modify the information system and did not include the work associated with gathering information or training. The estimates we received to modify a state information system ranged from 2,000 hours to 20,000 hours.

Comments to the 2016 SNPRM: Overall, many states and the national organization representing state child welfare agencies felt that the burden of the 2016 SNPRM will be significantly higher than the estimates provided. They said that reporting ICWA-related information would require significant upgrades to the SACWIS or other case management system to be able to report the data. States said that they collect some information, but not all information (e.g., name of tribes) is in an extractable data field and it is documented in case narratives. They also stated there will be an increased workload due to manually entering information from paper court orders or case narratives into the system for AFCARS reporting and limited or no electronic exchange exists in some states between the state title IV–E

agency and state court. One organization expressed concern that the 2016 SNPRM burden calculations assumed all states would be equally impacted, and suggested that states with few Indian children, as defined in ICWA, be allowed to format data collection in a different way. This commenter also expressed that states with larger AI/AN population would face a large burden for staff to meet the mandates.

Five state title IV–E agencies provided specific burden and cost estimates and suggestions for how to calculate the estimates for the 2016 SNPRM. They ranged from:

- Implementation timeframe of 24 months to 3.5 years to design, develop, and implement system modifications.
- One-time costs of \$100,000 to \$803,000 to make system changes.
- Annual costs of \$120,000 per year to enter data from court records.
- Increase the average hourly labor rate we used in the 2016 SNPRM include hourly rates for programming staff, staff attorneys, and paralegals because they would all be working together to implement the requirements of the 2016 SNPRM.
- Increase the time to determine whether a child is an Indian child as defined in ICWA to 1.5 hours per child.
- Base the estimates on all children entering foster care and not limit it to those for whom the race AI/AN was indicated.

Although ACF appreciates that these agencies provided this information on hourly and cost burden estimates, ACF received too few estimates to reference for calculating the cost and burden associated with this final rule. We understand the new data requirements could impact the time workers spend providing casework directly with children and families. However, this final rule reflects careful consideration of input received from states and tribes and balances the need for more current data with concerns from commenters about the burden that new reporting requirements represent. Thus, ACF carefully considered the statutory requirement in section 479(c)(1) of the Act to “avoid unnecessary diversion of resources from agencies responsible for adoption and foster care” and determined that the Final Rule does not represent an unnecessary diversion of resources. ACF provides estimates using the best available information.

Burden Estimate

The following are estimates.

Collection—AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Recordkeeping	59	2	8,204.25	968,102
Reporting	59	2	18	2,124
Total				970,226

Respondents: The 59 respondents comprise 52 state title IV–E agencies and seven tribal title IV–E agencies, which are Indian tribes, tribal organizations or consortium with an approved title IV–E plan under section 479B of the Act.

Recordkeeping burden: Searching data sources, gathering information, and entering the information into the system, developing or modifying procedures and systems to collect,

validate, and verify the information and adjusting existing ways to comply with AFCARS requirements, administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals), and training personnel on AFCARS requirements.

Reporting burden: Extracting the information for AFCARS reporting and transmitting the information to ACF.

Annualized Cost to the Federal Government

Federal reimbursement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a result of the revisions proposed in this rule, depending on each agency’s cost allocation plan, information system, and other factors. For this estimate, we used the 50% FFP rate.

Collection—AFCARS	Total annual burden hours	Average hourly labor rate	Total cost	Estimate Federal costs (50% FFP)
Recordkeeping	968,102	\$84	\$81,320,668	\$40,660,284
Reporting	2,124	84	178,416	89,208
Total				40,749,492

Assumptions for Estimates

We made a number of assumptions when calculating the burden and costs:

- To determine the number of children for which title IV–E agencies will have to report in the out-of-home care data file, ACF used the most recent FY 2015 AFCARS data available:
 - 269,509 Number of children who entered foster care during FY 2015. Of those, 6,350 children had a reported race of AI/AN.
 - We estimate the number of children to whom the ICWA-related data elements apply by using as a proxy those children whose race was reported as “American Indian or Alaska Native” in the most recent FY 2015 AFCARS data available. This is the best available data we can use for the burden estimate of the ICWA-related information even though we understand that not every child of this reported race category will be covered under ICWA and would also include children reported by a tribal title IV–E agency. The state title IV–E agency must report whether all children who enter foster care may be Indian children as defined in ICWA.
 - To determine the number of children for which title IV–E agencies must report in the adoption and guardianship assistance file, ACF used the most recent title IV–E Programs Quarterly Financial Report, CB–496, for FY 2015. 440,934 children received title

IV–E adoption assistance and 21,173 children received guardianship assistance.

- For this final rule, we integrated the ICWA-related data elements into other sections of the regulation. Tribal title IV–E agencies are not required to collect the ICWA-related information.
- The state title IV–E agency will be required to collect information for approximately 98 data elements for all children who are in both the out-of-home care reporting population and adoption and guardianship assistance reporting population and for approximately 17 data elements on children to whom the ICWA-related data elements apply in the out-of-home care reporting population.
- Tribal title IV–E agencies will be required to collect information for approximately 95 data elements for all children who are in the out-of-home care reporting population and adoption and guardianship assistance reporting population.
- ACF assumed that the burden for state and tribal title IV–E agencies to modify systems is similar to how long it would take to make revisions to a Comprehensive Child Welfare Information Systems (CCWIS). Currently, 36 states have an operational SACWIS and title IV–E agencies will have the option to transition to or build a CCIWS under the revised regulations

at 45 CFR 1355.50 et sq. ACF also recognizes that most title IV–E agencies will require revisions to electronic case management systems to meet the requirements of this final rule. As more title IV–E agencies build CCWIS, ACF anticipates it will lead to more efficiency in reporting and less costs and burden associated with this AFCARS final rule to the agencies.

- After reviewing the 2015 Bureau of Labor Statistics data and comments to the 2016 SNPRM to help determine the costs of the final rule, ACF assumed that there will be a mix of programming, management, caseworkers, and legal staff working to meet both the one-time and annual requirements of this final rule. For this estimate, we used the job roles of: Computer and Mathematical Operations (15–0000) with a hourly wage of \$41.43; Social Workers (21–1020) with a mean hourly wage estimate of \$23.88; Management Analyst (13–1111) with a mean hourly wage estimate of \$44.12; Social and Community Service Managers (11–9151) with a mean hourly wage estimate of \$33.38; and Paralegals and Legal Assistants (23–2011) with a mean hourly wage estimate of \$25.19. Thus, ACF averaged these wages to come to an average labor rate of \$42. In order to ensure we took into account overhead costs associated with these labor costs, ACF doubled this rate (\$84).

Calculations for Estimates

Recordkeeping: Adding the bullets below produces a total of 968,102 record keeping hours annually.

- For the out-of-home care data file, searching data sources, gathering information, and entering the information into the system will take on average 3 hours annually for all children who enter foster care and 10 hours for children who are Indian children as defined in ICWA. (3 hours × 269,509 children = 808,527 annual hours. 10 hours × 6,350 children = 63,500 annual hours. 808,527 + 63,500 = 872,027 total annual hours for this bullet.)

- For the adoption and guardianship assistance data file, updates or changes on an annual or biennial basis will take an average of 0.2 hours annually for records of children who have an adoption assistance agreement and 0.3 hours annually for children who have a guardianship assistance agreement for a total annual hours of 94,539. (0.2 hours × 440,934 children = 88,187 hours. 0.3 hours × 21,173 children = 6,352 hours. 88,187 hours + 6,352 hours = 94,539 total annual burden hours for this bullet.)

- Developing or modifying procedures and systems to collect, validate, and verify the information and adjusting existing ways to comply with AFCARS requirements will take on average 230 hours annually.

- Administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing the training and manuals), and training personnel on AFCARS requirements will take on average 1,306 hours annually.

Reporting: Extracting the information for AFCARS reporting and transmitting the information to ACF will take on average 18 hours.

In the above estimates, ACF acknowledges: (1) ACF has used average figures for title IV–E agencies of very different sizes and of which, some states may have larger populations of children served than other agencies, (2) these are rough estimates of the burden because state title IV–E agencies have not been required previously to report ICWA-related information in AFCARS, and (3) as described, ACF has limited information to use in making these estimates.

OMB is required to make a decision concerning the collection of information contained in this regulation 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 or 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.

VIII. Tribal Consultation Statement

ACF is committed to consulting with Indian tribes and tribal leadership to the extent practicable and permitted by law, prior to promulgating any regulation that has tribal implications. As we developed this rule, ACF engaged with tribes through multiples means. The requirements in this final rule were informed by consultations with and comments from tribal representatives.

Starting mid-2015, we began tribal consultation, conducted in accordance with the ACF Tribal Consultation Policy (76 FR 55678) with tribal representatives to obtain input on proposing additional AFCARS data elements related to ICWA. There was a conference call on May 1, 2015, that was co-facilitated by CB Associate Commissioner and the Chairperson of the ACF Tribal Advisory Committee, who also serves as the Vice Chair of the Jamestown S’Klallam Tribal Council. Tribes were informed of these consultations and conference calls through letters to tribal leaders. Comments were solicited during the call to determine essential data elements that state title IV–E agencies should report to AFCARS including, but not limited to: Whether the requirements of ICWA were applied to a child; notice for child welfare proceedings; active efforts to prevent removal or to reunify the Indian child with the child’s biological or adoptive parents or Indian custodian; placement preferences in ICWA; and terminations of parental rights for an Indian child. Tribal representatives did not provide specific suggestions on the call, but noted that they would provide formal comments on the 2016 SNPRM when it was issued.

