

## 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:** Final rule.

**SUMMARY:** This rule finalizes revisions to the Adoption and Foster Care Analysis and Reporting System (AFCARS) regulations proposed on April 19, 2019. AFCARS regulations require title IV-E agencies to collect and report data to ACF on children in out-of-home care, children 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:** This final rule is effective on July 13, 2020. As of May 12, 2020, the effective date for amendatory instructions 3 and 5, published December 14, 2016, at 81 FR 90524, and delayed August 21, 2018, at 83 FR 42225, are further delayed to October 1, 2022.

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#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Executive Summary per Executive Order 13563
- II. Background on the AFCARS Final Rule: Data Elements and Decision Making
- III. Overview of 2019 Notice of Proposed Rulemaking Comments
- IV. Implementation Timeframe
- V. Section-by-Section Discussion of Regulatory Provisions and Responses to Comments
- VI. Regulatory Impact Analysis
- VII. 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 final rule.

##### (1) *Purpose of the AFCARS final rule.*

##### (a) *The need for the regulatory action and how the action will meet that need:*

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 final rule published on December 14, 2016 (81 FR 90524, hereafter referred to as the 2016 final rule) as one in which the reporting burden may impose costs that exceed benefits. In response to E.O. 13777, we published in the **Federal Register** an Advance Notice of Proposed Rulemaking on March 15, 2018 (83 FR 11449, hereafter referred to as the 2018 ANPRM), soliciting specific feedback on the 2016 final rule data elements. Based on the feedback we received and our review of the need for and utility of the data elements, we later published a streamlined proposal for AFCARS in a Notice of Proposed Rulemaking on April 19, 2019 (84 FR 16572, hereafter referred to as the 2019 NPRM). This final rule is an E.O. 13771 deregulatory action which finalizes the proposal in the 2019 NPRM to streamline the AFCARS data elements.

(b) *Legal authority for the final rule:* AFCARS is a data collection system for national adoption and foster care data authorized under section 479 of the Social Security Act (the Act). Section 479(c)(3)(A) of the Act requires the collection of comprehensive national information with respect to the demographic characteristics of children in foster care and those who are adopted with state involvement and their biological, foster, and adoptive parents. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

##### (2) *Summary of the major provisions of the final rule.*

(a) *Out-of-home care data file data elements.* We finalize the out-of-home care data elements proposed in the 2019 NPRM. The out-of-home care data file in the 2016 final rule requires title IV-E agencies to report approximately 272 items; this final rule reduces the number of required items to approximately 183. This final rule does not include data

elements asking for information on, among other things, the sexual orientation of the child, foster parent, adoptive parent, or legal guardian, and reduces data elements related to the Indian Child Welfare Act of 1978 (ICWA).

(b) *Conforming changes.* We made conforming changes to §§ 1355.40, 1355.41, 1355.43, 1355.45, and 1355.46 to update the citations or dates as a result of amendments in other sections.

(3) *Costs and benefits.* The benefits are that the streamlined AFCARS data elements will reduce the title IV-E agency reporting burden from the 2016 final rule, thus resulting in an estimated \$46 million in total annual savings. (Affected entities will continue to incur \$43 million in annual costs, net of Federal reimbursements, attributable to the 2016 final rule.)

#### II. Background on the AFCARS Final Rule: Data Elements and Decision Making

Prior to issuing the 2019 NPRM, we conducted an in-depth analysis of the 2018 ANPRM comments, held tribal consultation, consulted with HHS experts that use AFCARS data, consulted with representatives of the Department of Interior (DOI) regarding the ICWA-related data elements, and considered the concerns and interests of all stakeholders. 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 or IV-E statutory requirement, program monitoring, Congressional reporting, or budgeting, and to specifically identify whether including the data element in AFCARS would improve the accuracy and reliability of the data. After careful consideration, we proposed in the 2019 NPRM to streamline the out-of-home care data elements to what we believe is a reasonable amount, while also reducing redundancies in the data elements. Additional details regarding this evaluative process and decision-making are available in the preamble of the 2019 NPRM (84 FR 16573).

