

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1355

RIN 0970-AC72

Adoption and Foster Care Analysis and Reporting System

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

ACTION: Notice of proposed rulemaking.

SUMMARY: ACF proposes to amend the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations. This notice of proposed rulemaking (NPRM) amends the AFCARS regulations that require title IV-E agencies to collect and report data to ACF on children in out-of-home care, who exit out-of-home care to adoption or legal guardianship, and children who are covered by a title IV-E adoption or guardianship assistance agreement.

DATES: In order to be considered, we must receive written comments on this NPRM on or before June 18, 2019.

ADDRESSES: We encourage the public to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. To download an electronic version of the proposed rule, please go to <http://www.regulations.gov/>. You may submit comments, identified by docket number, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-Mail:* CBComments@acf.hhs.gov. Include [docket number and/or RIN number] in subject line of the message.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided. For detailed instructions on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document. Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at the

address listed in the Paperwork Reduction Act (PRA) section of this preamble. A copy of these comments also may be sent to the HHS representative listed after the **FOR FURTHER INFORMATION CONTACT** heading. **FOR FURTHER INFORMATION CONTACT:** Kathleen McHugh, Director, Policy Division, Children's Bureau, cbcomments@acf.hhs.gov. **SUPPLEMENTARY INFORMATION:**

Table of Contents

- I. Executive Summary per Executive Order 13563
- II. Background on AFCARS and Regulation Development
- III. Overview of Major Proposed Revisions to Data Elements
- IV. Implementation Timeframe
- V. Public Participation
- VI. Section-by-Section Discussion of Regulatory Provisions
- VII. Regulatory Impact Analysis
- VIII. Tribal Consultation Statement

I. Executive Summary per Executive Order 13563

Executive Order (E.O.) 13563 requires that regulations be accessible, consistent, written in plain language, and easy to understand. This means that regulatory preambles for lengthy or complex rules (both proposed and final) must include executive summaries. Below is the executive summary for this AFCARS NPRM.

(1) *Purpose of the AFCARS NPRM.*

(a) *The need for the regulatory action and how the action will meet that need:* This NPRM proposes revisions to streamline the AFCARS data elements that were finalized in the AFCARS final rule published on December 14, 2016 (81 FR 90524). This action is in response to E.O. 13777 (issued February 24, 2017) that directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

(b) *Legal authority for the final rule:* Section 479 of the Social Security Act (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 NPRM.*

(a) *Data Elements.* We propose to remove and replace the data elements as described below to reduce the AFCARS reporting burden. We propose to modify the data elements in the out-of-home care data file (§ 1355.44) that title IV-E agencies must report. In particular, we propose to streamline data elements related to child information, placements, and permanency planning based on public comments to the Advanced Notice of Proposed Rule Making (ANPRM) and the work of federal experts with an interest in AFCARS data. We retained all data elements in the adoption and guardianship assistance data file (§ 1355.45) with conforming changes based on edits we made in § 1355.44.

(b) *Conforming Changes.* We propose to make conforming changes to §§ 1355.41, 1355.43, and 1355.46 to update the citations or dates as a result of our proposed amendments in other sections.

(3) *Costs and Benefits.* The benefits are that we will streamline the AFCARS data elements which will reduce the title IV-E agency reporting burden from the 2016 final rule, thus resulting in an estimated \$39.2 million in total annual savings. (Affected entities will continue to incur \$43.7 million in annual costs, net of federal reimbursements, attributable to the 2016 final rule.) This NPRM, if finalized as proposed, is expected to be an E.O. 13771 deregulatory action.

II. Background on AFCARS and Regulation Development

AFCARS is authorized by section 479 of the Act, which mandates that HHS regulate a data collection system for national adoption and foster care data. Title IV-E agencies must submit data files on a semi-annual basis to ACF. We use AFCARS data for a variety of requirements, including but not limited to budgeting, providing national statistics on the child welfare population, providing reports to Congress, and monitoring compliance with title IV-B and IV-E requirements. AFCARS regulations were first published in 1993 and states began submitting data in fiscal year (FY) 1995. At that time, the requirements were set forth in regulations at 45 CFR 1355.40 through 1355.47 and the appendices to part 1355. Per the 2016 final rule, the requirements are set forth in regulations at 45 CFR 1355.40 through 1355.47. The regulations specify the reporting population, standards for compliance, and all data elements.

We published the 2016 final rule revising the AFCARS regulations on December 14, 2016 (81 FR 90524) and it

included child welfare legislative changes that occurred since 1993, data elements related to the Indian Child Welfare Act (ICWA), and implemented fiscal penalties for noncompliant AFCARS data. The 2016 final rule provided two fiscal years for title IV–E agencies to comply with sections 1355.41 through 1355.47 and required title IV–E agencies to continue to report AFCARS data in accordance with section 1355.40 and the appendices to part 1355 until September 30, 2019.

Executive Order 13777

On February 24, 2017, the President issued E.O. 13777 *Enforcing the Regulatory Reform Agenda* to lower regulatory burdens on the American people. It directed federal agencies to establish a Regulatory Reform Task Force to review existing regulations and make recommendations regarding their repeal, replacement, or modification. The HHS Regulatory Reform Task Force identified the AFCARS regulation as one in which the reporting burden may impose costs that exceed benefits.

In response to the E.O. 13777, ACF published two notices in the **Federal Register** on March 15, 2018:

- NPRM proposing to delay the implementation of the first AFCARS report period under the December 2016 AFCARS final rule (45 CFR 1355.41–.47) by an additional two fiscal years, until October 1, 2021 (83 FR 11450).
- ANPRM soliciting specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the 2016 final rule and listed questions for which we sought a response (83 FR 11449).

Implementation Delay of the 2016 Final Rule

The comment period ended on April 16, 2018. In response to the NPRM on implementation delay, we received 43 comments and based on the comments, we issued a final rule to delay the implementation of the 2016 final rule for one additional fiscal year, until October 1, 2020 (Published August 21, 2018, 83 FR 42225). However, since we are proposing in this NPRM to revise the AFCARS data elements, we will revisit this implementation date to provide a timeframe to allow title IV–E agencies time to comply with the revised AFCARS data elements when we finalize this proposal through a final rule.

Advance Notice of Proposed Rulemaking

The ANPRM's comment period was open for 90 days and ended on June 13,

2018. Through the ANPRM, ACF asked the public to give specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the AFCARS requirements in 2016 final rule. The ANPRM listed questions specifically asking the public to comment on regarding the 2016 final rule:

- Identify the data elements that are overly burdensome for title IV–E agencies,
- Identify limitations title IV–E agencies will encounter in data reporting, including an explanation with cost and burden estimates for recordkeeping, reporting, and the number of children in foster care who are Indian children as defined in ICWA, and
- Recommendations on data elements to retain, simplify, and remove with justifications, such as its use at the national level or why the data would not be reliable in national statistics and would be better asked through a qualitative case review.

In response to the ANPRM, we received 237 comments from 38 states, 38 Indian tribes or consortiums, 62 organizations representing state or tribal interests, national public advocacy groups, professional associations, universities, two members of Congress, and 97 private citizens. The following is a summary and analysis of the public comments relevant to the specific issues for which we sought input.

Summary of State Comments: Thirty-six of the 38 states supported making revisions to streamline the AFCARS regulation. This was based on each state's self-assessment of the cost and burden/work hours needed at various levels of the agency and the number of hours it will take to complete the work required to comply with the AFCARS 2016 final rule. States shared similar concerns for implementing the requirements of the 2016 final rule such as: (1) Requiring the additional data elements could adversely impact their ability to provide safety, permanency, and well-being for youth in their care; (2) the additional work needed to comply would pull valuable resources away from the field and decrease the amount of time caseworkers have to work with families and children toward reunification, safety and risk assessments and planning, adoption, and other permanency activities; and (3) many new data elements are qualitative and therefore more accurately evaluated by quality assurance staff, through a case review or other monitoring efforts. The comments from the two states that did not support revising AFCARS

focused on the value of the information that may be gleaned from certain data elements related to sexual orientation and ICWA. Even though the vast majority of states supported streamlining the AFCARS data elements, they also expressed that the 2016 final rule was a considerable improvement to the current AFCARS, will improve data reporting, and provide national information on a number of new topics, including ICWA, health needs, and permanency. States recognized that more comprehensive data allows them to better understand the children and families they serve. However, they felt that the 2016 final rule was far-reaching and made suggestions for streamlining the data elements, based on their cost and burden analysis.

State Comments regarding Burden Estimates: States ranged considerably in estimating the work needed and length of time it would take to comply with the 2016 final rule. The variability in state estimates is expected and appropriate because there is considerable variability across states in sophistication and capacity of information systems, availability of both staff and financial resources, and populations of children in care. It is expected for a state with a large number of children in foster care to provide a much different burden estimate than a state with fewer children in foster care. Each state made a case about the increased and excessive burden as it applied to that specific state. States estimated it would take between 200 to 25,000 hours to accomplish tasks related to the ICWA-related data elements and 800 to 70,000 hours for completing work on all other data elements. Some of the tasks associated with these wide-ranging hours included:

- Developing or modifying policies, procedures, rules, case management systems, and electronic case records to comply with the AFCARS requirements,
- Searching for and gathering the information required to be reported for the data elements,
- Entering the information into the system, and
- Training staff on the requirements and changes.

Hours related to developing and administering staff training ranged from 20 to 102,000 hours depending on the number of staff that require training and materials that must be developed.

State Comments regarding Cost Estimates: States' estimates varied considerably, depending on the size of the state's out-of-home care population, staffing needs, the length of time states have to implement new AFCARS

requirements, and the level of current system functionality, including modifications needed and data exchanges with other agency systems. As mentioned previously, variability in state cost estimates is appropriate because significant differences exist across state systems, resources, and populations of children in care. States estimated that total costs to comply with the 2016 final rule ranged from \$1 million for one year to \$45 million over multiple years. They provided ranges for specific costs, such as \$41 million to hire and train new staff for administrative support, \$600,000 to \$1 million for total initial costs, and \$741,000 to \$11 million for ongoing costs. These costs included:

- Analyzing policies, practice, and casework to determine and implement modifications to capture and report data,
- Systems changes (for example, contract and staff costs to revise systems),
- Developing and administering staff training, ongoing monitoring, and quality assurance, and
- Reporting the data to ACF.

State Comments regarding Data

Elements: Based in large part on the cost and hours required to complete the work to comply with the 2016 final rule, 36 states are in favor of streamlining the data elements in the 2016 final rule, many of whom provided recommendations. States recommended revisions to the data elements around education, health assessments and conditions, youth pregnancy/fathering, siblings, prior adoptions, caseworker visits, and sex trafficking. The reasons provided for streamlining included that it would be costly to modify their systems to report so many new data elements (compared to the AFCARS prior to the 2016 final rule) and they did not see the benefit at the national level for providing new information that was not explicitly used for monitoring. A third of the states expressed concerns with the data elements around sexual orientation and recommended they be removed due to reasons such as it will not be reliable because youth would self-report, which could result in an undercount, and due to the sensitive and private nature of the information, they questioned the implications of having this information in a government record. Regarding the ICWA-related data elements, half of the states expressed concern with the large number of and detailed questions asked related to ICWA's requirements, with five states expressly asking for no ICWA-related data elements in AFCARS. Many states felt that some of the ICWA-related data

elements in the 2016 final rule are redundant, overly detailed, could be streamlined, or are too specific for a national data set and are better suited for a qualitative review. Four states reported that ICWA-applicable children in their out-of-home care populations were well under one percent (1%). However, states with higher numbers of tribal children in their care reported that they supported including limited information related to ICWA in AFCARS because they believe child welfare programs will be enhanced by having this information to inform policy decisions and program management.

Summary of Comments from Indian Tribes and Organizations Representing Tribal Interests: The 38 Indian tribes/consortiums and all organizations representing tribal interests opposed streamlining the AFCARS data elements and primarily focused their comments on ICWA's requirements and the ICWA-related data elements. They did not provide specific comments on or estimates for cost or burden related to the 2016 final rule. In general, they expressed that the state burden in collecting the ICWA-related data elements is not significant enough to warrant streamlining it because of their concerns regarding ICWA compliance. Most of the commenters provided the following general reasons for keeping all ICWA-related data elements in AFCARS:

- ICWA has been law for 40 years but there has been little in-depth data and limited federal oversight regarding this law.
- Collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families are kept together when possible and provide insight into state compliance with ICWA's requirements.
- Without any uniform, national data regarding ICWA's requirements, policymakers do not understand the scope of issues to inform policy changes.
- While some Indian tribes reported good working relationships with some states, the commenters expressed concerns that there are children in state custody who are not identified as Indian children and thus are not protected under ICWA.