In addition to the May 2015 tribal consultation, we reviewed comments to the 2015 NPRM that suggested we include ICWA-related data elements and we used these comments to help inform the 2016 SNPRM. We received 45 comments to the 2015 NPRM that recommended collecting basic information about the applicability of ICWA for children in out-of-home care, including: Identification of American Indian and Alaska Native children and their family structure, tribal notification

and intervention in state court proceedings, the relationship of the foster parents and other providers to the child, decisions to place a child in out-of-home care (including data on active efforts and continued custody), whether a placement was licensed by an Indian tribe, whether the placement preferences in ICWA were followed, and termination of parental rights (both voluntary and involuntary).

After the 2016 SNPRM was published, ACF conducted additional consultations with tribal representatives and the public via conference calls on April 22, 25, and 27, 2016 during the public comment period. Tribes were informed of these consultations and conference calls through letters to tribal leaders and emails on ACF’s tribal list serves. Much of the dialogue from call attendees was supportive of the data elements proposed in the 2016 SNPRM stating they are an important step to allowing tribes, states, and federal agencies the ability to develop a more detailed understanding of the unique experiences, needs, and barriers to permanency for AI/AN children. There was also discussion regarding how state title IV–E agencies will implement specific data elements around qualified expert witnesses, how state title IV–E agencies will share the data gathered with tribes, and the process for determining whether a state title IV–E agency will be found in non-compliance with data collection. Throughout the calls, we encouraged tribal representatives to submit written comments during the public comment period. We received 41 comments from tribes and 11 comments from organizations representing tribal interests, many of which were co-signed by multiple tribes. We addressed public comments in the section-by-section discussion preamble. This final rule was informed by these consultations and comments.

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: October 11, 2016.

Mark H. Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: October 14, 2016.

Sylvia M. Burwell,

Secretary.

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

PART 1355—GENERAL

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

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

■ 2. Amend § 1355.40 by redesignating paragraphs (a) through (e) as (b) through (f), adding a new paragraph (a), revising the second sentence of newly redesignated paragraph (b)(1), and revising newly redesignated paragraph (f) to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope.* State and tribal title IV–E agencies must follow the requirements of this section and Appendices A through E of part 1355 until September 30, 2019. As of October 1, 2019, state and tribal title IV–E agencies must comply with §§ 1355.41 through 1355.47.

(b) * * *

(1) * * * The data reporting system must meet the requirements of § 1355.40(c) and electronically report certain data regarding children in foster care and adoption. * * *

* * * * *

(f) *Substantial noncompliance.* Failure by a title IV–E agency to meet any of the standards described in paragraphs (b) through (e) of this section is considered a substantial failure to meet the requirements of the title IV–E plan.

* * * * *

§ 1355.40 [Removed and Reserved]

■ 3. Effective October 1, 2019, remove and reserve § 1355.40.

■ 4. Add §§ 1355.41 through 1355.47 to read as follows:

§ 1355.41 Scope of the Adoption and Foster Care Analysis and Reporting System.

(a) This section applies to state and tribal title IV–E agencies unless indicated for state title IV–E agencies only.

(b) An agency described in paragraph (a) of this section must report information on the characteristics and experiences of a child in the reporting

populations described in § 1355.42. 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 assistance data file as required in § 1355.43, pertaining to information described in §§ 1355.44 and 1355.45 and in a format according to ACF's specifications.

(c) *Definitions.* (1) Terms in 45 CFR 1355.41 through 1355.47 are defined as they appear in 45 CFR 1355.20, except that for purposes of data elements related to the Indian Child Welfare Act of 1978 (ICWA), terms that appear in § 1344.44(b)(3) through (b)(8), (c)(3), (c)(4), (c)(6), (c)(7), (d)(3), (e)(8) through (e)(11), (f)(10), and (h)(20) through (h)(23) are defined as they appear in 25 CFR 23.2 and 25 U.S.C. 1903.

(2) For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to § 1355.44(b)(4) or indicated “yes, ICWA applies” to § 1355.44(b)(5), for § 1355.44(c)(1), (c)(2), (d)(4), and (d)(5), the term “legal guardian” includes an Indian custodian as defined in ICWA at 25 U.S.C. 1903 if the Indian custodian has legal responsibility for the child.

§ 1355.42 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 for more than 24 hours. 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 on whose behalf title IV–E foster care maintenance payments are made and who is under the placement and care responsibility of another public agency or an Indian tribe, tribal organization or consortium with which the title IV–E agency has an agreement pursuant to section 472(a)(2)(B)(ii) of the Act.

(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, or a child's title IV–E foster care maintenance payment pursuant to a title IV–E agreement per section 472(a)(2) of the Act ends, regardless of any subsequent living arrangement.

(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.

§ 1355.43 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 assistance data files to ACF within 45 days of the end of the report period (*i.e.*, by May 15 and November 14). 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 § 1355.44 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 § 1355.44(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 § 1355.44(c) through (h).

(3) For a child who had an out-of-home care episode(s) as defined in § 1355.42(a) prior to October 1, 2019, the title IV–E agency must report only the information for the data elements described in § 1355.44(d)(1), (g)(1) and (g)(3) for the out-of-home care episode(s) that occurred prior to October 1, 2019.

(c) *Adoption and guardianship assistance data file.* A title IV–E agency must report the most recent information for the applicable data elements in § 1355.45 that pertains to each child in the adoption and guardianship assistance reporting population on the last day of the report period.

(d) *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 missing information that was not collected to a valid response option.

(e) *Electronic submission.* The title IV–E agency must submit the required data files electronically and in a format 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 §§ 1355.41 through 1355.45. The title IV–E agency's retention of such records is not limited to the requirements of 45 CFR 92.42(b) and (c).

§ 1355.44 Out-of-home care data file elements.

(a) *General information.* (1) *Title IV–E agency.* Indicate the title IV–E agency responsible for submitting the AFCARS data in a format according to ACF's specifications.

(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 local county, jurisdiction or equivalent unit that has primary responsibility for the child in a format according to ACF's specifications.

(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) 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."

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

(ii) *Child's sexual orientation.* For children age 14 and older, indicate whether the child self identifies as

"straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "decline," if the child declined to provide the information. Indicate "not applicable" for children age 13 and under.

(3) *Reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act.* For state title IV–E agencies only: Indicate whether the state title IV–E agency researched whether there is reason to know that the child is an Indian child as defined in ICWA in each paragraph (b)(3)(i) through (vii) of this section.

(i) Indicate whether the state title IV–E agency inquired with the child's biological or adoptive mother. Indicate "yes," "no" or "the biological or adoptive mother is deceased."

(ii) Indicate whether the state title IV–E agency inquired with the child's biological or adoptive father. Indicate "yes," "no," or "the biological or adoptive father is deceased."

(iii) Indicate whether the state title IV–E agency inquired with the child's Indian custodian, if the child has one. Indicate "yes," "no," or "child does not have an Indian custodian."

(iv) Indicate whether the state title IV–E agency inquired with the child's extended family. Indicate "yes" or "no."

(v) Indicate whether the state title IV–E agency inquired with the child who is the subject of the proceeding. Indicate "yes" or "no."

(vi) Indicate whether the child is a member of or eligible for membership in an Indian tribe. Indicate "yes," "no," or "unknown."

(vii) Indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. Indicate "yes," "no," or "unknown."

(4) *Application of ICWA.* For state title IV–E agencies only: Indicate whether the state title IV–E agency knows or has reason to know, that the child is an Indian child as defined in ICWA. Indicate "yes" or "no." If the state title IV–E agency indicated "yes," then the state title IV–E agency must complete paragraphs (b)(4)(i) and (ii). If the state title IV–E agency indicated "no," then the state title IV–E agency must leave paragraphs (b)(4)(i) and (ii) of this section blank.

(i) Indicate the date that the state title IV–E agency first discovered the information indicating the child is or may be an Indian child as defined in ICWA.

(ii) Indicate all federally recognized Indian tribe (s) that may potentially be the Indian child's tribe(s). The title IV–E agency must submit the information

in a format according to ACF's specifications.

(5) *Court determination that ICWA applies.* For state title IV–E agencies only: Indicate whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2). Indicate "yes, ICWA applies," "no, ICWA does not apply," or "no court determination." If the state title IV–E agency indicated "yes, ICWA applies," the state title IV–E agency must complete paragraphs (b)(5)(i) and (ii). If the state title IV–E agency indicated "no, ICWA does not apply" or "no court determination," the state title IV–E agency must leave paragraphs (b)(5)(i) and (ii) of this section blank.

(i) Indicate the date that the court determined that ICWA applies.

(ii) Indicate the Indian tribe that the court determined is the Indian child's tribe for ICWA purposes. The title IV–E agency must submit the information in a format according to ACF's specifications.

(6) *Notification.* State title IV–E agencies only: If the state title IV–E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), the state title IV–E agency must complete paragraphs (b)(6)(i) through (iii). Otherwise, leave paragraphs (b)(6)(i) through (iii) of this section blank.

(i) Indicate whether the Indian child's parent or Indian custodian was sent legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate "yes" or "no."

(ii) Indicate whether the Indian child's tribe(s) was sent legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a). Indicate "yes," "no" or "the child's Indian tribe is unknown".

(iii) Indicate the Indian tribe(s) that were sent notice for a child custody proceeding as required in ICWA at 25 U.S.C. 1912(a). The title IV–E agency must report the information in a format according to ACF's specifications.