We believe that the approach we took in determining the data elements to propose in the 2019 NPRM was comprehensive and inclusive of the purposes for which we will use the AFCARS data. We also understood that there have been several opportunities to comment on different iterations of AFCARS, so in the 2019 NPRM we provided specific guidance in section V. Public Participation on the type of comments that would be most useful to ACF in making decisions on the final rule. Specific considerations for commenters, included the following:

- How reporting the data elements in the 2019 NPRM will specifically enhance work with children and families.

- Why AFCARS is the most effective vehicle for collecting the data proposed in the 2019 NPRM and why no other current method is feasible to collect the information.

- How AFCARS data, which is aggregated at the national level, would help specific work with title IV–E agencies, children, and families.

### III. Overview of 2019 Notice of Proposed Rulemaking Comments

The comment period for the 2019 NPRM was open for 60 days and closed on June 18, 2019. We received 150 comments from 24 states and local child welfare agencies; 33 Indian tribes, tribal organizations or consortiums; 10 organizations representing tribal interests; 45 national advocacy groups and universities; one Member of Congress; and 37 anonymous or private citizens. The comments are available in the docket for this action on *Regulations.gov*.

*Summary of State and Local Child Welfare Agency Comments:* The overwhelming majority of state and local agencies supported streamlining the data elements as proposed in the 2019 NPRM. Their cited reasons include that it balances the need for updated information with the burden of having to revise systems to report data and it keeps a focus on Federal compliance and continuous quality improvement rather than turning AFCARS data into a research tool by adding measures that do not or cannot accurately capture the realities of child welfare practice. They also believe that the proposal would enable caseworkers to spend more time working with families and engaging in case planning, rather than data entry. Half of the state and local child welfare agencies specifically commented on the proposal to remove the sexual orientation data elements for the child, foster parents, adoptive parents and legal guardians. Of those, the majority agreed with the proposal, expressing that AFCARS is not the appropriate vehicle to collect this information, that it was unclear how this information in a Federal Government database will result in support services for children, and that this information should be tracked separately from AFCARS. Eleven state and local child welfare agencies specifically commented on the proposal to simplify the ICWA-related data elements. Of those, the overwhelming majority were in favor of the proposal and agreed with our rationale to keep the data elements that

are essential to understanding nationally the ICWA-applicable population of children in foster care, while removing those that were based on DOI regulations, qualitative in nature, or requirements of the courts. Further reduction in these data elements was also recommended due to an extremely low population of American Indian/Native Alaskan children in foster care in certain states.

*Summary of Comments from Indian Tribes, Tribal Organizations or Consortiums, and Organizations Representing Tribal Interests:* All Indian tribes, tribal organizations or consortiums, and organizations representing tribal interests opposed the proposal to reduce the ICWA-related data elements. In general, the commenters opposed streamlining primarily because they felt that all data elements in the 2016 final rule are needed to assess ICWA compliance, and that national information is important to address disparities, analyze outcomes, and help in working with Indian children and families. There were very few comments on the other data elements.

*Summary of Comments from National Advocacy Organizations and Other Entities:* The vast majority of the national advocacy organizations and other individuals or entities that commented expressed general opposition to the streamlining proposed in the 2019 NPRM. The commenters opposed streamlining for various reasons with the general sentiment being that the 2016 final rule would provide more insight into the foster care population, promote visibility for marginalized groups, and allow data-informed legislating, policy, and program decisions.

#### *Comment Analysis*

We reviewed and analyzed all of the 2019 NPRM comments and estimates provided and considered them in finalizing this rule and as it related to meeting the statutory requirements in § 479 of the Act to avoid unnecessary diversion of child welfare agency resources and to ensure that data collected is reliable and consistent. Our conclusion is that we do not have a sufficient justification, or a rational basis, for retaining the data elements proposed for removal, thus we did not make substantive changes in finalizing this rule. We received no new information that was convincingly articulated to persuade us to add in data elements from the 2016 final rule that were not proposed in the 2019 NPRM. In finalizing this rule, we maintain that we will collect the most critical

information on the out-of-home care population from a national perspective while avoiding the unnecessary diversion of resources from title IV–E agencies, consistent with the statute authorizing AFCARS.