Largely, the commenters representing tribal interests expressed support for retaining all of the data elements in the 2016 final rule and specifically, all of the ICWA-related data elements for similar reasons as noted above. They also expressed that:

- States should currently be asking questions that ascertain whether a child is an Indian child as defined in ICWA,

including inquiring about the family's tribal membership status,

- Specific data elements on notification of proceedings and transfers to tribal court are important because the timelines in ICWA are rarely met, and
- Information on termination of parental rights, removals under ICWA, and placement preferences are important for determining ICWA compliance.

Regarding the other data elements in the 2016 final rule, the commenters largely supported those for reasons such as the information will underscore the importance of certain casework activities (e.g., sibling placement whenever possible) and it will show trends in removal circumstances, placements, and permanency outcomes that will inform policymaking and provide a basis for education and training.

Summary of Comments from Organizations and Other Entities: The two members of Congress and most other advocacy and trade organizations, universities, private individuals, and other groups primarily focused their comments on which data elements from the 2016 final rule to remove or retain. They did not provide specific comments on or estimates for cost or burden related to any aspect the 2016 final rule. The majority of these commenters opposed streamlining the data for reasons similar to the commenters representing tribal interests, such as underscoring the importance of certain casework activities and showing national trends. The commenters provided broad commentary on the benefit of having new data outweighs the burden of having to report it. A few commenters supported streamlining based on the cost and system changes states will need to make to comply with AFCARS requirements. We received numerous comments that were outside the scope of the ANPRM, which did not address the questions for which we sought public comment, such as there has been ample opportunities to comment on AFCARS via prior rulemakings, repeated requests for feedback is an undue burden, and ACF's authority to collect ICWA-related data elements in AFCARS.

Commenters expressed support and some offered modifications for particular data elements in the 2016 final rule such as health assessments, educational status and special education, placement types, caseworker visits, circumstances present at removal, prior adoptions, title IV-E guardianships, youth who are pregnant or parenting, and youth who may be victims of sex trafficking. They

suggested that updates to AFCARS were long overdue and that the data elements related to ICWA and sexual orientation in particular will yield important national information because current methods of reporting, for example via the Child and Family Services Plans (CFSP) and case file reviews, do not result in reliable or consistent data, thus are ineffective at providing a national picture of children placed in out-of-home care.

Comment Analysis: We reviewed and analyzed all of the ANPRM comments, costs, and burden estimates and considered them as it related to meeting the requirements of E.O. 13777. ACF heard the concerns and interests of all stakeholders and after careful consideration, we believe that proposing revisions to the AFCARS regulation through a NPRM is warranted and within the spirit of E.O. 13777 to streamline and reduce burden on title IV–E agencies.

Commenters sufficiently argued that many new data elements are qualitative and therefore more accurately evaluated by quality assurance staff, through a case review, or other monitoring efforts. We must strongly weigh the desire for more information with the burden on those who are required to report it. The need for streamlining was convincingly argued through the states' detailed work and cost estimates that the 2016 final rule has many data elements that can be streamlined while still providing critical information on the out-of-home care population from a national perspective.

More states submitted comments and more detailed comments and cost/burden estimates in response to the ANPRM than in response to our previous AFCARS proposals, thereby providing us with much more rich and valuable information than we have had to date. Most of the state comments to the ANPRM were detailed and contained comprehensive burden and cost estimates illustrating the work they will have to undergo to implement the 2016 final rule. While some states indicated that the 2016 final rule made improvements in the AFCARS requirements that will enhance the knowledge about the children/youth in out-of-home care, the vast majority agreed and convincingly articulated that some of the data elements should be streamlined.

Regarding the ICWA-related data elements, section 479(c)(1) of the Act requires that any data collection system developed and implemented under this section must avoid unnecessary diversion of resources from agencies. Requiring every state to modify its systems to be able to report on a large

number of data elements when the foster care population does not reflect that the data elements will be applicable to a majority of their children does not meet this mandate. Additionally, according to AFCARS data on the race/ethnicity distribution of children/youth in care as of September 30, 2016, in 33 states, children who have a reported race as American Indian/Alaskan Native made up less than one percent of the children in foster care. We believe AFCARS can be streamlined in a way that is responsive to all concerned and in a way that can balance the need for updated data with reducing the burden on title IV–E agencies.

In response to the commenters that supported the data elements as promulgated in the 2016 final rule, we note that title IV–E agencies are to develop case management/electronic case records that meet the agency's business need. As such, title IV–E agencies may collect all of the data elements contained in the 2016 final rule regardless of what is ultimately required to be reported to ACF by title IV–E agencies in a rule that finalizes this NPRM. The AFCARS data elements are information that we require be reported to ACF, but we understand that title IV–E agencies collect more information in their own case records to support case practice that meets the needs of the children and families they serve. We commend the willingness to collect a more comprehensive array of information. However, the information we require title IV–E agencies to report to ACF via AFCARS must take into consideration and reflect the circumstances and capacity of all title IV–E agencies in setting the AFCARS requirements.

ACF understands and appreciates that Congress and stakeholders are interested in the well-being of children in foster care and we understand that national data about these children is useful for many reasons. However, the vast majority of commenters that opposed streamlining are not required to report AFCARS data and did not offer any specific estimates regarding the burden or cost placed on reporting title IV–E agencies. These commenters believed it was necessary for agencies to report qualitative data on particular topics through AFCARS for policy making purposes and justified it with general statements that the benefits of more data outweigh the burden to report it. However, it was not well illustrated why AFCARS is the best vehicle for collecting this data when there are other effective options for gathering qualitative information at the national

level, such as via surveys, research, or the Child and Family Services Review.

The suggestion that more data elements in AFCARS is essential for policy making was not sufficiently validated in the ANPRM comments. It would have been useful if the commenters identified the specific policies that they felt needed the detailed level of AFCARS data so urgently and why AFCARS specifically is the best means for collection of this data. Congress has passed approximately 24 laws that significantly amended federal child welfare programs since 1995, when AFCARS became effective. These policy changes were made despite not having the additional data from the 2016 final rule. Congress recently amended the statute at section 479 of the Act to require data elements it deems relevant for national public interest. For example, Congress required collection of information on sex trafficking victims (section 479(c)(3)(E) of the Act) and prior adoptions/guardianships (section 479(d) of the Act).

Based on state cost estimates, ACF is also concerned that a significant expansion of AFCARS at this time would negatively impact states' ability to take advantage of the new title IV–E prevention services program (see section 471(e) of the Act). Title IV–E is a cost reimbursement program, therefore, states must secure funding for the services, interventions, evaluation, data collection, and reporting out of their own resources before being reimbursed by the federal government for a portion of those costs. State cost estimates of the 2016 final rule are significant. Imposing additional reporting costs at this time, coupled with the new limits on federal funding for foster care maintenance payments for children in certain congregate care facilities and the reinstatement of eligibility criteria for infants and children up to age two in the title IV–E adoption assistance program included in the *Family First Prevention Services Act* (Public Law (Pub. L.) 115–123) may severely impede states' ability to opt into the title IV–E prevention services program.

Input From Federal Agency Experts

As part of the process to meet the requirements of E.O. 13777 and ongoing intra-agency collaboration related to data collection and analysis at ACF, the Children's Bureau consulted with the Department's subject matter experts with an interest in AFCARS data. We reviewed each data element in the 2016 final rule and evaluated whether it is needed for a specific purpose, such as a title IV–B/IV–E statutory requirement

and program monitoring, Congressional reporting, or budgeting, and to specifically identify whether including the data in AFCARS would improve the accuracy and reliability of the data. Given current budgetary constraints on title IV–E and federal agencies, the objective was to be clear on how each data element meets a mandate and how ACF will use the data, thus justifying it being a requirement for reporting. The subject matter experts identified a number of data elements that do not have a specific purpose for title IV–B/IV–E statute or program monitoring, Congressional reporting, or budgeting. Additionally, the Children’s Bureau consulted with representatives of the Department of Interior (DOI) regarding the ICWA-related data elements to retain in AFCARS.

After considering all input from ANPRM commenters and the Department’s subject matter experts with an interest in AFCARS, ACF proposes to streamline the AFCARS data elements to what ACF believes is a reasonable amount. We believe that this proposal meets the requests from states to streamline and reduce redundancies in the regulation; from Indian tribes, tribal organizations, and other stakeholders for keeping data elements related to specific areas; and to meet the requirements of E.O. 13777.

III. Overview of Major Proposed Revisions to Data Elements

The revisions proposed in this NPRM reflect ACF’s review and analysis of the ANPRM comments and input from the Department’s subject matter experts with an interest in AFCARS data, and consideration related to meeting the requirements of the E.O. 13777. The proposed revisions streamline the data elements to ones with a specific purpose for title IV–B/IV–E statute and program monitoring, Congressional reporting, budgeting, and areas where reporting of required information to AFCARS would improve the accuracy and reliability of the data in AFCARS. An overview of the major proposed revisions to the AFCARS data elements follows.

For the out-of-home care data file, the 2016 final rule required approximately 272 items where we require title IV–E agencies to report information. In this NPRM, we propose to reduce these points to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify.

We propose a simplification of data elements related to health assessments, child financial and medical assistance, child’s relationship to foster/adoptive parents and legal guardians, and inter-

jurisdictional adoptive/guardianship placements to keep only essential information as identified by ANPRM commenters on children in out-of-home care and who exit to adoption or legal guardianship. We propose to remove the following data elements because the information is too detailed or qualitative for a national data set, it may be inaccurately reported and therefore would be difficult to portray in a meaningful way and it does not have a specific purpose for title IV–B/IV–E statute and program monitoring, Congressional reporting, or budgeting:

- Educational stability,
- authority for placement and care responsibility,
- private agency living arrangement,
- juvenile justice involvement,
- transition plan and date, and
- interjurisdictional adoption or guardianship jurisdiction (name).

As stated in section II, a third of the states expressed concerns with the data elements around sexual orientation and recommended they be removed. States commented that if this information is important to decisions affecting the child, the information will be in the case file; however, when it is not pertinent, states said that asking for sexual orientation may be perceived as intrusive and worrisome to those who have experienced trauma and discrimination as a result of gender identity or sexual orientation. This would be a mandatory conversation a worker must have in order to complete the data elements. Mandating such a conversation may be contraindicated based on a child’s history of abuse or neglect.

In addition to the ANPRM comments, we reviewed the 2014 document entitled “Current Measures of Sexual Orientation and Gender Identity in Federal Surveys” prepared by the OMB Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys. Most concerning to our AFCARS work is the section of the document that “reviews and identifies issues for Federal agencies to consider when choosing sexual orientation and gender identity (SOGI) questions for inclusion in Federal surveys and administrative databases.” Overall, regardless of whether questions on sexual orientation are asked in a survey, interview, or otherwise, they may be considered sensitive and/or personal which means that certain issues must be considered. The paper specifically indicates that “before incorporating SOGI questions in surveys or administrative databases, Federal agencies need to consider the purpose

and objectives of the survey or database and the reason to add SOGI questions.” Further, the paper advises that new questions added to a survey or data base should be validated with qualitative techniques and question validation efforts should include both the SOGI and non-SOGI groups. In addition, the paper identifies other considerations when developing questions in this area. This includes a person’s age, and the paper specifically notes that “teenagers may be in the midst of developing their sexual orientation . . . and therefore they may be unsure of how to respond to SOGI questions.” Adolescents may use different terms to describe their sexual orientation than terms used by adults. Bullying related to one’s sexual orientation may cause some adolescents to be reluctant to identify themselves with terms that must be regulated in AFCARS. This emphasizes the importance that respondents are confident that their responses are private, anonymous, and confidential. Other factors that are relevant to asking questions related to sexual orientation are cultural or racial/ethnic considerations and geography. For example, there may also be regional differences in interviewers’ and respondents’ comfort with questions about their sexual orientation.