(7) *Request to transfer to tribal court.* For state title IV–E agencies only: If the state title IV–E agency indicated "yes" to paragraph (b)(4) or indicated "yes, ICWA applies" to paragraph (b)(5), indicate whether either parent, the Indian custodian, or the Indian child's tribe requested, orally on the record or in writing, that the state court transfer a foster-care or termination-of-parental rights proceeding to the jurisdiction of the Indian child's tribe, in accordance

with 25 U.S.C. 1911(b), at any point during the report period. Indicate “yes” or “no.” If the state title IV–E agency indicated “yes,” then the state title IV–E agency must complete paragraph (b)(8) of this section. If the state title IV–E agency indicated “no,” the state title IV–E agency must leave paragraph (b)(8) of this section blank.

(8) *Denial of transfer.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(7), indicate whether the state court denied the request to transfer the case to tribal jurisdiction. Indicate “yes” or “no.” If the state title IV–E agency indicated “yes,” then the state title IV–E agency must indicate in paragraphs (b)(8)(i) through (iii) of this section whether each reason for denial “applies” or “does not apply.”

Otherwise leave these paragraphs blank.

(i) Either of the parents objected to transferring the case to the tribal court.

(ii) The tribal court declined the transfer to the tribal court.

(iii) The state court determined good cause exists for denying the transfer to the tribal court.

(9) *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)(9)(i) through (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.

(10) *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.”

(11)(i) *Health assessment.* Indicate whether the child had a health assessment during the current out-of-home care episode. This assessment could include an initial health screening or any follow-up health screening per section 422(b)(15)(A) of the Act. Indicate “yes” or “no.” If the title IV–E agency indicated “yes,” the title IV–E must complete paragraphs (b)(11)(ii) and (b)(12); otherwise leave paragraphs (b)(11)(ii) and (b)(12) of this section blank.

(ii) *Date of health assessment.* Indicate the month, day, and year of the child’s most recent health assessment, if the title IV–E agency reported “yes” in paragraph (b)(11)(i) of this section; otherwise leave this paragraph blank.

(12) *Timely health assessment.* Indicate whether the date reported in paragraph (b)(11)(ii) is within the timeframes for initial and follow-up health screenings established by the title IV–E agency per section 422(b)(15)(A) of the Act. Indicate “yes” or “no.” If the title IV–E agency reported “no” in paragraph (b)(11)(i) of this section, the title IV–E agency must leave this paragraph blank.

(13) *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 data element described in paragraphs (b)(13)(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 and leave paragraphs (b)(13)(i) through (xii) blank. 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 and leave paragraphs (b)(13)(i) through (xii) blank. 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 and leave paragraphs (b)(13)(i) through (xii) blank.

(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) *Autism spectrum disorder.* The child has, or had previously, a neurodevelopment disorder, characterized by social impairments, communication difficulties, and restricted, repetitive, and stereotyped patterns of behavior. This includes the range of disorders from autistic disorder, sometimes called autism or classical autism spectrum disorder, to milder forms known as Asperger syndrome and pervasive developmental disorder not otherwise specified.

(iii) *Visual impairment and blindness.* The child has, or had previously, a visual impairment that may adversely affects the day-to-day functioning or educational performance, such as blindness, amblyopia, or color blindness.

(iv) *Hearing impairment and deafness.* The child has, or had previously, an impairment in hearing, whether permanent or fluctuating, that adversely affects the child’s day-to-day functioning and educational performance.

(v) *Orthopedic impairment or other physical condition.* The child has, or

had previously, a physical deformity, such as amputations and fractures or burns that cause contractures, or an orthopedic impairment, including impairments caused by a congenital anomalies or disease, such as cerebral palsy, spina bifida, multiple sclerosis, or muscular dystrophy.

(vi) *Mental/emotional disorders.* The child has, or had previously, one or more mood or personality disorders or conditions over a long period of time and to a marked degree, such as conduct disorder, oppositional defiant disorder, emotional disturbance, anxiety disorder, obsessive-compulsive disorder, or eating disorder.

(vii) *Attention deficit hyperactivity disorder.* The child has, or had previously, a diagnosis of the neurobehavioral disorders of attention deficit or hyperactivity disorder (ADHD) or attention deficit disorder (ADD).

(viii) *Serious mental disorders.* The child has, or had previously, a diagnosis of a serious mental disorder or illness, such as bipolar disorder, depression, psychotic disorders, or schizophrenia.

(ix) *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: physical development or motor skills, cognitive development, communication, language, or speech development, social or emotional development, or adaptive development.

(x) *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 in other data elements.

(xi) *Other diagnosed condition.* The child has, or had previously, a diagnosed condition or other health impairment other than those described above, which requires special medical care, such as asthma, diabetes, chronic illnesses, a diagnosis as HIV positive or AIDS, epilepsy, traumatic brain injury, other neurological disorders, speech/language impairment, learning disability, or substance use issues.

(14) *School enrollment.* Indicate whether the child is a full-time student at and enrolled in (or in the process of enrolling in) "elementary" or "secondary" education, or is a full or part-time student at and enrolled in "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 or part-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 or part-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 is in the process of enrolling in any school setting full-time, indicate "not enrolled."

(15) *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 "GED" if the child has completed a general equivalency degree or other high school equivalent. 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.

(16) *Educational stability.* Indicate if the child is 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)(16)(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)(13)(i) through (vi) of this section.

(17) *Pregnant or parenting.* (i) Indicate whether the child is pregnant as of the end of the report period. Indicate “yes” or “no.”

(ii) Indicate whether the child has ever fathered or bore a child. Indicate “yes” or “no.”

(iii) Indicate whether the child and his/her child(ren) are placed together at any point during the report period, if the response in paragraph (b)(17)(ii) is “yes.” Indicate “yes,” “no,” or “not applicable” if the response in paragraph (b)(17)(ii) of this section is “no.”

(18) *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, 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 “yes” if the child has either an IEP or an IFSP or “no” if the child has neither.

(19) *Prior adoption.* Indicate whether the child experienced a prior legal adoption before the current out-of-home care episode. Include any public, private or independent adoption in the United States or adoption in another country and tribal customary adoptions. Indicate “yes,” “no” 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, the title IV–E agency must complete paragraphs (b)(19)(i) and (ii) of this section; otherwise the title IV–E agency must leave those data elements blank.

(i) *Prior adoption date.* Indicate the month and year that the most recent prior adoption was finalized. 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.

(ii) *Prior adoption intercountry.* Indicate whether the child’s most recent prior adoption was an intercountry adoption, meaning that the child’s prior adoption occurred in another country or the child was brought into the United States for the purposes of finalizing the prior adoption. Indicate “yes” or “no.”

(20)(i) *Prior guardianship.* Indicate whether the child experienced a prior legal guardianship 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,” “no,” 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, the title IV–E agency must complete paragraph (b)(20)(ii); otherwise the title IV–E agency must leave it blank.

(ii) *Prior guardianship date.* Indicate the month and year that the most recent prior guardianship became legalized.

(21) *Child financial and medical assistance.* Indicate whether the child received financial and medical assistance 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)(21)(i) through (xiii) 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) *Title IV–E adoption subsidy.* The child is determined eligible for a title IV–E adoption assistance subsidy.

(viii) *Title IV–E guardianship assistance.* The child is determined eligible for a title IV–E guardianship assistance subsidy.

(ix) *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.

(x) *Title IV–B.* The child’s living arrangement is supported by funds under title IV–B of the Act.

(xi) *SSBG.* The child’s living arrangement is supported by funds under title XX of the Act.

(xii) *Chafee Foster Care Independence Program.* The child is living independently and is supported by funds under the John F. Chafee Foster Care Independence Program.

(xiii) *Other.* The child is receiving financial support from another source not previously listed above.

(22) *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.

(23) *Total number of siblings.* Indicate the total number of siblings of the child. 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 subject of this record in the total number. If the child does not have

any siblings, the title IV–E agency must indicate “0.” If the title IV–E agency indicates “0,” the title IV–E agency must leave paragraphs (b)(24) and (b)(25) of this section blank.

(24) *Siblings in foster care.* Indicate the number of siblings of the child who are in foster care as defined in § 1355.20. 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 subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must leave this paragraph blank. If the child has siblings, but they are not in foster care as defined in § 1355.20, the title IV–E agency must indicate “0.” If the title IV–E agency reported “0,” leave paragraph (b)(25) of this section blank.

(25) *Siblings in living arrangement.* Indicate the number of siblings of the child who are in the same living arrangement as the child, on the last day of 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 subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must leave this paragraph blank. If the child has siblings, but they are not in the same living arrangement as the child, the title IV–E agency must indicate “0.”

(c) *Parent or legal guardian information—(1) 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 of 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 of 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.”

(2) *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 of 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.

(3) *Tribal membership mother.* For state title IV–E agencies only, indicate whether the biological or adoptive mother is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(4) *Tribal membership father.* For state title IV–E agencies only, indicate whether the biological or adoptive father is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(5) *Termination/modification of parental rights.* Indicate whether the termination/modification of parental rights for each parent (biological, legal and/or putative) was voluntary or involuntary. Voluntary means the parent voluntarily relinquished their parental rights to the title IV–E agency, with or without court involvement. Indicate “voluntary” or “involuntary.” Indicate “not applicable” if there was no termination/modification and leave paragraphs (c)(5)(i), (c)(5)(ii), (c)(6) and (c)(7) of this section blank.

(i) *Termination/modification of parental rights petition.* Indicate the month, day and year that each petition to terminate/modify 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/modification of parental rights.* Enter the month, day and year that the parental rights were voluntarily or involuntarily terminated/modified, for each biological, legal and/or putative parent, if applicable. If the parent is deceased, enter the date of death.