In drafting the 2019 NPRM, we balanced the commenters' desires for more information with the need to minimize burden pursuant to E.O. 13777 and to focus on improving quality of services and achieving positive outcomes for children and families. This final rule will provide ample data for analysis via a combination of information from the data elements and will provide more robust national information on children in foster care not available in the current AFCARS. Specific to ICWA, we maintain that the detailed ICWA-related information requirements promulgated in the 2016 final rule are not appropriate for AFCARS.

Lastly, our decision to not add data elements aligns with the statutory requirements in section 479 of the Act to avoid unnecessary diversion of agency resources and to ensure that the data collected is reliable and consistent. We address specific comments to the proposal in the beginning of V. Section-by-Section Discussion of Regulatory Provisions of this final rule.

### IV. Implementation Timeframe

We are providing two fiscal years for title IV–E agencies to comply with §§ 1355.41 through 1355.47, which we believe is sufficient for title IV–E agencies to implement the changes necessary to comply with this final rule. State commenters to both the 2019 NPRM and the 2018 ANPRM indicated they would need sufficient time to make changes to their electronic case management systems to collect new information and train employees on new requirements, and suggested timeframes ranging from one to five fiscal years post publication of the final rule. A third of states that commented suggested two fiscal years post publication of the final rule would be acceptable. States also suggested that this final rule not be implemented until after the state has fully implemented a Comprehensive Child Welfare Information System (CCWIS). A few states recommended a phased-in approach to penalties and compliance with the AFCARS requirements, stating that penalties should not begin until after the implementation period ends.

During the implementation period, state and tribal title IV–E agencies must continue to report to ACF data related to children in foster care and those who have been adopted with title IV–E

agency involvement in accordance with § 1355.40 and the appendices to part 1355. It is essential for agencies to continue to report AFCARS data to ACF without interruption because AFCARS data is used for various reports, planning, and monitoring, and to make the Adoption and Legal Guardianship Incentive awards.

#### V. Section-by-Section Discussion of Regulatory Provisions and Responses to Comments

We respond to the comments we received in response to the 2019 NPRM in this section-by-section discussion. We also address in the section-by-section preamble whether we made any changes to our 2019 NPRM proposal. Before discussing each section of the final rule, we respond to the general comments we received in response to our 2019 NPRM proposal to streamline the data elements, reduce the ICWA-related data elements, and remove the data elements on the child/foster parent/adoptive parent/guardian's sexual orientation. Many comments we received iterated the same or similar information that fell into these broad categories and we believe that it is clearer for us to respond to similarly grouped comments in this way. Following these discussions is a discussion of specific sections of the 2019 NPRM.

##### *Response to Comments on Streamlining the Data Elements*

*Comment:* Indian tribes, commenters representing tribal interests, national advocacy organizations, and other commenters opposed streamlining the AFCARS data elements as proposed in the 2019 NPRM and requested that we re-institute the 2016 final rule in its entirety. Their common reasons for doing so were essentially the same as previously provided in response to the ANPRM and included that:

- The entire 2016 final rule will provide a comprehensive data set that will help us track outcomes, address disparities, and address a perceived need for research and legislation.
- ACF overstated the burden in the 2019 NPRM and did not consider that the information from additional data may lead to lower future costs because families would get the help they need.
- The 2016 final rule would promote visibility for marginalized groups and help us understand their particular experiences in foster care.

- Caseworkers should be collecting all of the information promulgated in the 2016 final rule as part of routine casework, so it should be in the case file and transmitted to ACF for AFCARS.

In contrast, the vast majority of state commenters supported the streamlined proposal and specified that a lower reporting burden will help their work with children and families by enabling caseworkers to spend less time on data entry.