As a result of our review of the OMB document, in particular, taking into consideration the need to validate questions related to sexual orientation and ensure responses about sexual orientation, especially with adolescents, are private, anonymous, and confidential, it is clear that AFCARS is not the appropriate vehicle to collect this information. It is not feasible for us to test the validity or accuracy of adding questions related to sexual orientation across all title IV–E agencies. Additionally, it is impossible to ensure that a child’s response to a question on sexual orientation would be kept private, anonymous, or confidential considering a caseworker would be gathering this information to enter into a child’s case electronic record. Information in case records are kept confidential, but because the child is in the placement and care of the title IV–E agency, information on the child’s case must be disclosed to courts and providers under specific circumstances, to assist the child and family. Information on sexual orientation, if it is not relevant to the child’s needs, is not appropriate to be included. Information on sexual orientation is more appropriately collected through a survey because that would allow for testing of the questions, training by staff

administering the survey, and addressing the issues raised by the OMB paper to provide more controls for allowing anonymity, privacy, and confidentiality.

We acknowledge that other personal information is reported to AFCARS, such as medical or mental health information. This data, however, is documented in official documents, such as medical reports and records, and is in the child's case record because section 475(1)(C) of the Act requires health and education records be in the case plan. Information on sexual orientation is not required by the Act to be in the child's case plan, and while states agreed that the individual workers knowing this information about children and families they work with may help them in assisting families, there is no statutory requirement that it be reported to a national administrative data set.

However, there was support from commenters for keeping the circumstance at removal on whether there was family conflict related to the child's sexual orientation, gender identity, or gender expression. This means that agencies will report whether this was a circumstance surrounding the child at removal. This is different than asking for someone's sexual orientation because the information would be gathered during the course of the investigation that resulted in the child's removal from the home and documented in the case record. The data element *Child and family circumstances at removal*, has many circumstances to which the agency will report whether each "applies" or "does not apply." If family conflict related to the child's sexual orientation, gender identity, or gender expression (§ 1355.44(d)(4)(xxx)) was not known as a circumstance surrounding the child at removal, or was not documented in the electronic case record, the information will be reported to AFCARS as "does not apply." This does not require the worker to have a conversation in instances where it is not appropriate or not applicable to the child's wellbeing. We believe that this circumstance at removal captures information appropriate for a national data set that will provide insight into issues of potential discrimination, safety concerns, and homelessness experienced by youth because it is inherent in what the circumstance is asking. Additionally, there will be an opportunity for analysis via a combination of information gleaned from other data elements, for example, the sex and marital status of foster parents, adoptive parents, and legal

guardians. The information from these data elements will provide an overview of the number of foster, adoptive, and legal guardian couples who identify as non-heterosexual. While we understand the importance of collecting sexual orientation data and appreciate the comments that supported keeping the data elements, we must balance this with the need to collect accurate data per the statute and in a manner that is consistent with children's treatment needs.

We propose a simplification of the ICWA-related data elements to the information that commenters to the ANPRM and others during consultation indicated were essential for identifying the number of children in out-of-home care nationally, who should be afforded the protections of ICWA. The ICWA-related data elements from the 2016 final rule that we kept and revised are:

- Whether the state title IV-E agency made inquiries of whether the child is an Indian child as defined in ICWA,
- child's tribal membership and all federally recognized tribes that may potentially be the Indian child's tribe,
- whether ICWA applies for the child and the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies,
- whether the Indian child's tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a), and
- tribal membership of mother, father, foster parents, adoptive parents, and legal guardians.

During consultation, tribal representatives expressed a need for information on the tribal membership of children in foster care and their foster care/adoptive placements, whether ICWA applies to the child, and notification of proceedings per ICWA requirements. These data elements were identified as the most important pieces of information to be able to know the number of children nationally where ICWA applies and provide some national information on whether the state made inquiries and whether notification to the Indian child's tribe occurred.

The ICWA-related data elements from the 2016 final rule that we are removing are request to transfer to tribal court, denial of transfer, court findings related to involuntary and voluntary termination of parental rights, including good cause findings, qualified expert witness testimony, whether active efforts were made prior to the termination/modification, removals under ICWA, available ICWA foster care/pre-adoptive placement preferences, adoption/guardianship

placement preferences under ICWA, good cause and basis for good cause under ICWA, and information on active efforts. These data elements asked for detailed information on ICWA's requirements, tied to DOI regulations and the ICWA statute, and court actions.

We also understand that it is important to states, Indian tribes, and stakeholders to know the information behind the data elements we are removing. While we have demonstrated that the detailed ICWA-related information from the 2016 final rule is not appropriate for AFCARS, we are also demonstrating a commitment to obtain alternative methods that will inform aspects of ICWA. First, using the information that will be reported for other data elements proposed in the NPRM, ACF, researchers, and others will be able to analyze aspects of ICWA to inform an assessment of ICWA that occurs outside of AFCARS reporting. Below are areas where commenters identified they wanted to keep some of the ICWA-related data elements and we explain what we propose to collect in other data elements that will inform aspects of ICWA:

- *Transfers*: We propose to collect whether any child in the out-of-home care reporting population exits out-of-home care to a transfer to an Indian tribe (that operates a title IV-E program or that does not operate a title IV-E program) in § 1355.44(g)(4). We do not require reporting on the specifics of ICWA requirements as to whether there was a request orally on the record or in writing, whether the state court denied the request, and good cause because this information is better for a qualitative assessment that can provide context. The information proposed in this NPRM on transfers can be used to inform a qualitative assessment.

- *Placement preferences for foster care, adoption and guardianship*: We proposed to collect tribal membership of foster/adoptive parents and guardians, whether placement is relative or kin, and the name of the jurisdiction where the child is living for foster care (see section 1355.44(e)). We do not require reporting on what placements were available, whether the placement meets the requirements of the Indian child's tribe or ICWA, or whether there was good cause to deviate from the Indian child's tribe's or ICWA's placement preferences. The information we propose in this NPRM on placements and tribal membership can be used to inform a qualitative assessment that will allow context, because placement decisions are specific to the child's needs.

• *Voluntary or involuntary termination/modifications of parental rights:* We propose to collect whether a termination/modification of parental rights is voluntary or involuntary and will require it be reported for all children (§ 1355.44(c)(5)). We do not require reporting of the ICWA-specific requirements on court findings regarding reasonable doubt on continued custody, qualified expert witness testimony, and whether efforts to prevent the breakup of the Indian family were unsuccessful. However, knowing whether the termination/modification was involuntary or voluntary can be used to inform a qualitative assessment on these proceedings because these decisions are specific to each case and court action and thus need context to fully understand them.

Additionally, the Court Improvement Program (CIP) requires grantees to engage in meaningful and ongoing collaboration with the state child welfare agency and tribes (section 438(b)(1)(C) of the Act). In furtherance of this statutory mandate, the next program instruction for the CIP will encourage grantees to work with the dependency courts across their jurisdictions to enhance efforts to collect and track key ICWA data indicators. This is logical because the requirements of ICWA and accompanying regulations are upon state courts. The capacity of state and county courts to collect and track data varies widely across the country. Many courts either do not track ICWA-related data currently or do so inconsistently. The forthcoming program instruction's emphasis on collecting and tracking ICWA-related data will be coupled with technical assistance through the CB's technical assistance provider for CIP grantees and the courts to help address this historic and ongoing information gap. CIP grantees will be encouraged to use CIP grant funds to assess the court's ICWA practice, support the court's data infrastructure, and train key court personnel on the importance of monitoring ICWA. Specifically, CIP grantees will be encouraged and supported to collect and monitor data on court inquiries, orders and findings related to:

- Identification of Indian children as defined in ICWA,
- notice to Indian tribes,
- tribal participation as parties in hearings involving Indian children,
- tribal intervention in dependency cases,
- transfer of ICWA cases to tribal courts, and

• placement of Indian children according to tribal preferences.

These are two examples of how we are committed obtaining more information on ICWA through appropriate and alternative methods that allow for a fuller understanding of ICWA's role in child welfare cases that AFCARS cannot provide. Thus, based on the ANPRM comments and consultation, we believe that this proposal represents a balance for the need for data on the population of children to whom ICWA applies and state concerns for the burden and costs for collecting and reporting the large number of ICWA-related data elements in the 2016 final rule.

We note that due to the low numbers of children in the out-of-home care reporting population where ICWA applies, we will not be able to release specific information regarding the child's tribal membership or ICWA applicability to requestors, except for the Indian tribe of which the child is or may be a member. When AFCARS data is released to the public by the National Data Archive on Child Abuse and Neglect (NDACAN), the data is de-identified, meaning that it does not include names, numbers, or other information that would make directly identifying the children possible. However, when the NDACAN provides data on populations where the number of children in the out-of-home care reporting population is low (for example, a county), there is a risk of possibly identifying a child using a unique combination of indirect identifiers in the AFCARS data, such as tribal membership and dates of removals, placements, and exits. To mitigate these risks, the NDACAN takes specific measures in releasing the data to protect confidentiality. Thus, to protect the confidentiality of these children, we will be unable to release certain information related to tribal membership or ICWA applicability, except to the Indian tribe of which the child is or may be a member.

IV. Implementation Timeframe

Implementation of changes to the AFCARS data elements as described in this NPRM will be dependent on the issuance of a final rule. We expect provisions in an eventual final rule to be effective no sooner than the start of the second federal fiscal year following the publication of the final rule. A precise effective date will be dependent on the publication date of the final rule, but this construct provides title IV-E agencies with at least one full year before we will require them to begin collecting and reporting new AFCARS

data elements. We welcome public comments on specific provisions included in this proposed rule that may warrant a longer phase-in period.

V. Public Participation

We understand that there have been several opportunities to comment, in general, on AFCARS. However, each comment solicitation has been on a different iteration of AFCARS. In this NPRM, AFCARS is streamlined from the 2016 final rule, thus commenters must focus their comments on the data elements proposed in this specific rulemaking. Commenters should consider how this proposed iteration of AFCARS will impact their work and budgets and be specific when commenting on this NPRM. Commenters should identify the specific data elements to which their comments apply and provide specific supporting information for the comment. We welcome public comments on the data elements that we are proposing to remove or revise from the 2016 final rule.

We encourage commenters to speak to the following:

- Whether the information is readily available or collected as part of the title IV-E agency's casework.
- Recordkeeping hours spent annually to adjust existing ways to comply with AFCARS requirements, gather and enter information into the electronic case management system, and training and administrative tasks associated with training personnel on the AFCARS requirements (e.g., reviewing instructions, developing training and manuals).
- Reporting hours spent annually extracting the information for AFCARS reporting and transmitting the information proposed in this NPRM to ACF.
- Timeframes required to complete the work.
- Specifically how reporting the data elements in this NPRM will enhance their work with children and families.

We understand that stakeholders who are not title IV-E agencies will not be able to offer specific estimates regarding the burden or cost placed on title IV-E agencies for reporting AFCARS because they are not required to report AFCARS data. However, we believe that it would be appropriate and helpful for commenters to provide specific reasons as to why they think AFCARS is the most effective vehicle for collection of the data proposed in this NPRM and why no other current method is feasible to collect the information. Additional comments that would be helpful would describe any work done to coordinate

with title IV–E agencies in collecting and reporting data for AFCARS and how AFCARS data, which is aggregated at the national level, would help their specific work with title IV–E agencies, children, and families.

VI. Section-by-Section Discussion of Regulatory Provisions

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

This section states the scope of AFCARS. Paragraph (c) of this section prescribes the definitions of terms used in the AFCARS data elements and these terms as defined in the 2016 final rule are unchanged. We propose to make minor conforming amendments to paragraphs (c)(1) and (2) to update the citations to the ICWA-related data elements as a result of our proposed amendments to § 1355.44.

Section 1355.43 Data Reporting Requirements

This section states the AFCARS data reporting requirements and these requirements are unchanged from the 2016 final rule. In paragraph (b)(3), we propose 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 October 1, 2020. As stated in the 2016 final rule, this means that title IV–E agencies do not need to report complete historical and current information for these children. We are proposing this change of the new date to October 1, 2020 to conform to the date in the final rule we published in the **Federal Register** on August 21, 2018 (83 FR 42225).

Section 1355.44 Out-of-Home Care Data File Elements

This section states the data element descriptions for the out-of-home care data file.