(6) *Involuntary termination/modification of parental rights under ICWA.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), and indicated “involuntary” to paragraph (c)(5), the state title IV–E agency must complete paragraphs (c)(6)(i) through (iii) of this section.

(i) Indicate whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f). Indicate with “yes” or “no.”

(ii) Indicate whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert

witnesses in accordance with 25 U.S.C. 1912(f). Indicate “yes” or “no.”

(iii) Indicate whether prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate “yes” or “no.”

(7) *Voluntary termination/modification of parental rights under ICWA.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), and indicated “voluntary” to paragraph (c)(5) of this section, indicate whether the consent to termination of parental or Indian custodian rights was executed in writing and recorded before a court of competent jurisdiction with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) and (c). Indicate “yes” or “no.”

(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. 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. 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. 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) *Removals under ICWA.* For state title IV–E agencies: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), the state title IV–E agency must complete paragraphs (d)(3)(i) through (d)(3)(iii) for each removal reported in paragraph (d)(1) of this section.

(i) Indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian

custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a). Indicate “yes” or “no.”

(ii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) of this section included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 23.121(a). Indicate “yes” or “no.”

(iii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (d)(3)(i) indicates that prior to each removal reported in paragraph (d)(1) of this section that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d). Indicate “yes” or “no.”

(4) *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 “relative legal guardian household” if the child was living with a relative(s) who is also the child’s legal guardian. 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 or homeless.

(5) *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), legal 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.

(6) *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)(6)(i) through (xxxiii) “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 violent act(s), including any forceful detention of an individual, that results in, threatens to result in, or attempts to cause physical injury or mental harm. This is committed by a person against another individual

residing in the child’s home and with whom such person is in an intimate relationship; dating relationship; is or was related by marriage; or has a child in common. This circumstance includes domestic violence between the child and his or her partner and applies to a child or youth of any age (including those younger and older than the age of majority. 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 use.* 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 use.* 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 and/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 and/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.

(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.

(xxviii) *Sex trafficking.* The child is a victim of sex trafficking at the time of removal.

(xxix) *Parental immigration detention or deportation.* The parent is or was detained or deported by immigration officials.

(xxx) *Family conflict related to child's sexual orientation, gender identity, or gender expression.* There is family conflict related to the child's sexual orientation, gender identity, or gender expression. This includes the child's

expressed identity or perceived status as lesbian, gay, bisexual, transgender, questioning, queer, or gender non-conforming. This also includes any conflict related to the ways in which a child manifests masculinity or femininity.

(xxxi) *Educational neglect.* Alleged or substantiated failure of a parent or caregiver to enroll a child of mandatory school age in school or provide appropriate home schooling or needed special educational training, thus allowing the child or youth to engage in chronic truancy.

(xxxii) *Public agency title IV-E agreement.* The child is in 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 and on whose behalf title IV-E foster care maintenance payments are made

(xxxiii) *Tribal title IV-E agreement.* The child is in the placement and care responsibility of an Indian tribe, tribal organization or consortium with which the title IV-E agency has an agreement and on whose behalf title IV-E foster care maintenance payments are made.

(xxxiv) *Homelessness.* The child or his or her family has no regular or adequate place to live. This includes living in a car, or on the street, or staying in a homeless or other temporary shelter.

(7) *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 (d)(7), indicate whether the title IV-E agency made a report to law enforcement for entry into the National Crime Information Center (NCIC) database. Indicate "yes" if the agency made a report to law enforcement and indicate "no" if the agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated "yes" in paragraph (d)(7)(i) of this section, indicate the date that the agency made the report to law enforcement.

(8) *Victim of sex trafficking while in foster care.* Indicate "yes" if the child was a victim of sex trafficking while in out-of-home care during the current out-of-home care episode. Indicate "no" if the child was not a victim of sex trafficking during the current out-of-home care episode.

(i) *Report to law enforcement.* If the title IV-E agency indicated "yes" in this

paragraph (d)(8) of this section, indicate whether the agency made a report to law enforcement for entry into the NCIC database. Indicate "yes" if the title IV-E agency made a report(s) to law enforcement and indicate "no" if the title IV-E agency did not make a report.

(ii) *Date.* If the title IV-E agency indicated "yes" in paragraph (d)(8)(i), indicate the date(s) the agency made the report(s) to law enforcement.

(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. In the case of a child who has run away, whose whereabouts are unknown, or 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 when 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).

(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.

(iv) *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) and there is not a legal, biological, or marital connection between the child and foster parent.

(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 but inside the United States. 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 paragraph (e)(7) blank.

(7) *Jurisdiction or country where child is living.* Indicate 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 paragraph (e)(7) blank. The title IV–E agency must report the information in a format according to ACF's specifications.

(8) *Available ICWA foster care and pre-adoptive placement preferences.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), indicate which foster care or pre-adoptive placements that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) were willing to accept placement for each of the child's living arrangements reported in paragraph (e)(1) of this section. Indicate in each paragraph (e)(8)(i) through (v) of this section “yes” or “no.”

(i) A member of the Indian child's extended family.

(ii) A foster home licensed, approved, or specified by the Indian child's tribe.

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(v) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).

(9) *Foster care and pre-adoptive placement preferences under ICWA.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), for each of the Indian child's foster care or pre-adoptive placement(s) reported in paragraph (e)(1) of this section, indicate whether the placement meets the placement preferences of ICWA in 25 U.S.C. 1915(b) by indicating with whom the Indian child is placed. Indicate “a member of the Indian child's extended family,” “a foster home licensed, approved, or specified by the Indian child's tribe,” “an Indian foster home licensed or approved by an authorized non-Indian licensing authority,” “an institution for children approved by an Indian tribe or operated by an Indian

organization which has a program suitable to meet the Indian child's needs," "a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c)" or "placement does not meet ICWA placement preferences." If the state IV-E agency indicated "placement does not meet ICWA placement preferences," then the state IV-E agency must complete paragraph (e)(10). Otherwise, the state title IV-E agency must leave paragraph (e)(10) blank.

(10) *Good cause under ICWA.* For state title IV-E agencies only: If the state title IV-E agency indicated "placement does not meet ICWA placement preferences" in paragraph (e)(9), indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) or to depart from the placement preferences of the Indian child's tribe in accordance with 25 U.S.C. 1915(c). Indicate "yes" or "no." If the state title IV-E agency indicated "yes," then the state title IV-E agency must indicate the basis for good cause in paragraph (e)(11) of this section. If the state title IV-E agency indicated "no," then the state title IV-E agency must leave paragraph (e)(11) blank.

(11) *Basis for good cause.* For state title IV-E agencies only: If the state title IV-E agency indicated "yes" to paragraph (e)(10), indicate the state court's basis for determining good cause to depart from ICWA placement preferences by indicating "yes" or "no" in each paragraph (e)(11)(i) through (v) of this section.

(i) Request of one or both of the Indian child's parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular placement.

(12) *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 adult" if the foster parent 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)(25) of this section; otherwise the title IV-E agency must leave those data elements blank.

(13) *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) and there is not a legal, biological, or marital connection between the child and foster parent.

(14) *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.

(15) *First foster parent tribal membership.* Indicate whether the first foster parent is a member of an Indian tribe. Indicate "yes," "no," or "unknown."

(16) *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)(16)(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.

(17) *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.”

(18) *Gender of first foster parent.* Indicate whether the first foster parent self identifies as “female” or “male.”

(19) *First foster parent sexual orientation.* Indicate whether the first foster parent self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the first foster parent declined to identify his/her status.

(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)(12) of this section.

(21) *Second foster parent tribal membership.* Indicate whether the second foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(22) *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)(22)(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)(12) 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.

(23) *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)(12) of this section.

(24) *Gender of second foster parent.* Indicate whether the second foster parent self identifies as “female” or “male.”

(25) *Second foster parent sexual orientation.* Indicate whether the second foster parent self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the second foster parent declined to identify his/her status.

(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) *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.

(4) *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.

(5) *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. A status offense is specific to juveniles, such as running away, truancy or underage alcohol violations. Indicate “yes” or “no.”

(6) *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.

(7) *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.

(8) *Transition plan.* Indicate whether a child has a transition plan that meets the requirements of section 475(5)(H) of the Act, including plans developed before the 90-day period. Indicate “yes,” “no” or “not applicable.”

(9) *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)(8) 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.

(10) *Active efforts.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), indicate whether the active efforts in each paragraph (f)(10)(i) through (xiii) “applies” or “does not apply.” The state title IV–E agency must indicate all of the active efforts that apply once the child enters the AFCARS out-of-home care reporting population per § 1355.42(a) through the child’s exit per paragraph (g)(1) of this section and the active efforts made prior to the child entering the out-of-home care reporting population.

(i) Assist the parent(s) or Indian custodian through the steps of a case plan and with developing the resources necessary to satisfy the case plan.

(ii) Conduct a comprehensive assessment of the circumstances of the Indian child’s family, with a focus on safe reunification as the most desirable goal.

(iii) Identify appropriate services to help the parent overcome barriers, including actively assisting the parents in obtaining such services.

(iv) Identify, notify and invite representatives of the Indian child’s tribe to participate in providing support and services to the Indian child’s family and in family team meetings, permanency planning and resolution of placement issues.

(v) Conduct or cause to be conducted a diligent search for the Indian child’s extended family members, and contact and consult with extended family members to provide family structure and support for the Indian child and the Indian child’s parents.