Section 1355.44(a) General Information

In paragraph (a), we propose that title IV–E agencies collect and report general information that identifies the reporting title IV–E agency as well as the child in out-of-home care. We propose the data elements below and they are unchanged from the 2016 final rule.

Title IV–E agency. In paragraph (a)(1), we propose that the title IV–E agency indicate the name of the title IV–E agency responsible for submitting AFCARS data to ACF. A state title IV–E agency must indicate its state name. ACF will work with tribal title IV–E agencies to provide guidance during implementation.

Report date. In paragraph (a)(2), we propose that the title IV–E agency

indicate the report period date, which is the last month and year that corresponds with the end of the report period.

Local agency. In paragraph (a)(3), we propose that the title IV–E agency report the name of the local county, jurisdiction, or equivalent unit that has responsibility for the child. ACF will work with tribal title IV–E agencies to provide guidance during implementation.

Child record number. In paragraph (a)(4), we propose that the title IV–E agency report the child's record number, which is a unique person identification number, as an encrypted number. The child record number must remain the same for the child no matter where the child lives while in the placement and care responsibility of the title IV–E agency and across all report periods and out-of-home care episodes. This number remains the same if the child exits the out-of-home care data file and enters the reporting population for the adoption and guardianship assistance data file. The title IV–E agency must apply and retain the same encryption routine or method for the child record number across all report periods. The title IV–E agency's encryption methodology must meet all ACF standards prescribed through technical bulletins or policy.

Section 1355.44(b) Child Information

In paragraph (b), we propose that the title IV–E agency collect and report child specific information for the identified child in out-of-home care.

Child's date of birth. In paragraph (b)(1), we propose that the title IV–E agency report the child's date of birth including the month, day and year. If the child was abandoned and the actual date of birth is not known, an estimated date of birth is to be provided. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster children.

Child's sex. In paragraph (b)(2), we propose to require the title IV–E agency to report only the child's sex. The proposed response options are “male” and “female”. The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from “gender” to “sex”. Commenters to the ANPRM suggested that the data element “gender” in the 2016 final rule be revised to reflect a gender other than male or female but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this

information, which might not be collected consistently.

Reason to know a child is an “Indian Child” as defined in the Indian Child Welfare Act. In paragraph (b)(3), we propose to require the state title IV–E agency to report whether it made inquiries to determine if the child is an Indian child as defined in ICWA. The 2016 final rule requires state title IV–E agencies to report whether it specifically inquired with seven different people/entities. We propose to modify this data element from the 2016 final rule to require the state title IV–E agency to report generally whether inquiries were made as to whether the child is an Indian child as defined in ICWA and remove the list of specific people/entities. As we explained in section II, the specifics of the individual people/entities inquired with are better suited for a qualitative review because this information is too detailed for national statistics and therefore would be difficult to portray in a meaningful way. However, during consultation, it was noted that knowing whether the title IV–E agency inquired about the child's status as an Indian child as defined in ICWA is essential in determining whether ICWA applies for a child. Commenters to the ANPRM also noted that this information is useful demographic information on the children in the out-of-home care reporting population.

Child's tribal membership. In paragraph (b)(4), we propose to require the state title IV–E agency to report whether the child is a member of or eligible for membership in an Indian tribe and if so, indicate all of the federally recognized tribes with which the child may potentially be associated. This information must be submitted in a format specified by ACF. In the 2016 final rule, this is part of the data elements on *Reason to know a child is an “Indian Child” as defined in the Indian Child Welfare Act*. We propose to modify this data element from the 2016 final rule to make it a separate data element asking about the child's tribal membership status and report all federally recognized tribes that may potentially be the Indian child's tribe(s), if applicable. During consultation, it was noted that knowing whether the child is a member of or eligible for membership in an Indian tribe is essential in determining whether ICWA applies for a child. Commenters to the ANPRM also noted that this information is useful demographic information on the children in the out-of-home care reporting population.

Application of ICWA. In paragraph (b)(5), we propose to require the state

title IV–E agency to report whether ICWA applies for the child and if yes, the date the Indian tribe or state or tribal court notified the state title IV–E agency that ICWA applies. In the 2016 final rule, this information is split among multiple data elements that ask whether the state title IV–E agency knows or has reason to know that the child is an Indian child as defined in ICWA, whether a court determined that ICWA applies, and if so, the date of the court determination. We propose to revise this data element from the 2016 final rule to only ask whether ICWA applies for the child, with a response of “yes”, “no”, or “unknown,” and if yes, the date the state title IV–E agency was notified of this determination. As we explained in section II, commenters to the ANPRM felt that some of the ICWA-related data elements were redundant because they asked for similar information in multiple data elements. This is one area that the commenters noted should be combined. The data we propose to collect in paragraph (b)(5) will identify the child records in the out-of-home care reporting population where ICWA applies and will provide a national number of the children in the out-of-home care reporting population to whom ICWA applies.

Notification. In paragraph (b)(6), we propose to require the state title IV–E agency to report whether the child’s Indian tribe was sent legal notice, in accordance with 25 U.S.C. 1912(a), if the state title IV–E agency indicated “yes” in paragraph (b)(5)(i). The data element in the 2016 final rule requires state title IV–E agencies to report also whether notice was sent to the Indian child’s parent or Indian custodian. We propose to modify this data element from the 2016 final rule to only require the state title IV–E agency to respond with “yes” or “no” that it sent notification to the Indian tribe. Notification was identified during consultation as a key aspect of ICWA’s requirements that should remain in AFCARS because notification is critical to meaningful access to and participation in adjudications. The data will help identify to what extent notification is being done by the state title IV–E agency on a national level for children in the out-of-home care reporting population.

Child’s race. In paragraph (b)(7), we propose to require the title IV–E agency to report the race of the child. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster children. In

paragraph (b)(7)(vi) for *Race-unknown*, we added instructions to clarify that this category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known. If a child is abandoned, the title IV–E agency must report per paragraph (b)(7)(vii). We made this clarifying edit to address some confusion expressed by commenters to the ANPRM. All other data elements are unchanged from the 2016 final rule.

Child’s Hispanic or Latino ethnicity. In paragraph (b)(8), we propose to require the title IV–E agency to report the Hispanic or Latino ethnicity of the child. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster children.

Health assessment. In paragraph (b)(9), we propose to require the title IV–E agency to report whether the child had a health assessment during the current out-of-home care episode. We propose to simplify this data element from the 2016 final rule to require the title IV–E agency to respond “yes” or “no” and to remove the additional data elements for reporting the date of the child’s most recent health assessment and if it was within the timeframes established by the agency. Commenters suggested removing these data elements because the specific information around the dates of health assessments and whether they are timely is too detailed for national statistics and therefore would be difficult to portray in a meaningful way. However, commenters noted that knowing whether a child had a health assessment will support ACF in assessing the current state of the well-being of children placed in out-of-home care and implementation of title IV–B requirement around health assessment and planning per section 422(b)(15)(A) of the Act.

Health, behavioral or mental health conditions. In paragraph (b)(10), we propose to 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 is 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. This is unchanged from the 2016 final rule. We continue to propose this data element because the annual outcomes report to Congress includes statistics on children with a diagnosed disability and also must contain information on children placed in a child care institution with a special needs or another diagnosed mental or physical illness or condition, per section 479A(a)(7)(A)(i)(III) of the Act. The information needed for the annual outcomes report to Congress comes from AFCARS data.

School enrollment. In paragraph (b)(11), we propose to require the title IV–E agency to 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. This is unchanged from the 2016 final rule. We continue to propose this data element because we will use this information, combined with other AFCARS data elements, to assess nationally the well-being of children placed in out-of-home care as part of monitoring the title IV–B and IV–E programs through reviews.

Educational level. In paragraph (b)(12), we propose to require the title IV–E agency to report the highest educational level from kindergarten to college or post-secondary education/training, as well as a general equivalency diploma (GED), completed by the child as of the last day of the report period. This is unchanged from the 2016 final rule. We continue to propose this data element because we will use this information, combined with other AFCARS data elements to assess nationally the well-being of children placed in out-of-home care as part of monitoring the title IV–B and IV–E programs through reviews.

Pregnant or parenting. In paragraph (b)(13), we propose to require the title IV–E agency to report whether the child has ever fathered or bore a child, as well as whether the child and child(ren) are placed together in foster care. This is unchanged from the 2016 final rule. This data element is used in the annual report to Congress consistent with section 479A(a)(7)(B) of the Act and budget formulation for the title IV–E program.

Special education. In paragraph (b)(14), we propose to require the title IV–E agency to report on the child’s

special education status by indicating if the child has an Individualized Education Program (IEP) or an Individualized Family Service Program (IFSP). This is unchanged from the 2016 final rule. We continue to propose this data element because the annual report to Congress must contain information on children placed in a child care institution receiving specialized education, per section 479A(a)(7)(A)(i)(IV) of the Act.

Prior adoption. In paragraph (b)(15), we propose to require the title IV–E agency to 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, the title IV–E agency must report the date it was finalized and whether the child’s prior adoption was an intercountry adoption. This is unchanged from the 2016 final rule. We continue to propose this data element to fulfill the statutory mandate in section 479(c)(3)(C)(ii) and 479(d) of the Act which requires information regarding children who enter into foster care after prior finalization of an adoption. This information will also be used to improve consistency with the data we provide to the State Department for their reports regarding international adoptions. Currently, the information is reported via a narrative in the CFSP and annual updates. This proposed method is preferred because currently the information must be compiled from the narratives and the reporting is not consistent across title IV–E agencies. Having this information in AFCARS will improve the accuracy, reliability, and consistency of the data because it will become an automated reporting through AFCARS.

Prior guardianship. In paragraph (b)(16), we propose to require the title IV–E agency to report whether the child experienced a prior legal guardianship and if so, to report the date that the prior legal guardianship became legalized. This is unchanged from the 2016 final rule. We continue to propose this data element to fulfill the statutory mandate in section 479(d) of the Act which requires information regarding children who enter into foster care after prior finalization of a legal guardianship.

Child financial and medical assistance. In paragraph (b)(17), we propose to 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. We propose to revise this

data element from the 2016 final rule to simplify the types of assistance to be reported to only include: “state/tribal adoption assistance”; “state/tribal foster care”; “Title IV–E adoption subsidy”; “Title IV–E guardianship assistance”; “Title IV–A TANF”; “Title IV–B”; “Chafee Foster Care Independence Program”; or “Other”. The data element in the 2016 final rule required state title IV–E agencies to report also whether the child received SSI or Social Security Benefits, title XIX, title XXI, title XX, or child support. We propose to remove those five data elements due to ANPRM comments that cited reporting on the multiple financial options as burdensome and suggested these data elements be streamlined. The financial categories that remain are the essentials for children in out-of-home care to meet the requirement in section 479(c)(3)(D) of the Act related to the nature of assistance supporting the child. The other categories were determined to be extraneous information and delineating these categories in AFCARS does not enhance information about the child when other reporting methods, such as the CB–496 financial reporting form, exist to address this information.

Title IV–E foster care during report period. In paragraph (b)(18), we propose to 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. This is unchanged from the 2016 final rule. We propose to continue this data element because section 479(c)(3)(D) of the Act requires the collection of the extent and nature of assistance provided by federal, state, and local adoption and foster care programs and it is used for the federal title IV–E reviews per 45 CFR 1356.71.

Siblings. In paragraphs (b)(19) through (21), we propose to require title IV–E agency to report the total number of siblings that the child has, if applicable, the number of siblings who are in foster care as defined in § 1355.20, and the number of siblings who are in the same living arrangement as the child, on the last day of the report period. This is unchanged from the 2016 final rule. We continue to propose these data elements on siblings because we will use this information, combined with other AFCARS data elements to assess nationally the well-being of children placed in out-of-home care as part of monitoring the title IV–B and IV–E programs through the Child and Family Services Reviews (CFSR).

Section 1355.44(c) Parent or Legal Guardian Information

In paragraph (c), we propose that the title IV–E agency collect and report information on the child’s parent(s) or legal guardian(s).