(vi) Offer and employ all available and culturally appropriate family preservation strategies and facilitate the use of remedial and rehabilitative services provide by the child’s tribe.

(vii) Take steps to keep siblings together whenever possible.

(viii) Support regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.

(ix) Identify community resources including housing, financial, transportation, mental health, substance use and peer support services and actively assisting the Indian child’s parents or when appropriate, the child’s family, in utilizing and accessing those resources.

(x) Monitor progress and participation in services.

(xi) Consider alternative ways to address the needs of the Indian child’s

parents and, where appropriate, the family, if the optimum services do not exist or are not available.

(xii) Provide post-reunification services and monitoring.

(xiii) Other active efforts tailored to the facts and circumstances of the case.

(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 (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.

(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 paragraph (h) 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 the data elements in paragraph (h) 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. Indicate “married but individually adopting or obtaining legal guardianship” if the adoptive parents or legal guardians are considered united in matrimony according to applicable laws, but are individually adopting or obtaining legal guardianship. Indicate “separated” if the foster parent is legally separated or is living apart from his or her spouse. 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. Use this response option even if only one person of the unmarried couple is the adoptive parent or legal guardian of the child. Indicate “single adult” if the adoptive parent or legal guardian 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)(9) through (14) 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) and there is not a legal, biological, or marital connection between the child and foster parent.

(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) *First adoptive parent or guardian tribal membership*. Indicate whether the first adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(5) *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)(5)(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.

(6) *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."

(7) *Gender of first adoptive parent or guardian*. Indicate whether the first adoptive parent self identifies as "female" or "male."

(8) *First adoptive parent or legal guardian sexual orientation*. Indicate whether the first adoptive parent or legal guardian self identifies as "straight or heterosexual," "gay or lesbian," "bisexual," "don't know," "something else," or "declined" if the first adoptive parent or legal guardian declined to identify his/her status.

(9) *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.

(10) *Second adoptive parent, guardian, or other member of the couple tribal membership*. Indicate whether the second adoptive parent or guardian is a member of an Indian tribe. Indicate "yes," "no" or "unknown."

(11) *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)(11)(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.

(12) *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.

(13) *Gender of second adoptive parent, guardian, or other member of the couple.* Indicate whether the second adoptive parent, guardian, or other member of the couple self identifies as “female” or “male.”

(14) *Second adoptive parent, guardian, or other member of the couple sexual orientation.* Indicate whether the second adoptive parent or legal guardian self identifies as “straight or heterosexual,” “gay or lesbian,” “bisexual,” “don’t know,” “something else,” or “declined” if the second adoptive parent or legal guardian declined to identify his/her status.

(15) *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. 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. 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” apply for the child’s adoption or legal guardianship, the title IV–E agency must complete the data element in paragraph (h)(16) of this section; otherwise the title IV–E agency must leave it blank.

(16) *Interjurisdictional adoption or guardianship jurisdiction.* Indicate the state, tribal service area, Indian reservation or country where the reporting title IV–E agency placed the child for adoption or legal guardianship, in a format according to ACF’s specifications. 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)(15) of this section; otherwise the title IV–E agency must leave it blank.

(17) *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.

(18) *Assistance agreement type.* Indicate the type of assistance agreement between the title IV–E agency and the adoptive parent(s) or legal guardian(s): “Title IV–E adoption assistance agreement;” “State/tribal adoption assistance agreement;” “Adoption-Title IV–E agreement non-recurring expenses only;” “Adoption-Title IV–E agreement Medicaid only;” “Title IV–E guardianship assistance agreement;” “State/tribal guardianship assistance agreement;” or “no agreement” if there is no assistance agreement.

(19) *Siblings in adoptive or guardianship home.* Indicate the number of siblings of the child who are in the same adoptive or guardianship home as the child. 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 subject of this record in the total number. If the child does not have any siblings, the title IV–E agency must indicate “not applicable.” If the child has siblings, but they are not in the same adoptive or guardianship home as the child, the title IV–E agency must indicate “0.”

(20) *Available ICWA Adoptive placements.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5), indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) were willing to accept placement. Indicate in each paragraph (h)(20)(i) through (h)(20)(iv) of this section “yes” or “no.”

(i) A member of the Indian child’s extended family.

(ii) Other members of the Indian child’s tribe.

(iii) Other Indian families.

(iv) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child’s tribe, in accordance with 25 U.S.C. 1915(c).

(21) *Adoption placement preferences under ICWA.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” to paragraph (b)(4) or indicated “yes, ICWA applies” to paragraph (b)(5) of this section,

indicate whether the adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) by indicating with whom the Indian child is placed. Indicate “a member of the Indian child’s extended family,” “other members of the Indian child’s tribe,” “other Indian families,” “a placement that complies with the order of preference for adoptive placements established by an Indian child’s tribe, in accordance with 25 U.S.C. 1915(c),” or “placement does not meet ICWA placement preferences.” If the state IV–E agency indicated “placement does not meet ICWA placement preferences,” then the state IV–E agency must complete paragraph (h)(22). Otherwise, leave blank.

(22) *Good cause under ICWA.* For state title IV–E agencies only: If the state title IV–E agency indicated “placement does not meet ICWA placement preferences” in paragraph (h)(21), indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences under 25 U.S.C. 1915(a) or to depart from the placement preferences of the Indian child’s tribe under 25 U.S.C. 1915(c). Indicate “yes” or “no.” If the state title IV–E agency indicated “yes,” then the state title IV–E agency must indicate the basis for good cause in paragraph (h)(23) of this section. If the state title IV–E agency indicated “no,” then the state title IV–E agency must leave paragraph (h)(23) blank.

(23) *Basis for good cause.* For state title IV–E agencies only: If the state title IV–E agency indicated “yes” in paragraph (h)(22), indicate the state court’s basis for determining good cause to depart from ICWA adoptive placement preferences by indicating “yes” or “no” in each paragraph (h)(23)(i) through (v) of this section.

(i) Request of one or both of the child’s parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular placement.

§ 1355.45 Adoption and guardianship assistance data file elements.

A title IV–E agency must report the following information for each child in the adoption and guardianship assistance reporting population, if applicable based on § 1355.42(b).

(a) *General information*—(1) *Title IV–E agency*. Indicate the title IV–E agency responsible for submitting the AFCARS data to ACF per requirements issued by 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. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child demographics*—(1) *Child's date of birth*. Indicate the month, day and year of the child's birth.

(2) *Child's gender*. 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 (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 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.

(d) *Adoption finalization or guardianship legalization date*. Indicate the month, day and year that the child's adoption was finalized or the guardianship became legalized.

(e) *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.

§ 1355.46 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 § 1355.43 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 (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 §§ 1355.44 or 1355.45.

(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 §§ 1355.44 or 1355.45.

(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 as specified per ACF.

(5) *Tardy transactions*. Tardy transactions are instances in which the removal transaction date or exit transaction date described in § 1355.44(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 § 1355.43(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 §§ 1355.44(a)(1) through (4), 1355.44(b)(1) and (b)(2)(i), 1355.45(a), and 1355.45(b)(1) and (2) be 100 percent free of missing data, invalid data and internally inconsistent data (see paragraphs (b)(1) through (3) of this section). ACF will not process a title IV–E agency’s data file that does not meet the proper format standard.

(d) *Data quality standards.* (1) 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.

(2) *Acceptable cross-file.* The data files must be free of cross-file errors that exceed the acceptable thresholds, as defined by ACF.

(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 formatting 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 May 15 and November 14), 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 § 1355.47.

(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 1355.45.

§ 1355.47 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 May 15, 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 November 14, 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 (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 § 1355.46.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of one fourth of one percent (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]

■ 5. Effective October 1, 2019, remove Appendices A through E to Part 1355.

Note: The following attachments will not appear in the Code of Federal Regulations.

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44

Category	Element	Reponses options	Section citation
General information	Title IV–E agency	Name	1355.44(a)(1).
	Report date	Date	1355.44(a)(2).
	Local agency	Name	1355.44(a)(3).
Child information	Child record number	Number	1355.44(a)(4).
	Child’s date of birth	Date	1355.44(b)(1).
	Child’s gender	Male	1355.44(b)(2)(i).
		Female	
	Child’s sexual orientation	Straight or heterosexual	1355.44(b)(2)(ii).
	Gay or lesbian Bisexual Don’t know Something else Decline Not applicable		