Year of birth parent(s) or legal guardian(s). In paragraphs (c)(1) and (2), we propose to require the title IV–E agency to report the birth year of the child’s parent(s) or legal guardian(s). If the 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. If the child was abandoned and the identity of the parent or legal guardian is unknown and cannot be ascertained, the title IV–E agency would indicate “abandoned.” If there is not another parent or legal guardian, the title IV–E agency would indicate “not applicable.” This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of biological parents.

Tribal membership mother and father. In paragraphs (c)(3) and (4), we propose to require the title IV–E agency to report whether the biological or adoptive mother and father are members of an Indian tribe. This is unchanged from the 2016 final rule. During consultation, it was noted that knowing whether the mother and father are members of an Indian tribe is necessary in determining whether ICWA applies for a child.

Termination/modification of parental rights. In paragraph (c)(5), we propose to require the title IV–E agency to report whether the rights for each parent were terminated or modified on a voluntary or involuntary basis. A voluntary termination means the parent(s) voluntarily relinquished parental rights to the title IV–E agency, with or without court involvement. In paragraph (c)(5)(i), we propose that the title IV–E agency report each date the petition to terminate/modify parental rights was filed, if applicable. In paragraph (c)(5)(ii), we propose that the title IV–E agency report the date parental rights were terminated/modified, if applicable. This is unchanged from the 2016 final rule. Section 479(c)(3)(B) of the Act requires title IV–E agencies to report on the status of the foster care population, including children available for adoption. The termination/modification dates, and whether it is voluntary or involuntary is used for title IV–E program monitoring via the CFSR to monitor compliance with the

requirement in section 475(5)(E) of the Act. In the case of a child who has been in foster care under the responsibility of the title IV–E agency for 15 of the most recent 22 months, section 475(5)(E) of the Act requires the title IV–E agency to file a petition to terminate the parental rights unless an exception exists, as defined in statute. Having this information in AFCARS will improve the accuracy and reliability of the dates to use for the CFSR.

Section 1355.44(d) Removal Information

In paragraph (d), we propose that the title IV–E agency collect and report information on each of the child's removal(s).

Date of child's removal. In paragraph (d)(1), we propose to 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. For a child who ran away or whose whereabouts are unknown at the time of removal, the title IV–E agency would indicate the date they received placement and care responsibility. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(3)(C) of the Act which requires that the data collection system include characteristics of children entering out-of-home care. This information is also used in the annual outcomes report to Congress.

Removal transaction date. In paragraph (d)(2), we propose to require the title IV–E agency to report the transaction date for each of the child's removal dates reported in paragraph (d)(1) using 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. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(2) of the Act which requires the collection of this data element in order to assure that the data collected is reliable and consistent over time.

Environment at removal. In paragraph (d)(3), we propose to 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). This is unchanged from the 2016 final rule. We continue to propose this data element because it enables us to analyze removals of children over time for technical assistance and monitoring.

Child and family circumstances at removal. In paragraph (d)(4), we

propose to 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 34 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 out-of-home care. We continue to propose this data element because multiple sections of the Act require the information that will be reported in the circumstances: Section 479(c)(3)(C) of the Act requires identification of the characteristics of children placed in foster care, the annual outcomes report to Congress must contain information on children placed in a child care institution with special needs or another diagnosed mental or physical illness or condition, per section 479A(a)(7)(A)(i)(III) of the Act, and section 471(d) of the Act requires an annual report to Congress regarding information on children and youth who are sex trafficking victims. We propose to make only minor revisions to three circumstances which are in paragraphs (d)(4)(ix), (xxvi), and (xxx). In paragraph (d)(4)(ix)

Abandonment, we propose to revise the instruction to not include a child who is left at a “safe haven” and in paragraph (d)(4)(xxvi) *Voluntary relinquishment for adoption*, we propose to include the instruction that this includes a child who is left at a “safe haven.” We understand from providing technical assistance to title IV–E agencies that there may be specific laws and policies in the states that separate children who are “abandoned” from those who are left at a “safe haven” and a better reflection of this in the data is to include children left at a “safe haven” under paragraph (d)(4)(xxvi) *Voluntary relinquishment for adoption*. In paragraph (d)(4)(xxx) *Family conflict related to child's sexual orientation, gender identity, or gender expression*, we modified the data element definition to define it as the child's expressed or perceived sexual orientation, gender identity, gender expression, or any conflict related to the ways in which a child manifests masculinity or femininity. These revisions clarify the purpose of the circumstance, which is to know whether the child's expression or the caregiver's perception of the child's sexual orientation or gender identity is a circumstance associated with the child's removal. The rest of the circumstances are unchanged from the 2016 final rule.

Victim of sex trafficking prior to entering foster care. In paragraph (d)(5),

we propose to 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 and if yes, the agency must indicate whether it reported each instance to law enforcement and the dates of each report. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(E)(i) of the Act requires the data system collection include an annual number of children who were victims of sex trafficking prior to entering foster care and this information will inform reports required in sections 471(a)(34)(B) and 471(d) of the Act on children and youth reported to be sex trafficking victims.

Victim of sex trafficking while in foster care. In paragraph (d)(6), we propose to 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 and if yes, the agency must indicate whether it reported each instance to law enforcement and the dates of each report. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(E)(ii) of the Act requires the data system collection include an annual number of children who were victims of sex trafficking while in foster care and this information will inform reports required in sections 471(a)(34)(B) and 471(d) of the Act on children and youth reported to be sex trafficking victims.

Section 1355.44(e) Living Arrangement and Provider Information

In paragraph (e), we propose that the title IV–E agency collect and report information on each of the child's living arrangements for each out-of-home care episode.

Date of living arrangement. In paragraph (e)(1), we propose to require the title IV–E agency to report the date of each living arrangement. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the length of placement in an out-of-home care setting.

Foster family home. In paragraph (e)(2), we propose to require the title IV–E agency to report whether or not a child resides in a foster family home for each living arrangement. If the title IV–E agency reports “yes”, then the agency must complete paragraph (e)(3). This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system

include the length and type of placement.

Foster family home type. In paragraph (e)(3), we propose to require the title IV–E agency to report the foster family home type. The title IV–E agency must indicate whether each of the following proposed foster family home types “applies” or “does not apply”: licensed home, therapeutic foster family home, shelter care foster family home, relative foster family home, pre-adoptive home, and kin foster family home. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the type of placement for the child.

Other living arrangement type. In paragraph (e)(4), we propose to require the title IV–E agency to report whether a child is placed in one of 14 living arrangements for a child who is not placed in a foster family home, as indicated in paragraph (e)(2) of this section, for each living arrangement. The proposed living arrangement types are mutually exclusive and are as follows: “group home-family-operated”, “group home-staff-operated”, “group home-shelter care”, “residential treatment center”, “qualified residential treatment program”, “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 propose to modify the list of options from the 2016 final rule to include a “qualified residential treatment program” as a new placement option per revisions made by Public Law 115–123 at section 472(k)(2)(A) and (4) of the Act to add these specialized placements where children may be placed. Qualified residential treatment programs must meet specific requirements outlined at section 472(k)(4) of the Act and should not be reported under the response option “residential treatment centers.” We also propose to modify the definition of the response option “residential treatment center” to include when the child is placed with a parent who is in a licensed residential family-based treatment facility for substance abuse per section 472(j) of the Act. We propose this revision due to the changes made by Public Law 115–123 at section 472(j) of the Act to allow foster care maintenance payments for a child placed with a parent in these specified placements. We propose to modify the definition of the response option “child care institution” to include a setting

specializing in providing prenatal, postpartum, or parenting supports for youth per section 472(k)(2)(B) of the Act, and a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims per section 472(k)(2)(D) of the Act. We propose this revision due to the changes made by Public Law 115–123 at section 472(k) of the Act. The other response options are unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include the type of placement. The annual outcomes report to Congress must contain information on children placed in a child care institution or other setting that is not a foster family home including the type of the placement setting, per section 479(a)(7)(A) of the Act.

Location of living arrangement. In paragraph (e)(5), we propose to require the title IV–E agency to report the location of each living arrangement. The proposed locations are as follows: “Out-of-State or out-of-Tribal service area”; “In-State or in-Tribal service area”; “Out-of-country”; and “Runaway or whereabouts unknown”. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(C) of the Act requires that the data collection system include information on children placed in foster care outside the title IV–E agency that has placement and care responsibility.

Jurisdiction or country where child is living. In paragraph (e)(6), we propose to require the title IV–E agency to report and name the jurisdiction or country where the child is living in a format according to ACF’s specifications. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(B) of the Act requires that the data collection system include information on children placed in foster care outside the title IV–E agency that has placement and care responsibility. Further, this information will be used to inform the information provided in paragraph (e)(5).

Marital status of the foster parent(s). In paragraph (e)(7), we propose to require the title IV–E agency to report foster parent’s marital status. The marital status response options are as follows: “married couple”, “unmarried couple”, “separated”, and “single adult”. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national

information on the demographic characteristics of foster parents. Also, this information is currently used to inform recruitment campaigns for foster parents.

Child’s relationship to the foster parent(s). In paragraph (e)(8), we propose to require the title IV–E agency to report the child’s relationship to the foster parent(s). We propose to simplify the response options from the 2016 final rule from seven to three: “relative(s)”, “nonrelative(s)”, and “kin”. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information on the demographic characteristics of foster parents. However, we propose to streamline the response options because primarily we are interested in knowing whether the child’s foster parent is a relative, nonrelative, or kin. This will inform placement types and be used for foster parent recruitment campaigns. However, the level of specificity in the 2016 final rule’s response options serves no identified purpose.

Year of birth for foster parent(s). In paragraphs (e)(9) and (14), we propose to require the title IV–E agency to report the year of birth of the foster parent(s). If there is no second foster parent, then the title IV–E agency must leave paragraph (e)(14) blank. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents.

Foster parent(s) tribal membership. In paragraphs (e)(10) and (15), we propose to require the title IV–E agency to report the tribal membership of the foster parent(s). If there is no second foster parent, then the title IV–E agency must leave paragraph (e)(15) blank. This is unchanged from the 2016 final rule. Commenters to the ANPRM noted that knowing whether the foster parents are members of an Indian tribe will provide information related to ICWA placement preferences in AFCARS.

Race of foster parent(s). In paragraphs (e)(11) and (16), we propose to require the title IV–E agency to report the race of the foster parent(s). If there is no second foster parent, then the title IV–E agency must leave paragraph (e)(16) blank. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents.

Hispanic or Latino ethnicity of foster parent(s). In paragraphs (e)(12) and (17), we propose to require the title IV–E agency to report the Hispanic or Latino ethnicity of the foster parent(s). If there is no second foster parent, then the title IV–E agency must leave paragraph (e)(17) blank. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents.

Sex of foster parent(s). In paragraphs (e)(13) and (18), we propose to require the title IV–E agency to report the sex of the foster parent(s). If there is no second foster parent, then the title IV–E agency must leave paragraph (e)(18) blank. The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from “gender” to “sex”. We propose this data element because section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of foster parents. Commenters to the ANPRM suggested that the data element “gender” in the 2016 final rule be revised to reflect a gender other than male or female, but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

Section 1355.44(f) Permanency Planning

In paragraph (f), we propose that the title IV–E agency collect and report information related to permanency planning for children in out-of-home care, which includes permanency plans, hearings, and caseworker visits with the child.

Permanency plan and date. In paragraph (f)(1), we propose to require the title IV–E agency to report each permanency plan established for the child. The proposed permanency plan options are as follows: “reunify with parent(s) or legal guardian(s)”; “live with other relatives”; “adoption”; “guardianship”; “planned permanent living arrangement”; and “permanency plan not established”. In paragraph (f)(2), we propose to require the title IV–E agency to report the date of each permanency plan. These data elements are unchanged from the 2016 final rule. We continue to propose these data elements because section 479(c)(3)(B) of the Act requires that the data collection system include the goals for ending or continuing foster care and this

information is used in the annual outcomes report to Congress.

Date of periodic review(s) and permanency hearing(s). In paragraph (f)(3), we propose to require the title IV–E agency to report the date of each periodic review, either by a court, or an administrative review (as defined in section 475(6) of the Act) that meets the requirements of section 475(5)(B) of the Act. In paragraph (f)(4), we propose to require the title IV–E agency to report the date 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. These data elements are unchanged from the 2016 final rule. This information will be used for title IV–B/IV–E program monitoring via the CFSP and having this information in AFCARS will allow us to more accurately assess the quality and frequency of these hearings/reviews.