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	Reason to know a child is an “Indian child” as defined in the Indian Child Welfare Act.	.....	1355.44(b)(3).
	Inquired with the child’s biological or adoptive mother.	Yes No The biological or adoptive mother is deceased	1355.44(b)(3)(i).
	Inquired with the child’s biological or adoptive father.	Yes No The biological or adoptive father is deceased	1355.44(b)(3)(ii).
	Inquired with the child’s Indian custodian.	Yes No Child does not have an Indian custodian	1355.44(b)(3)(iii).
	Inquired with the child’s extended family.	Yes No	1355.44(b)(3)(iv).
	Inquired with the child	Yes No	1355.44(b)(3)(v).
	Child is a member or eligible for membership in an Indian tribe.	Yes No Unknown	1355.44(b)(3)(vi).
	Domicile or residence of the child, the child’s parent, or the child’s Indian custodian is on a reservation or in an Alaska Native village.	Yes No Unknown	1355.44(b)(3)(vii).
	Application of ICWA	Yes No	1355.44(b)(4).
	The date that the state title IV–E agency first discovered information indicating the child is or may be an Indian child as defined in ICWA.	Date	1355.44(b)(4)(i).
	All federally recognized Indian tribe(s) that may potentially be the Indian child’s tribe(s).	Name(s)	1355.44(b)(4)(ii).
	Court determination that ICWA applies	Yes, ICWA applies No, ICWA does not apply No court determination	1355.44(b)(5).
	Date court determined that ICWA applies.	Date	1355.44(b)(5)(i).
	Indian tribe that the court determined is the Indian child’s tribe for ICWA purposes.	Name	1355.44(b)(5)(ii).
	Notification .....	.....	1355.44(b)(6).
	Whether the Indian child’s parent or Indian custodian was sent legal notice more than 10 days prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a).	Yes No	1355.44(b)(6)(i).
	Whether the Indian child’s tribe(s) was sent legal notice more than 10 days prior to the first child custody proceedings in accordance with 25 U.S.C. 1912(a).	Yes No	1355.44(b)(6)(ii).
	The Indian tribe(s) that were sent notice for a child custody proceeding as required in ICWA at 25 U.S.C. 1912(a).	Name(s)	1355.44(b)(6)(iii).
	Request to transfer to tribal court	Yes No	1355.44(b)(7).
	Denial of transfer	Yes No	1355.44(b)(8).
	Either of the parents objected to transferring the case to tribal court.	Applies Does not apply	1355.44(b)(8)(i).
	The tribal court declined the transfer to the tribal court.	Applies Does not apply	1355.44(b)(8)(ii).
	The state court determined good cause exists for denying the transfer to tribal court.	Applies Does not apply	1355.44(b)(8)(iii).
	Child’s race .....	.....	1355.44(b)(9).
	Race—American Indian or Alaska Native.	Yes No	1355.44(b)(9)(i).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	Race—Asian	Yes	1355.44(b)(9)(ii).
		No	
	Race—Black or African America	Yes	1355.44(b)(9)(iii).
		No	
	Race—Native Hawaiian or Other Pacific Islander	Yes	1355.44(b)(9)(iv).
		No	
	Race—White	Yes	1355.44(b)(9)(v).
		No	
	Race—Unknown	Yes	1355.44(b)(9)(vi).
		No	
	Race—Abandoned	Yes	1355.44(b)(9)(vii).
		No	
	Race—Declined	Yes	1355.44(b)(9)(viii).
		No	
	Child’s Hispanic or Latino ethnicity	Yes	1355.44(b)(10).
		No	
		Unknown	
		Abandoned	
		Declined	
	Health assessment	Yes	1355.44(b)(11)(i).
		No	
	Date of health assessment	Date	1355.44(b)(11)(ii).
	Timely health assessment	Yes	1355.44(b)(12).
		No	
	Health, behavioral or mental health conditions	Child has a diagnosed condition	1355.44(b)(13).
		No exam or assessment conducted	
		Exam or assessment conducted and none of the conditions apply	
		Exam or assessment conducted but results not received	
	Intellectual disability	Existing condition	1355.44(b)(13)(i).
		Previous condition	
		Does not apply	
	Autism spectrum disorder	Existing condition	1355.44(b)(13)(ii).
		Previous condition	
		Does not apply	
	Visual impairment and blindness	Existing condition	1355.44(b)(13)(iii).
		Previous condition	
		Does not apply	
	Hearing impairment and deafness	Existing condition	1355.44(b)(13)(iv).
		Previous condition	
		Does not apply	
	Orthopedic impairment or other physical condition	Existing condition	1355.44(b)(13)(v).
		Previous condition	
		Does not apply	
	Mental/emotional disorders	Existing condition	1355.44(b)(13)(vi).
		Previous condition	
		Does not apply	
	Attention deficit hyperactivity disorder	Existing condition	1355.44(b)(13)(vii).
		Previous condition	
		Does not apply	
	Serious mental disorders	Existing condition	1355.44(b)(13)(viii).
		Previous condition	
		Does not apply	
	Developmental delay	Existing condition	1355.44(b)(13)(ix).
		Previous condition	
		Does not apply	
	Developmental disability	Existing condition	1355.44(b)(13)(x).
		Previous condition	
		Does not apply	
	Other diagnosed condition	Existing condition	1355.44(b)(13)(xi).
		Previous condition	
		Does not apply	
	School enrollment	Elementary	1355.44(b)(14).
		Secondary	
		Post-secondary education or training	
		College	
		Not school-age	
		Not enrolled	
	Educational level	Not school-age	1355.44(b)(15).
		Kindergarten	
		1st grade	

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
		2nd grade 3rd grade 4th grade 5th grade 6th grade 7th grade 8th grade 9th grade 10th grade 11th grade 12th grade GED Post-secondary education or training College	
	Educational stability	Yes	1355.44(b)(16).
		No	
	Proximity	Applies	1355.44(b)(16)(i).
		Does not apply	
	District/zoning rules	Applies	1355.44(b)(16)(ii).
		Does not apply	
	Residential facility	Applies	1355.44(b)(16)(iii).
		Does not apply	
	Services/programs	Applies	1355.44(b)(16)(iv).
		Does not apply	
	Child request	Applies	1355.44(b)(16)(v).
		Does not apply	
	Parent/Legal guardian request	Applies	1355.44(b)(16)(vi).
		Does not apply	
	Other	Applies	1355.44(b)(16)(vii).
		Does not apply	
	Pregnant or parenting		1355.44(b)(17).
	Child is pregnant as of end of report period.	Yes	1355.44(b)(17)(i).
		No	
	Child has ever fathered or bore a child.	Yes	1355.44(b)(17)(ii).
		No	
	Child and his/her child(re) are placed together at any point during the report period.	Yes	1355.44(b)(17)(iii).
		No	
	Special education	Not applicable	
		Yes	1355.44(b)(18).
		No	
	Prior adoption	Yes	1355.44(b)(19).
		No abandoned	
	Prior adoption date	Date	1355.44(b)(19)(i).
	Prior adoption intercountry	Yes	1355.44(b)(19)(ii).
		No	
	Prior guardianship	Yes	1355.44(b)(20)(i).
		No	
		Abandoned	
	Prior guardianship date	Date	1355.44(b)(20)(ii).
	Child financial and medical assistance	Child has received support/assistance	1355.44(b)(21).
		No support/assistance received	
	SSI or Social Security benefits	Applies	1355.44(b)(21)(i).
		Does not apply	
	Title XIX Medicaid	Applies	1355.44(b)(21)(ii).
		Does not apply	
	Title XXI SCHIP	Applies	1355.44(b)(21)(iii).
		Does not apply	
	State/Tribal adoption assistance	Applies	1355.44(b)(21)(iv).
		Does not apply	
	State/Tribal foster care	Applies	1355.44(b)(21)(v).
		Does not apply	
	Child support	Applies	1355.44(b)(21)(vi).
		Does not apply	
	Title IV–E adoption subsidy	Applies	1355.44(b)(21)(vii).
		Does not apply	
	Title IV–E guardianship assistance	Applies	1355.44(b)(21)(viii).
		Does not apply	
	Title IV–A TANF	Applies	1355.44(b)(21)(ix).
		Does not apply	
	Title IV–B	Applies	1355.44(b)(21)(x).
		Does not apply	
	SSBG	Applies	1355.44(b)(21)(xi).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
Parent or legal guardian information ...	Chafee Foster Care Independence Program.	Does not apply Applies	1355.44(b)(xii).
	Other	Does not apply Applies	1355.44(b)(xiii).
	Title IV–E foster care during report period.	Does not apply Yes	1355.44(b)(22).
	Total number of siblings	No Number	1355.44(b)(23).
	Siblings in foster care	Number	1355.44(b)(24).
	Siblings in living arrangement	Number	1355.44(b)(25).
	Year of birth of first parent or legal guardian.	Date	1355.44(c)(1).
	Year of birth of second parent or legal guardian.	Date	1355.44(c)(2).
	Tribal membership mother	Yes	1355.44(c)(3).
	Tribal membership father	No Unknown Yes	1355.44(c)(4).
	Termination/modification of parental rights.	No Unknown Voluntary	1355.44(c)(5).
	Termination/modification of parental rights petition.	Involuntary Not applicable Date	1355.44(c)(5)(i).
	Termination/modification of parental rights.	Date	1355.44(c)(5)(ii).
	Involuntary termination/modification of parental rights under ICWA.	.....	1355.44(c)(6).
	State court found beyond reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f).	Yes	1355.44(c)(6)(i).
	Court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f).	No Yes	1355.44(c)(6)(ii).
	Prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).	Yes	1355.44(c)(6)(iii).
	Voluntary termination/modification of parental rights under ICWA.	No Yes	1355.44(c)(7).
Removal information	Date of child's removal	Date	1355.44(d)(1).
Removal transaction date	Date	1355.44(d)(2).	
Removals under ICWA .....	.....	1355.44(d)(3).	
Court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a).	Yes	1355.44(d)(3)(i).	
Evidence presented for foster care placement as indicated in paragraph (d)(3)(i) included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) and 25 CFR 121(a).	No Yes	1355.44(d)(3)(ii).	