Caseworker visit dates and locations. In paragraph (f)(5), we propose to require the title IV–E agency to report the date of each in-person, face-to-face caseworker visit with the child, consistent with section 422(b)(17) of the Act. In paragraph (f)(6), we propose to require the title IV–E agency to report each caseworker visit location from two response options: “Child’s residence” and “other location.” These data elements are unchanged from the 2016 final rule. Currently, information on caseworker visits to meet the requirements of section 424(f) and 479A(a)(6) of the Act is reported via the CFSP and annual updates. Reporting this information in AFCARS instead will improve the accuracy of the data and alleviate the burden of agencies having to report on this as a narrative in the CFSP and annual updates.

Section 1355.44(g) General Exit Information

In paragraph (g), we propose that the title IV–E agency collect and report 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.

Date of exit. In paragraph (g)(1), we propose to require the title IV–E agency to report the date for each of the child’s exits from out-of-home care. If this data element is applicable, the data elements in paragraphs (g)(2) and (3) of this section must have a response. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(3) of the Act which requires that the data collection system include the length of a child’s placement in out-of-home care. This information is also used in the

annual outcomes report to Congress that measures the length of time children are in foster care, re-entry rates, and permanency and calculating awards for the adoption and guardianship incentives payment program under section 473A of the Act.

Exit transaction date. In paragraph (g)(2), we propose to require the title IV–E agency to report a non-modifiable, computer-generated date which accurately indicates the date of each response to paragraph (g)(1) of this section. This is unchanged from the 2016 final rule. We propose to continue this data element consistent with section 479(c)(2) of the Act which requires that the data collected is reliable and consistent over time.

Exit reason. In paragraph (g)(3), we propose to require the title IV–E agency to report the reason for each of the child’s exits from out-of-home care. The proposed exit reasons are as follows: “not applicable”; “reunify with parents/legal guardian”; “live with other relatives”; “adoption”; “emancipation”; “guardianship”; “runaway or whereabouts unknown”; “death of child”; and “transfer to another agency”. This is unchanged from the 2016 final rule. This information in combination with the date of exit is used in the annual outcomes report to Congress that measures the length of time children are in foster care, re-entry rates, and permanency.

Transfer to another agency. In paragraph (g)(4), we propose to require the title IV–E agency to report the type of agency that received placement and care responsibility for the child if the title IV–E agency indicated the child was transferred to another agency in paragraph (g)(3). The proposed agency types are: “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”; and “private agency”. This is unchanged from the 2016 final rule. This information is used to provide further information on the transfer indicated in paragraph (g)(3) that aids in data accuracy consistent with the requirement for reliable and consistent data in section 479(c)(2) of the Act.

Section 1355.44(h) Exit to Adoption and Guardianship Information

In paragraph (h), we propose that the title IV–E agency collect and report information only if the title IV–E agency indicated the child exited to adoption or legal guardianship in *Exit reason* paragraph (g)(3) of this section. Otherwise, the title IV–E agency must leave paragraph (h) blank.

Marital status of the adoptive parent(s) or guardian(s). In paragraph (h)(1), we propose to require the title IV–E agency to report the marital status of the adoptive parent(s) or legal guardian(s). The marital status response options are as follows: “married couple”; “married but individually adopting or obtaining legal guardianship”; “unmarried couple”; and “single adult”. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and of children who exit from foster care. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns.

Child’s relationship to the adoptive parent(s) or guardian(s). In paragraph (h)(2), we propose to require the title IV–E agency to report the type of relationship between the child and the adoptive parent(s) or legal guardian(s). We propose to simplify the response options from the 2016 final rule from seven to four: “relative(s)”; “nonrelative(s)”; “foster parent(s)”; and “kin”. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information on the demographic characteristics of adoptive parents and children who exit from foster care. However, we propose to streamline the response options because primarily we are interested in knowing whether the child’s adoptive parent(s) or guardian(s) is a relative, nonrelative, or kin to inform permanency outcomes data and family recruitment. However, the level of specificity in the 2016 final rule’s response options serves no identified purpose.

Date of birth of the adoptive parent or guardian. In paragraph (h)(3) and (8), we propose to require the title IV–E agency to report the date of the birth of the adoptive parent(s) or legal guardian(s). The title IV–E agency must leave (h)(8) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care. Additionally, this information will inform permanency outcomes

information and adoption recruitment campaigns.

Adoptive parent or guardian tribal membership. In paragraph (h)(4) and (9), we propose to require the title IV–E agency to report whether the adoptive parent(s) or guardian(s) is a member of an Indian tribe. The title IV–E agency must leave paragraph (h)(9) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. Commenters to the ANPRM noted that knowing whether the adoptive parents or legal guardians are members of an Indian tribe will provide information related to ICWA placement preferences in AFCARS. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns.

Race of adoptive parent or guardian. In paragraph (h)(5) and (h)(10), we propose to require the title IV–E agency to report the adoptive parent(s) or guardian(s)’s race as determined by the individual. The title IV–E agency must leave paragraph (h)(10) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care.

Hispanic or Latino ethnicity of first adoptive parent or guardian. In paragraph (h)(6) and (h)(11), we propose to require the title IV–E agency to report whether the adoptive parent(s) or guardian(s) is of Hispanic or Latino ethnicity as determined by the individual. The title IV–E agency must leave paragraph (h)(11) blank if there is no second adoptive parent, legal guardian, or other member of the couple. This is unchanged from the 2016 final rule. We continue to propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care.

Sex of first adoptive parent or guardian. In paragraph (h)(7) and (12), we propose to require the title IV–E agency to report the sex of the adoptive parent(s) or guardian(s). The title IV–E agency must leave paragraph (h)(12) blank if there is no second adoptive parent, legal guardian, or other member of the couple. The response options are

unchanged from the 2016 final rule; the only change is to the name of the data element, from “gender” to “sex”. We propose this data element because section 479(c)(3)(A) and (c)(3)(C)(i) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of adoptive parents and children who exit from foster care. Additionally, this information will inform permanency outcomes information and adoption recruitment campaigns. While some agencies currently allow individuals to identify as a gender other than male or female and commenters to the ANPRM suggested that the data element “gender” in the final 2016 rule be revised to reflect a gender other than male or female, but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

Inter/Intrajurisdictional adoption or guardianship. In paragraph (h)(13), we propose to require the title IV–E agency to report whether the child was placed within the state or tribal service area, outside of the state or tribal service area or into another country for adoption or legal guardianship. The proposed placement types are as follows: “interjurisdictional adoption or guardianship”; “intercountry adoption or guardianship”; and “intrajurisdictional adoption or guardianship”. This is unchanged from the 2016 final rule. We continue to propose this data element to inform permanency outcomes information, adoption recruitment campaigns, and statutorily mandated efforts to remove barriers to placing children for adoption in a timely manner per section 471(a)(23) of the Act.

Assistance agreement type. In paragraph (h)(14), we propose to require the title IV–E agency to report the type of assistance agreement between the title IV–E agency and the adoptive parent(s) or legal guardian(s). The proposed assistant agreement types are as follows: “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”. This is unchanged from the 2016 final rule. We continue to propose this data element because it is used in calculations for the adoption and guardianship incentives payment program under section 473A of the Act.

Siblings in adoptive or guardianship home. In paragraph (h)(15), we propose to require the title IV–E agency to report the number of siblings of the child who are in the same adoptive or guardianship home as the child. This is unchanged from the 2016 final rule. We continue to propose this data element so that the information reported can be used with other AFCARS data elements to assess nationally the current state of the well-being of children adopted or in a legal guardianship as part of monitoring the title IV–E and IV–B programs through the CFSR.

Section 1355.45 Adoption and Guardianship Assistance Data File

This section states the data element descriptions for the adoption and guardianship assistance data file. The data elements in this section are unchanged from 2016 final rule with the exceptions described below.

In paragraph (b)(2), we propose to require the title IV–E agency to report the sex of the child using the response options of “male or” “female”. The response options are unchanged from the 2016 final rule; the only change is to the name of the data element, from “gender” to “sex”. Commenters to the ANPRM suggested that the data element “gender” in the 2016 rule be revised to reflect a gender other than male or female, but HHS did not identify a compelling reason to increase the reporting burden by requesting the provision of this information, which might not be collected consistently.

In paragraph (b)(3)(vi), for *Race-unknown*, we added instructions that this paragraph must be reported if 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 is not known. We also clarified that this category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known. We made these clarifying edits to match edits we propose in section 1355.44(b)(7)(vi).

In paragraph (f), we propose to require the title IV–E agency to indicate the agency that placed the child for adoption or legal guardianship from the following three options: “title IV–E agency”; “private agency under agreement”; and “Indian tribe under contract/agreement”. In the 2016 final rule, this data element was required to be reported in the out-of-home care data file in section 1355.44(h)(17). However, as we examined AFCARS per E.O. 13777, we noted that this information needs to be reported as part of the adoption and guardianship assistance

data file because we must know the placing agency in order to calculate the awards for adoption incentive payments for “preadolescent child” adoptions per section 473A(g)(6)(B) and “older child” adoptions per section 473A(g)(7)(B) of the Act. Thus, instead of requiring title IV–E agencies to report this information in the out-of-home care data file, we propose to require it be reported in the adoption and guardianship assistance data file.

Section 1355.46 Compliance

This section states compliance requirements for AFCARS data. The compliance requirements in this section are unchanged from 2016 final rule and state the type of assessments ACF 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. We propose to amend paragraph (c)(2) to update the cross references in this section to mirror the proposed revisions to sections 1355.44 and 1355.45.

VII. Executive Orders 12866, 13563, and 13771

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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. ACF consulted with OMB and determined that this proposed 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 proposed rule will not be economically significant as defined in E.O. 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). As required in E.O. 12866, a cost-benefit analysis needs is included in this proposed rule. Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), was issued on January 30, 2017. This rule, if finalized, is considered an

E.O. 13771 deregulatory action. Annualizing these costs and cost savings in perpetuity and discounting at 7 percent back to 2016, we estimate that this rule would generate \$29.9 million in annualized cost savings discounted relative to 2016 at 7 percent over a perpetual time horizon, in 2016 dollars. Details on the estimated costs of this rule can be found in the Paperwork Reduction Act analysis. This proposed rule is considered an E.O. 13771 deregulatory action. As described below, this NPRM will save approximately 544,337 burden hours. After multiplying by the average wage rate of affected individuals, this amounts to \$39,192,264 in savings each year, relative to the estimated costs and burden of the 2016 final rule, in the year this NPRM (when finalized) will become effective, which is in FY 2021. We used the information that states provided in comments to the ANPRM on the cost and burden associated with implementing the 2016 final rule as the basis for these burden estimate calculations and reduced it by 33 percent to represent the reduction in the workload associated with reporting the data proposed in this NPRM relative to the 2016 final rule. We relied on this approach because of the type of data elements that we removed, which specifically were qualitative in nature and required a significant amount of training and staff time to locate the information and ensure proper data entry.

Regulatory Flexibility Analysis

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

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). In 2018, that threshold is approximately \$150 million. This proposed rule does not impose any mandates on state, local, or tribal governments, or the private sector that will result in an annual expenditure of \$150 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

E.O. 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”—The public comment period is open for 60 days wherein we solicit comments via regulations.gov, email, and postal mail. During this comment period, we will hold informational calls.
- “A summary of the nature of their concerns and the agency's position supporting the need to issue the regulation”—As we discussed in sections II and III of the preamble to this proposed rule, state commenters support making revisions to streamline the AFCARS regulation. However, Indian tribes, organizations representing tribal interests, and most other national advocacy organizations, universities, private individuals, and other groups opposed streamlining. We took the comments into consideration and believe that based on our analysis of the comments, the best way to reduce the burden to title IV–E agencies, who are required to submit the data to ACF and will be held to penalties for non-compliant data submissions, is to propose revisions to the AFCARS regulation through a NPRM. We believe that the states sufficiently argued through detailed work and cost estimates in response to the ANPRM that the 2016 final rule has many data

elements that can be streamlined while still providing critical information on the reporting population.