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	Evidence presented for foster care placement as indicated in paragraph (d)(3)(i) indicates that prior to each removal reported in paragraph (d)(1) that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d).	Yes No	1355.44(d)(3)(iii).
	Environment at removal	Parent household Relative household Legal guardian household Relative legal guardian household Justice facility Medical/mental health facility Other	1355.44(d)(4).
	Authority for placement and care responsibility.	Court ordered Voluntary placement agreement Not yet determined	1355.44(d)(5).
	Child and family circumstances at removal.		1355.44(d)(6).
	Runaway	Applies Does not apply	1355.44(d)(6)(i).
	Whereabouts unknown	Applies Does not apply	1355.44(d)(6)(ii).
	Physical abuse	Applies Does not apply	1355.44(d)(6)(iii).
	Sexual abuse	Applies Does not apply	1355.44(d)(6)(iv).
	Psychological or emotional abuse	Applies Does not apply	1355.44(d)(6)(v).
	Neglect	Applies Does not apply	1355.44(d)(6)(vi).
	Medical neglect	Applies Does not apply	1355.44(d)(6)(vii).
	Domestic violence	Applies Does not apply	1355.44(d)(6)(viii).
	Abandonment	Applies Does not apply	1355.44(d)(6)(ix).
	Failure to return	Applies Does not apply	1355.44(d)(6)(x).
	Caretaker's alcohol use	Applies Does not apply	1355.44(d)(6)(xi).
	Caretaker's drug use	Applies Does not apply	1355.44(d)(6)(xii).
	Child alcohol use	Applies Does not apply	1355.44(d)(6)(xiii).
	Child drug use	Applies Does not apply	1355.44(d)(6)(xiv).
	Prenatal alcohol exposure	Applies Does not apply	1355.44(d)(6)(xv).
	Prenatal drug exposure	Applies Does not apply	1355.44(d)(6)(xvi).
	Diagnosed condition	Applies Does not apply	1355.44(d)(6)(xvii).
	Inadequate access to mental health services.	Applies Does not apply	1355.44(d)(6)(xviii).
	Inadequate access to medical services.	Applies Does not apply	1355.44(d)(6)(xix).
	Child behavior problem	Applies Does not apply	1355.44(d)(6)(xx).
	Death of caretaker	Applies Does not apply	1355.44(d)(6)(xxi).
	Incarceration of caretaker	Applies Does not apply	1355.44(d)(6)(xxii).
	Caretaker's significant impairment—physical/emotional.	Applies Does not apply	1355.44(d)(6)(xxiii).
	Caretaker's significant impairment—cognitive.	Applies Does not apply	1355.44(d)(6)(xxiv).
	Inadequate housing	Applies Does not apply	1355.44(d)(6)(xxv).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
Living arrangement and provider information.	Voluntary relinquishment for adoption	Applies Does not apply	1355.44(d)(6)(xxvi).
	Child requested placement	Applies Does not apply	1355.44(d)(6)(xxvii).
	Sex trafficking	Applies Does not apply	1355.44(d)(6)(xxviii).
	Parental immigration detainment or deportation.	Applies Does not apply	1355.44(d)(6)(xxix).
	Family conflict related to child's sexual orientation, gender identity, or gender expression.	Applies Does not apply	1355.44(d)(6)(xxx).
	Educational neglect	Applies Does not apply	1355.44(d)(6)(xxxi).
	Public agency title IV–E agreement	Applies Does not apply	1355.44(d)(6)(xxxii).
	Tribal title IV–E agreement	Applies Does not apply	1355.44(d)(6)(xxxiii).
	Homelessness	Applies Does not apply	1355.44(d)(6)(xxxiv).
	Victim of sex trafficking prior to entering foster care.	Yes No	1355.44(d)(7).
	Report to law enforcement	Yes No	1355.44(d)(7)(i).
	Date	Date	1355.44(d)(7)(ii)
	Victim of sex trafficking while in foster care.	Yes No	1355.44(d)(8).
	Report to law enforcement	Yes No	1355.44(d)(8)(i).
	Date	Date	1355.44(d)(8)(ii)
	Date of living arrangement	Date	1355.44(e)(1)
	Foster family home	Yes No	1355.44(e)(2)
	Foster family home type		1355.44(e)(3)
	Licensed home	Applies Does not apply	1355.44(e)(3)(i).
	Therapeutic foster family home	Applies Does not apply	1355.44(e)(3)(ii).
	Shelter care foster family home	Applies Does not apply	1355.44(e)(3)(iii).
	Relative foster family home	Applies Does not apply	1355.44(e)(3)(iv).
	Pre-adoptive home	Applies Does not apply	1355.44(e)(3)(v).
	Kin foster family home	Applies Does not apply	1355.44(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	1355.44(e)(4).
	Private agency living arrangement	Private agency involvement No private agency involvement	1355.44(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	1355.44(e)(6).
	Jurisdiction or country where child is living.	Name	1355.44(e)(7).
	Available ICWA foster care and pre-adoptive placement preferences.		1355.44(e)(8).
	A member of the Indian's extended family.	Yes No	1355.44(e)(8)(i).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	A foster home licensed, approved, or specified by the Indian child's tribe.	Yes No	1355.44(e)(8)(ii).
	An Indian foster home licensed or approved by an authorized non-Indian licensing authority.	Yes No	1355.44(e)(8)(iii).
	An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.	Yes No	1355.44(e)(8)(iv).
	A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).	Yes No	1355.44(e)(8)(v).
	Foster care and pre-adoptive placements preferences under ICWA.	A member of the Indian child's extended family A foster home licensed, approved, or specified by the Indian child's tribe An Indian foster home licensed or approved by an authorized non-Indian licensing authority An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c) Placement does not meet ICWA placement preferences	1355.44(e)(9).
	Good cause under ICWA	Yes No	1355.44(e)(10).
	Basis for good cause		1355.44(e)(11)
	Request of one or both of the Indian child's parents.	Yes No	1355.44(e)(11)(i).
	Request of the Indian child	Yes No	1355.44(e)(11)(ii).
	Unavailability of suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA art 25 U.S.C. 1915 but none has been located.	Yes No	1355.44(e)(11)(iii).
	Extraordinary physical, mental or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.	Yes No	1355.44(e)(11)(iv).
	Presence of a sibling attachment that can be maintained only through a particular placement.	Yes No	1355.44(e)(11)(v).
	Marital status of the foster parents	Married couple Unmarried couple Separated Single adult	1355.44(e)(12).
	Child's relationships to the foster parents.	Paternal grandparent(s) Maternal grandparent(s) Other paternal relative(s) Other maternal relative(s) Sibling(s) Non-relative(s) Kin	1355.44(e)(13).
	Year of birth for first foster parent	Date	1355.44(e)(14).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	First foster parent tribal membership ..	Yes No Unknown	1355.44(e)(15).
	Race of first foster parent .....	.....	1355.44(e)(16).
	Race—American Indian or Alaska Na- tive.	Yes No	1355.44(e)(16)(i).
	Race—Asian	Yes No	1355.44(e)(16)(ii).
	Race—Black or African America	Yes No	1355.44(e)(16)(iii).
	Race—Native Hawaiian or Other Pa- cific Islander.	Yes No	1355.44(e)(16)(iv)
	Race—White	Yes No	1355.44(e)(16)(v).
	Race—Unknown	Yes No	1355.44(e)(16)(vi).
	Race—Declined	Yes No	1355.44(e)(16)(vii).
	Hispanic or Latino ethnicity of first fos- ter parent.	Yes No Unknown Declined	1355.44(e)(17).
	Gender of first foster parent	Female Male	1355.44(e)(18).
	First foster parent sexual orientation ..	Straight or heterosexual Gay or lesbian Bisexual Don't know Something else Declined	1355.44(e)(19).
	Year of birth for second foster parent	Date	1355.44(e)(20).
	Second foster parent tribal member- ship.	Yes No Unknown	1355.44(e)(21).
	Race of second foster parent .....	.....	1355.44(e)(22).
	Race—American Indian or Alaska Na- tive.	Yes No	1355.44(e)(22)(i).
	Race—Asian	Yes No	1355.44(e)(22)(ii).
	Race—Black or African America	Yes No	1355.44(e)(22)(iii).
	Race—Native Hawaiian or Other Pa- cific Islander.	Yes No	1355.44(e)(22)(iv).
	Race—White	Yes No	1355.44(e)(22)(v)
	Race—Unknown	Yes No	1355.44(e)(22)(vi).
	Race—Declined	Yes No	1355.44(e)(22)(vii).
	Hispanic or Latino ethnicity of second foster parent.	Yes No Unknown Declined	1355.44(e)(23).
	Gender of second foster parent	Female Male	1355.44(e)(24).
	Second foster parent sexual orienta- tion.	Straight or heterosexual Gay or lesbian Bisexual Don't know Something else Declined	1355.44(e)(25).
Permanency planning	Permanency plan	Reunify with parent(s) or legal guard- ian(s) Live with other relatives Adoption Guardianship Planned permanent living arrange- ment Permanency plan not established	1355.44(f)(1)
	Date of permanency plan	Date	1355.44(f)(2).
	Date of periodic review	Date	1355.44(f)(3).
	Date of permanency hearing	Date	1355.44(f)(4).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	Juvenile justice	Yes No	1355.44(f)(5)
	Caseworker visit dates	Date	1355.44(f)(6).
	Caseworker visit location	Child's residence Other location	1355.44(f)(7).
	Transition plan	Yes No Not applicable	1355.44(f)(8).
	Date of transition plan	Date	1355.44(f)(9).
	Active efforts .....	.....	1355.44(f)(10)
	Assist the parent(s) or Indian custodian through the steps of a case plan and with developing the resources necessary to satisfy the case plan.	Applies Does not apply	1355.44(f)(10)(i).
	Conduct a comprehensive assessment of the circumstances of the Indian child's family, with a focus on safe reunification as the most desirable goal.	Applies Does not apply	1355.44(f)(10)(ii).
	Identify appropriate services and to help the parent overcome barriers, including actively assisting the parents in obtaining such services.	Applies Does not apply	1355.44(f)(10)(iii).
	Identify, notify and invite representatives of the Indian child's tribe to participate in providing support and services to the Indian child's family and in family team meetings, permanency planning and resolution of placement issues.	Applies Does not apply	1355.44(f)(10)(iv).
	Conduct or cause to be conducted a diligent search for the Indian child's expended family members, and contacting and consulting with extended family members to provide family structure and support for the Indian child and the Indian child's parents.	Applies Does not apply	1355.44(f)(10)(v).
	Offer and employ all available and culturally appropriate family preservation strategies and facilitate the use of remedial and rehabilitative services provide by the child's tribe.	Applies Does not apply	1355.44(f)(10)(vi).
	Take steps to keep siblings together whenever possible.	Applies Does not apply	1355.44(f)(10)(vii).
	Support regular visits with parents or Indian custodians in the most natural setting possible as well as trial home visits of the Indian child during any period of removal, consistent with the need to ensure the health, safety, and welfare of the child.	Applies Does not apply	1355.44(f)(10)(viii).
	Identify community resources including housing, financial, transportation, mental health, substance use and peer support services and actively assisting the Indian child's parents or when appropriate, the child's family in utilizing and accessing those resources.	Applies Does not apply	1355.44(f)(10)(ix).
	Monitor progress and participation in services.	Applies Does not apply	1355.44(f)(10)(x).
	Consider alternative ways to address the needs of the Indian child's parents and, where appropriate, the family, if the optimum services do not exist or are not available.	Applies Does not apply	1355.44(f)(10)(xi).
	Provide post-reunification services and monitoring.	Applies Does not apply	1355.44(f)(10)(xii).