- “A statement of the extent to which the concerns of state and local officials have been met” (Secs. 6(b)(2)(B) and 6(c)(2))—As we discussed in the section-by-section discussion preamble, we propose in the NPRM fewer data elements than is in the 2016 final rule, many of which were identified in state comments to the ANPRM to be overly burdensome for numerous reasons. We believe that these reduced data requirements balance the need for updated information with the burden to comply with AFCARS requirements.

Paperwork Reduction Act

This final rule contains information collection requirements (ICRs) that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. A description of these provisions is given in the following paragraphs with an estimate of the annual burden. To fairly evaluate whether an information collection should be approved by OMB, the Department solicits comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Information collection for AFCARS is currently authorized under OMB number 0970–0422. This proposed 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. We propose:

- 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 and guardianship 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.

Burden Estimate

The following are estimates.

Through the ANPRM, ACF asked the public to give specific feedback on the AFCARS data elements, costs to implement, and burden hours to complete the work required to comply with the AFCARS requirements in 2016 final rule. The ANPRM listed questions specifically asking the public to identify the data elements that are overly burdensome for title IV–E agencies, an explanation with cost and burden estimates for recordkeeping, reporting, and recommendations on data elements to retain, simplify, and remove with justifications. Section II of the preamble provides a summary and analysis of the ANPRM comments. Regarding burden, the state commenters provided estimates for the recordkeeping and reporting burden hours to implement the 2016 final rule. This included identifying the staff positions that we used to determine the labor rate, hour estimates for searching data sources, gathering information, 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, and training personnel on AFCARS requirements. We used the estimates provided by states to determine the cost to implement the 2016 final rule. In this section, we discuss our assumptions for the estimates and calculations for estimates.

For the 2016 final rule, based on the state ANPRM comments, we estimate the total burden of the 2016 final rule to be 1,768,744 hours. We estimated this by using either the median or the average of the states' estimates for the various recordkeeping and reporting tasks and adding them together. States ranged considerably in estimating the work needed and length of time it would take to comply with the 2016 final rule, which is expected and appropriate because there is considerable variability across states in sophistication of information systems, availability of both staff and financial resources, and populations of children in care. Thus, we used the median of the states' estimates for the estimates related to training and developing or modifying procedures and systems. We used the average of the states' estimates for the estimates of gathering/entering information, reporting, and the labor rate.

To estimate the burden of this NPRM, we used the estimates to implement the 2016 final rule and reduced the recordkeeping hours and reporting hours by approximately 33 percent. This represents the approximate workload reduction associated with reporting

fewer data elements as proposed in this NPRM.

Respondents: The 66 respondents comprise 52 state title IV–E agencies and 14 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. The estimates provided in the NPRM are spread across respondents for the purposes of the PRA estimates; however, we understand based on the ANPRM comments that actual burden hours and costs will vary due to sophistication and capacity of information systems, availability of staff

and financial resources, and populations of children in care.

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% Federal Financial Participation (FFP) rate.

Collection—AFCARS	Total annual burden hours	Average hourly labor rate	Total cost	Estimate Federal costs (50% FFP)
Recordkeeping	1,212,163	\$72	\$87,275,736	\$43,637,868
Reporting	2,244	72	161,568	80,784
Total	43,718,652

Cost savings of NPRM: 544,337 hours × \$72 labor rate = \$39,192,264

Assumptions for Estimates

We made a number of assumptions when calculating the burden and costs that were informed by the states' estimates provided in their comments to the ANPRM:

- **Number of children in out-of-home care:** To determine the number of children for which title IV–E agencies will have to report in the out-of-home care data file on average, ACF used the most recent FY 2016 AFCARS data available: 273,539 children entered in foster care during FY 2016. Of those, 6,033 children had a reported race of American Indian/Alaska Native. We used the number of children who entered foster care rather than the entire population of children in foster care because agencies will not have to collect and report all data elements on all children in foster care; therefore, this accounts for the variances in burden. This is consistent with the 2016 final rule and the 2016 final rule is what we use to estimate the relative savings of this NPRM.

- **Out-of-home care data elements:** For the out-of-home care data file, the 2016 final rule required approximately 272 items where we require title IV–E agencies to report information. In this NPRM, we propose to reduce these points to approximately 183, representing 170 that we propose to keep from the 2016 final rule and 13 we propose to modify. This represents approximately a 33 percent reduction in

the total items that we propose agencies to report in this NPRM.

- **Number of children receiving adoption and guardianship assistance:** 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 2016: 456,715 children received title IV–E adoption assistance and 24,689 children received guardianship assistance.

- **Adoption and guardianship assistance data elements:** There are approximately 19 items where we require title IV–E agencies report information for the adoption and guardianship assistance data file, which is not a significant change from the 2016 final rule.

- **Systems changes:** ACF assumed that the burden for title IV–E agencies to modify systems based in part on the estimates states' provided in response to the ANPRM. Additionally, as of July 2018, 29 states and tribes have declared as moving forward with a new or transitional Comprehensive Child Welfare Information Systems (CCWIS) (see also 45 CFR 1355.50 *et seq.* for requirements). ACF recognizes that most title IV–E agencies will require revisions to electronic case management systems to meet the requirements proposed in this NPRM. 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 reporting AFCARS data.

- **Labor rate:** Based on the state comments to the ANPRM, ACF assumes

that there will be a mix of the following positions working to meet both the one-time and annual requirements of this proposed rule. We reviewed 2017 Bureau of Labor Statistics data and for this estimate, we used the job roles of: Information technology (IT) and computer programming, administrative, management, caseworkers, subject matter experts, and legal staff. For this estimate, we used the job roles of: Computer Information and Systems Managers (11–3021) with an average hourly wage of \$71.99, Computer and Mathematical Occupations (15–0000) (*e.g.*, computer and information analysts, computer programmers, and database and systems administrators) with an average hourly wage of \$43.18, Office and Administrative Support Occupations (43–000) (*e.g.*, administrative assistants, data entry, legal secretaries, government program eligibility interviewers, information and record clerks) with an average hourly wage of \$18.24, Social and Community Service Managers (11–9151) with an average hourly wage estimate of \$33.91, Community and Social Service Operations (21–0000) (*e.g.*, Social Workers, Child and Family Social Workers, Counselors, Social Service Specialists) with an average hourly wage of \$23.10, and Paralegals and Legal Assistants (23–2011) with an average hourly wage estimate of \$25.92. Thus, ACF averaged these wages to come to an average labor rate of \$36.05. In order to ensure we took into account overhead costs associated with these labor costs, ACF doubled this rate (\$72).

Calculations for Estimates

We used the information that states provided in comments to the ANPRM on the cost and burden associated with implementing the 2016 final rule as the basis for these burden estimate calculations. Thus, for these estimates, we are using the states' estimates and reducing them by 33 percent to represent the reduction in the workload associated with reporting the data proposed in this NPRM. We relied on this approach because of the type of data elements that we removed, which specifically were qualitative in nature and required a significant amount of training and staff time to locate the information and ensure proper data entry.

Recordkeeping: Adding the bullets below produces a total of 1,212,163 record keeping hours annually, as summarized below.

- For the out-of-home care data file, searching data sources, gathering information, and entering the information into the system would take on average 4.02 hours annually for all children who enter foster care, for a total of 1,099,627 hours annually. States provided estimates that ranged from 3 to 15 hours related to these tasks for the 2016 final rule. The range depended on whether the work was for the ICWA-related data elements or not. The average of the hours provided from the states that broke out this information in their ANPRM comments was 6 hours annually. We used the average because there were not significant outliers in the comments provided. For the purposes of this NPRM estimate, we reduced the 6 hours by 33 percent since that represents the reduction in data elements to be reported per this NPRM, which is 4.02 hours. (4.02 hours \times 273,539 children = 1,099,627 annual hours for this bullet.)

- For the adoption and guardianship assistance data file, we estimated in the

2016 final rule that 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. The data elements in the adoption and guardianship assistance data file did not significantly change and we did not receive information from state estimates to determine that a change in these estimates was warranted. As noted earlier, the number of children in adoption or guardianship assistance agreements increased, which reflects the most recent data available, FY 2016. The new total annual hours is estimated to be 98,750. (0.2 hours \times 456,715 children = 91,343 hours. 0.3 hours \times 24,689 children = 7,407 hours. 91,343 hours + 7,407 hours = 98,750 total annual burden hours for this bullet.)

- Developing or modifying standard operating procedures and IT systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements is estimated at 6,700 hours annually. States provided estimates in response to the ANPRM that ranged from 1,000 to 20,000 hours, which varied widely depending on the size of the state's out-of-home care population, type, sophistication, and age of systems. To estimate the annual hours, we chose to use the median of these estimates provided by the state commenters, rather than relying on the average of those provided in the comments, because it would be distorted by the considerable hour range. The median hours from state's estimates was 10,000, and we reduced it by 33 percent since that represents the reduction in data elements to be reported per this NPRM, which is 6,700 hours. Thus, we estimate 6,700 hours annually for this bullet. (10,000 \times 0.67 = 6,700 hours)

- 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 we estimate will take on average 7,086 hours annually. In response to the ANPRM, states provided varying estimates for the hours and cost of training that were not broken out the same way. For example, one estimate was 40 hours to develop training materials and 2 hours of training per staff person. Other estimates were only totals of training hours that ranged between 42,712 to 102,000 hours encompassing initial and ongoing training to implement the 2016 final rule. Another estimate broke out ongoing training at 8,500 hours annually. To estimate the annual hours related to training tasks, we used the median of the hours provided from the ANPRM comments, rather than relying on the average, because it would be distorted by the considerable hour ranges and associated tasks. We understand that training hours will vary depending on the size of the agency's workforce needing training. The median hours from state's estimates was 10,576, and we reduced it by 33 percent since that represents the reduction in data elements to be reported per this NPRM, which is 7,086 hours. Thus we estimate 7,086 hours annually for this bullet. (10,576 \times 0.67 = 7,086 hours)

Reporting: We estimate that extracting the information for AFCARS reporting and transmitting the information to ACF would take on average 17 hours annually. Very few states broke out reporting in their ANPRM comments and the average of the hours provided came to 26 hours. Since the NPRM reduces the data elements by 33 percent, we reduced the estimated burden related to reporting that amount. Thus we estimate 17 hours for this task. (26 \times 0.67 = 17 hours)

Collection—AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Recordkeeping	66	2	9,183	1,212,163
Reporting	66	2	17	2,244
Total				1,214,407

Title IV–E agencies must comply with the current AFCARS requirements in 45 CFR 1355.40 and the appendix to part 1355 until September 30, 2020 (45 CFR 1355.40, per the final rule on implementation delay published August 21, 2018, 83 FR 42225). On October 1, 2020 (FY 2021), title IV–E agencies must

comply with the provisions of the 2016 final rule. When this NPRM is finalized, title IV–E agencies must comply with the provisions proposed in this NPRM, which is scheduled to begin on October 1, 2020 (FY 2021), because this NPRM does not propose to change the implementation date. Because we

anticipate that this NPRM will be finalized before the 2016 final rule becomes effective, the year in which title IV–E agencies will experience savings from the 2016 final rule is FY 2021. We used fiscal years in this estimate because AFCARS data reporting periods are categorized by

fiscal years. The savings is generated by the reductions proposed in this NPRM, which reduces the data that title IV–E agencies must report from what was published in the 2016 final rule. As discussed above, we estimate approximately a 33 percent reduction in

the total items that we propose agencies to report in this NPRM from the 2016 final rule, as discussed previously. These charts represent the burden hour and cost savings we estimate that this NPRM will have over the 2016 final rule's requirements. This NPRM will

save approximately 544,337 burden hours. After multiplying by the average wage rate of affected individuals, this amounts to \$39,192,264 in savings each year relative to the 2016 final rule, in the year this NPRM (when finalized) will become effective, FY 2021.

SAVINGS OF NPRM RELATIVE TO 2016 FINAL RULE

Burden hour savings of NPRM	Total annual burden hours for 2016 final rule	Total annual burden hours for NPRM	Difference (hours)
FY 2021	1,768,744	1,214,407	554,337

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 may have larger populations of children served than other agencies, and (2) these are rough estimates based on the ANPRM comments in which they ranged in the level of detail they provided regarding burden hours, costs, and work needing to be completed.