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
General exit information	Other active efforts tailored to the facts and circumstances of the case.	Applies Does not apply	1355.44(f)(10)(xiii).
	Date of exit	Date	1355.44(g)(1).
	Exit transaction date	Date	1355.44(g)(2).
	Exit reason	Not applicable	1355.44(g)(3)
Exit to adoption and guardianship information.	Transfer to another agency	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 State title IV–E agency	1355.44(g)(4)
	Marital status of adoptive parent(s) or guardian(s).	Tribal title IV–E agency Indian tribe or tribal agency (non IV–E) Juvenile justice agency Mental health agency Other public agency Private agency Married couple	1355.44(h)(1).
	Child’s relationship to the adoptive parent(s) or guardian(s).	Married but individually adopting or obtaining legal guardianship Separated Unmarried couple Single adult	1355.44(h)(2)
	Paternal grandparent(s)	Applies Does not apply	1355.44(h)(2)(i).
	Maternal grandparent(s)	Applies Does not apply	1355.44(h)(2)(ii).
	Other paternal relative(s)	Applies Does not apply	1355.44(h)(2)(iii).
	Other maternal relative(s)	Applies Does not apply	1355.44(h)(2)(iv).
	Sibling(s)	Applies Does not apply	1355.44(h)(2)(v).
	Kin	Applies Does not apply	1355.44(h)(2)(vi).
	Non-relative(s)	Applies Does not apply	1355.44(h)(2)(vii).
Foster parent(s)	Applies Does not apply	1355.44(h)(2)(viii).	
Date of birth of first adoptive parent or guardian.	Date	1355.44(h)(3).	
First adoptive parent or guardian tribal membership.	Yes No Unknown	1355.44(h)(4).	
Race of first adoptive parent or guardian.	.....	1355.44(h)(5)	
Race—American Indian or Alaska Native.	Yes No	1355.44(h)(5)(i).	
Race—Asian	Yes No	1355.44(h)(5)(ii).	
Race—Black or African America	Yes No	1355.44(h)(5)(iii).	
Race—Native Hawaiian or Other Pacific Islander.	Yes No	1355.44(h)(5)(iv).	
Race—White	Yes No	1355.44(h)(5)(v).	
Race—Unknown	Yes No	1355.44(h)(5)(vi).	
Race—Declined	Yes No	1355.44(h)(5)(vii).	
Hispanic or Latino ethnicity of first adoptive parent or guardian.	Yes No Unknown Declined	1355.44(h)(6).	

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	Gender of first adoptive parent or guardian.	Female	1355.44(h)(7).
	First adoptive parent or legal guardian sexual orientation.	Male Straight or Heterosexual	1355.44(h)(8).
	Date of birth of second adoptive parent, guardian or other member of the couple.	Gay or lesbian Bisexual Don't know Something else Declined Date	1355.44(h)(9)
	Second adoptive parent, guardian, or other member of the couple tribal membership.	Yes	1355.44(h)(10).
	Race of second adoptive parent, guardian, or other member of the couple.	No Unknown	1355.44(h)(11).
	Race—American Indian or Alaska Native.	Yes	1355.44(h)(11)(i).
	Race—Asian	No Yes	1355.44(h)(11)(ii).
	Race—Black or African America	No Yes	1355.44(h)(11)(iii).
	Race—Native Hawaiian or Other Pacific Islander.	No Yes	1355.44(h)(11)(iv).
	Race—White	No Yes	1355.44(h)(11)(v).
	Race—Unknown	No Yes	1355.44(h)(11)(vi).
	Race—Declined	No Yes	1355.44(h)(11)(vii).
	Hispanic or Latino ethnicity of second adoptive parent, guardian, or other member of the couple.	No Unknown Declined Yes	1355.44(h)(12).
	Gender of second adoptive parent, guardian, or other member of the couple.	Female	1355.44(h)(13).
	Second adoptive parent, guardian, or other member of the couple sexual orientation.	Male Straight or heterosexual	1355.44(h)(14).
	Inter/Intrajurisdictional adoption or guardianship.	Gay or lesbian Bisexual Don't know Something else Declined Interjurisdictional adoption or guardianship Intercountry adoption or guardianship Intrajurisdictional adoption or guardianship	1355.44(h)(15).
	Interjurisdictional adoption or guardianship jurisdiction.	Name	1355.44(h)(16).
	Adoption or guardianship placing agency.	Title IV–E agency	1355.44(h)(17).
	Assistance agreement type	Private agency under agreement Indian tribe under contract/agreement Title IV–E adoption assistance agreement State/tribal adoption assistance agreement Adoption—Title IV–E agreement non-recurring expenses only Adoption—Title IV–E agreement Medicaid only Title IV–E guardianship assistance agreement State/tribal guardianship assistance agreement No agreement	1355.44(h)(18).
	Siblings in adoptive or guardianship home.	Number	1355.44(h)(19).
	Available ICWA adoptive placements	.....	1355.44(h)(20).
	A member of the Indian child's extended family.	Yes	1355.44(h)(20)(i).
		No	

ATTACHMENT A—OUT-OF-HOME CARE DATA FILE ELEMENTS § 1355.44—Continued

Category	Element	Reponses options	Section citation
	Other members of the Indian child's tribe.	Yes No	1355.44(h)(20)(ii).
	Other Indian families	Yes No	1355.44(h)(20)(iii).
	A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c).	Yes No	1355.44(h)(20)(iv).
	Adoption placement preferences under ICWA.	A member of the Indian child's extended family Other members of the Indian child's tribe Other Indian families A placement that complies with the order of preference for adoptive placements established by an Indian child's tribe, in accordance with 25 U.S.C. 1915(c) Placement does not meet ICWA placement preferences	1355.44(h)(21).
	Good cause under ICWA	Yes No	1355.44(h)(22).
	Basis for good cause .....	.....	1355.44(h)(23)
	Request of one or both of the child's parents.	Yes No	1355.44(h)(23)(i)
	Request of the Indian child	Yes No	1355.44(h)(23)(ii).
	The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located.	Yes No	1355.44(h)(23)(iii).
	The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.	Yes No	1355.44(h)(23)(iv).
	The presence of a sibling attachment that can be maintained only through a particular placement.	Yes No	1355.44(h)(23)(v).

ATTACHMENT B—ADOPTION ASSISTANCE DATA FILE ELEMENTS § 1355.45

Element	Reponses options	Section citation
Title IV–E agency	Name	1355.45(a)(1).
Report date	Date	1355.45(a)(2).
Child record number	Number	1355.45(a)(3).
Child's date of birth	Date	1355.45(b)(1).
Child's gender	Male Female	1355.45(b)(2).
Child's race .....	.....	1355.45(b)(3).
Race—American Indian or Alaska Native	Yes No	1355.45(b)(3)(i).
Race—Asian	Yes No	1355.45(b)(3)(ii).
Race—Black or African America	Yes No	1355.45(b)(3)(iii).
Race—Native Hawaiian or Other Pacific Islander	Yes No	1355.45(b)(3)(iv).
Race—White	Yes No	1355.45(b)(3)(v).
Race—Unknown	Yes No	1355.45(b)(3)(vi).
Race—Abandoned	Yes No	1355.45(b)(3)(vii).

ATTACHMENT B—ADOPTION ASSISTANCE DATA FILE ELEMENTS § 1355.45—Continued

Element	Reponses options	Section citation
Race—Declined	Yes	1355.45(b)(3)(viii).
Hispanic or Latino Ethnicity	No. Yes	1355.45(b)(4).
Assistance agreement type	No. Unknown. Abandoned. Declined.	
Subsidy amount	Title IV–E adoption assistance agreement	1355.45(c)(1).
Adoption finalization or guardianship legalization date	Title IV–E guardianship assistance agreement. Number	1355.45(c)(2).
Agreement termination date	Date	1355.45(d).
	Date	1355.45(e).

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