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 and within the requirements of E.O. 13175 *Consultation and Coordination With Indian Tribal Governments*. Section II of this NPRM provides a summary and analysis of the ANPRM comments. The comments to the ANPRM allowed us to assess whether and how we could potentially reduce burden on title IV–E agencies to report AFCARS data, per E.O. 13777, while still adhering to the requirements of section 479 of the Act and collecting useful data that will inform efforts to improve the child welfare system. This includes assessing

the need for ICWA-related data elements as strongly illustrated by the tribal commenters. Additionally during the comment period of the ANPRM, CB held consultation on May 15 and 16, 2018 where the ANPRM and history of the AFCARS regulation, including the Executive Order precipitating another look at AFCARS, was presented by CB officials. During this time, tribal leaders, officials and representatives identified the ICWA-related information they felt was important to retain in AFCARS because it was essential in determining whether ICWA applied for a child or it provided basic information on ICWA's requirements. Prior to these information sessions, the ANPRM, 2016 final rule and other AFCARS supplementary information was linked to on the CB website. Additionally, links to the ANPRM and the AFCARS supplementary information was emailed to CB's tribal lists (on March 13, 2018 when the ANPRM was available for public inspection and March 15, 2018 when the ANPRM was published), and CB issued ACYF–CB–IM–18–01 (issued March 16, 2018). CB also issued ACYF–CB–IM–18–03 on August 21, 2018 announcing publication of the final rule regarding implementation of the 2016 final rule and announcing our intent to issue a NPRM to revise the data elements per the spring 2018 unified agenda. This was also emailed to CB's tribal lists. Additionally, ACF held a tribal consultation on November 6, 2017 during which tribes requested that ACF leave the 2016 final rule in place, stating that the ICWA-related data elements are very necessary for accountability. At a meeting with tribal representatives at the Secretary's Tribal Advisory Committee on May 9 and 10, 2018, representatives stated the following: They supported the 2016 final rule, have concerns that states are not following ICWA, that the ICWA-related data elements are critical to informing Congress, HHS, states, and tribes on

how Native children and families are doing in state child welfare systems and that AFCARS information would help inform issues such as foster care disproportionality.

As we developed this proposed rule, we carefully considered the comments to the ANPRM from Indian tribes and organizations representing tribal interests, whose comments unequivocally supported keeping most, if not all, ICWA-related data elements in AFCARS. However, we must balance the need for data with the needs of our grantees, the title IV–E agencies, that must revise their systems to meet new AFCARS requirements and will ultimately be held accountable via compliance and penalties to report the data. We look forward to engaging in consultation during the comment period of this NPRM and to receiving comments on this proposal.

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: February 5, 2019.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: February 12, 2019.

Alex M. Azar II,

Secretary.

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

PART 1355—GENERAL

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

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

■ 2. In § 1355.41, revise paragraphs (c)(1) and (2) to read as follows:

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

* * * * *

(c) * * *

(1) Terms in §§ 1355.41 through 1355.47 are defined as they appear in § 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 (6), (c)(3) and (4), (e)(10) and (15), and (h)(4) and (9) 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)(5)(i), for § 1355.44(c)(1) and (2) and (d)(3), 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.

■ 3. In § 1355.43, revise paragraph (b)(3) to read as follows:

§ 1355.43 Data reporting requirements.

* * * * *

(b) * * *

(3) For a child who had an out-of-home care episode(s) as defined in § 1355.42(a) prior to October 1, 2020, the title IV-E agency must report only the information for the data described in § 1355.44(d)(1) and (g)(1) and (3) for the out-of-home care episode(s) that occurred prior to October 1, 2020.

* * * * *

■ 4. Revise § 1355.44 to read as follows:

§ 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) *Child’s sex*. Indicate whether the child is “male” or “female.”

(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 made inquiries whether the child is an Indian child as defined in ICWA. Indicate “yes” or “no.”

(4) *Child’s tribal membership*. For state title IV-E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(ii) If the state title IV-E agency indicated “yes” in paragraph (b)(4)(i) of this section, 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) *Application of ICWA*. For state title IV-E agencies only:

(i) Indicate whether ICWA applies for the child. Indicate “yes,” “no,” or “unknown.”

(ii) If the state title IV-E agency indicated “yes” in paragraph (b)(5)(i) of this section, indicate the date that the state title IV-E agency was notified by the Indian tribe or state or tribal court that ICWA applies.

(6) *Notification*. For state title IV-E agencies only: If the state title IV-E agency indicated “yes” to paragraph (b)(5)(i) of this section, the state title IV-E agency must indicate whether the Indian child’s tribe(s) was sent legal notice in accordance with 25 U.S.C. 1912(a). Indicate “yes” or “no.”

(7) *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 paragraphs (b)(7)(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 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 is not known. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

(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.

(8) *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."

(9) *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."

(10) *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, 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 paragraph (b)(10)(i) through (xi) of this section, indicate "existing condition," "previous condition" or "does not apply," as applicable. "Previous condition" means a previous diagnoses that no longer exists as a current condition. 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)(10)(i) through (xi) 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 and leave paragraphs (b)(10)(i) through (xi) of this section 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)(10)(i) through (xi) of this section 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, 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 in paragraphs (b)(10)(i) through (x) of this section, 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.

(11) *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.”

(12) *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.

(13) *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)(13)(ii) of this section is “yes.” Indicate “yes,” “no,” or “not applicable” if the response in paragraph (b)(13)(ii) of this section is “no.”

(14) *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.

(15) *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)(15)(i) and (ii) of this section; otherwise the title IV–E agency must leave those paragraphs 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.”

(16)(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(d) 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)(16)(ii) of this section; 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.

(17) *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)(17)(i) through (viii) of this section “applies” or “does not apply.” Indicate “no support/assistance received” if none of these apply.

(i) *State/Tribal adoption assistance.* The child is receiving an adoption subsidy or other adoption assistance paid for solely by the state or Indian tribe.

(ii) *State/Tribal foster care.* The child is receiving a foster care payment that is solely funded by the state or Indian tribe.

(iii) *Title IV–E adoption subsidy.* The child is determined eligible for a title IV–E adoption assistance subsidy.

(iv) *Title IV–E guardianship assistance.* The child is determined eligible for a title IV–E guardianship assistance subsidy.

(v) *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.

(vi) *Title IV–B.* The child’s living arrangement is supported by funds under title IV–B of the Act.

(vii) *Chafee Foster Care Independence Program.* The child is living independently and is supported by funds under the John F. Chafee Foster Care Independence Program.

(viii) *Other*. The child is receiving financial support from another source not previously listed in paragraphs (b)(17)(i) through (vii) of this section.

(18) *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.

(19) *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)(20) and (21) of this section blank.

(20) *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)(21) of this section blank.

(21) *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) and (ii) 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.

(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) *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.

(4) *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 described in paragraphs (d)(4)(i) through (xxxiv) of this section “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 does not include a child left at a “safe haven” as defined by the title IV–E agency. 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. This includes a child left at a “safe haven” as defined by the title IV–E agency.

(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 expressed or perceived sexual orientation, gender identity, or gender expression. This 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.

(5) *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)(5) introductory text of this section, 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)(5)(i) of this section, indicate the date that the agency made the report to law enforcement.

(6) *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)(6) 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)(6)(i) of this section, 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 paragraph (e)(3) of this section. If the title IV-E agency indicates “no,” the title IV-E agency must complete paragraph (e)(4) of this section.

(3) *Foster family home type.* If the title IV-E agency indicated that the child is living in a foster family home in paragraph (e)(2) of this section, indicate whether each foster family home type listed in paragraphs (e)(3)(i) through (vi) of this section applies or does not apply; otherwise the title IV-E agency must leave this paragraph (e)(3) 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 paragraph (e)(2) of this section, indicate the type of

setting; otherwise the title IV-E agency must leave this paragraph 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 or if the child is placed with a parent who is in a licensed residential family-based treatment facility for substance abuse per section 472(j) of the Act. This does not include a qualified residential treatment program defined in section 472(k)(4) of the Act. Indicate “qualified residential treatment program” if the child is in a placement that meets all of the requirements of section 472(k)(2)(A) and (4) of the Act. 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 includes a setting specializing in providing prenatal, post-partum, or parenting supports for youth per section 472(k)(2)(B) of the Act, and a setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims per section 472(k)(2)(D) of the Act. 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 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) *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 paragraph (e)(6) of this section; otherwise the title IV–E agency must leave paragraph (e)(6) of this section blank.

(6) *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)(5) of this section; otherwise the title IV–E agency must leave paragraph (e)(6) of this section blank. The title IV–E agency must report the information in a format according to ACF’s specifications.

(7) *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 paragraphs for the second foster parent in paragraphs (e)(14) through (18) of this section; otherwise the title IV–E agency must leave those paragraphs blank.

(8) *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 “relative(s)” if the foster parent(s) is the child’s relative (by biological, legal or marital connection). 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.

(9) *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.

(10) *First foster parent tribal membership.* For state title IV–E agencies only: Indicate whether the first foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(11) *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 paragraphs (e)(11)(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.

(12) *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.”

(13) *Sex of first foster parent.* Indicate whether the first foster parent is “female” or “male.”

(14) *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 paragraph blank if there is no second foster parent according to paragraph (e)(7) of this section.

(15) *Second foster parent tribal membership.* For state title IV–E agencies only: Indicate whether the second foster parent is a member of an Indian tribe. Indicate “yes,” “no,” or “unknown.”

(16) *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 paragraphs (e)(16)(i) through (vii) of this section applies with a “yes” or “no.” The title IV–E agency must leave this paragraph blank if there is no second foster parent according to paragraph (e)(7) 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.

(17) *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 paragraph blank if there is no second foster parent according to paragraph (e)(7) of this section.

(18) *Sex of second foster parent.* Indicate whether the second foster parent is “female” or “male.”

(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) *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.

(6) *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.

(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 paragraph blank. If this paragraph is applicable, 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 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 paragraph (g)(3) of this section. Otherwise the title IV–E agency must leave paragraphs (h)(1) through (15) of this section 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 paragraphs for the second adoptive parent or second legal guardian in paragraphs (h)(8) through (12) of this section; otherwise the title IV–E agency must leave those paragraphs blank.

(2) *Child’s relationship to the adoptive parent(s) or guardian(s).* Indicate the type of relationship between the child and his or her adoptive parent(s) or legal guardian(s). Indicate whether each relationship listed in paragraphs (h)(2)(i) through (iv) of this section “applies” or “does not apply.”

(i) *Relative(s).* The adoptive parent(s) or legal guardian(s) is the child’s relative (by biological, legal or marital connection).

(ii) *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.

(iii) *Non-relative(s).* The adoptive parent(s) or legal guardian(s) is not related to the child by biological, legal or marital connection.

(iv) *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.* For state title IV–E agencies only: 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 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) *Sex of first adoptive parent or guardian.* Indicate whether the first adoptive parent is “female” or “male.”

(8) *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 paragraph blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(9) *Second adoptive parent, guardian, or other member of the couple tribal membership.* For state title IV–E agencies only: Indicate whether the second adoptive parent or guardian is a member of an Indian tribe. Indicate “yes,” “no” or “unknown.”

(10) *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 paragraphs (h)(10)(i) through (vii) of this section applies with a “yes” or “no.” The title IV–E agency must leave this paragraph 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.

(11) *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 paragraph blank if there is no second adoptive parent, legal guardian, or other member of the couple according to paragraph (h)(1) of this section.

(12) *Sex of second adoptive parent, guardian, or other member of the couple.* Indicate whether the second adoptive parent, guardian, or other member of the couple is "female" or "male."

(13) *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.

(14) *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.

(15) *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."

■ 5. In § 1355.45, revise paragraphs (b)(2) and (b)(3)(vi) and add paragraph (f) to read as follows:

§ 1355.45 Adoption and guardianship assistance data file elements.

* * * * *

(b) * * *

(2) *Child's sex.* Indicate "male" or "female."

(3) * * *

(vi) *Race—Unknown.* The child or parent or legal guardian does not know the race, or at least one race of the child is not known. This category does not apply when the child has been abandoned or the parents failed to return and the identity of the child, parent(s), or legal guardian(s) is known.

* * * * *

(f) *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.

■ 6. In § 1355.46, revise the second sentence of paragraph (c)(2) to read as follows:

§ 1355.46 Compliance.

* * * * *

(c) * * *

(2) * * * 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 (2), and 1355.45(a) and (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). * * *

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