*Response:* We considered the circumstances and capacity of all title IV-E agencies in setting the AFCARS requirements. The vast majority of commenters who opposed simplifying and reducing the data elements in the 2019 NPRM were not agencies responsible for reporting data to AFCARS. They reiterated similar justifications that they made in response to the 2018 ANPRM for including in this final rule all of the data elements promulgated in the 2016 final rule. The commenters did not provide additional evidence for collecting the data elements at a *Federal* level that we proposed to remove or simplify. The commenters that opposed streamlining did not elaborate on why AFCARS is the most effective vehicle for collecting the information required under the 2016 final rule that we proposed to remove, which in large part was qualitative data, describe work done to coordinate with title IV-E agencies in collecting and reporting data for AFCARS, or specify how the data we proposed to remove would help their specific work with children and families served by the title IV-E agency. The comments from non-title IV-E agencies, which opposed streamlining due to a perceived “need” for the data, lead us to believe that there is a misunderstanding of AFCARS and its functionality. The information that title IV-E agencies report to AFCARS is aggregated and de-identified at the national level, meaning it does not include names, numbers, or other information. This means that the data provides broad insight into the national population of children in foster care because AFCARS is designed to have a few response options that must be broad enough to capture a range of experiences across the country. The title IV-E agency extracts the information from electronic case files, via a programming code, and transmits it to ACF. Section 479 of the Act does not authorize us to collect *all* information from a title IV-E agency case file, nor would that be appropriate.

##### *Response to Comments on Streamlining ICWA-Related Data Elements*

*Comment:* In general, Indian tribes, commenters representing tribal interests, national advocacy organizations, a member of congress, and private individuals opposed our proposal to streamline the ICWA-related

data elements and requested that we re-institute all of the ICWA-related data elements from the 2016 final rule for essentially the same reasons previously provided in response to the 2018 ANPRM including that:

- The 2019 NPRM was too drastic in streamlining the ICWA-related data elements and the information is needed to assess compliance with ICWA;
- Section 422(b)(9) in title IV-B of the Act includes processes regarding ICWA; and
- Unlike DOI, ACF has established relationships with states and the Federal AFCARS system in place to receive data on Native American children in state foster care systems, and therefore is better positioned to collect ICWA-related data.

*Response:* First, in this final rule, we are attempting to correct any confusion or misperception that we may have created by justifying the ICWA-related data elements in the 2016 final rule on the basis of consistency with DOI's final rule on ICWA (published on June 14, 2016, 81 FR 38778). DOI is the lead agency for ICWA compliance, statute, and regulations and HHS is not the cognizant authority over implementing, overseeing, or assessing compliance with ICWA. Retaining all of the 2016 final rule ICWA-related data elements would put HHS in the position of interpreting various ICWA requirements. We have authority only for the collection of data elements that are used for functions and oversight under HHS authority, namely the title IV-B and IV-E programs.

Second, we want to clarify that section 422(b)(9) of the Act does not provide the legal authority for HHS to collect ICWA-related data in AFCARS or for HHS to determine state compliance with ICWA. Rather, it simply requires a description of specific measures taken by the state to comply with ICWA. HHS is not authorized to determine compliance with ICWA and/or penalize states for failure to comply with ICWA through this requirement.

Third, sections 479(c)(3)(A) through (D) of the Act require the collection of comprehensive national information with respect to the demographic characteristics of, status of, and assistance provided to children in foster care and those who are adopted with state involvement along with their biological, foster, and adoptive parents. The AFCARS statute does not provide authority for ACF to require states to report specific details on ICWA's requirements in AFCARS to be used for ICWA compliance and this was mischaracterized in the 2016 final rule. The AFCARS authority allows us to

collect ICWA-related data elements in this final rule to inform us whether a child's connections with his or her family, heritage, and community are preserved and will provide context for other title IV–B and IV–E monitoring. Further, the data will provide supplemental information on whether states follow certain best practices with regard to Native American children in foster care. For example, while HHS reviews are not designed to measure states' conformity with specific ICWA provisions, information from the data elements in this final rule will provide contextual data such as whether the state made concerted efforts to preserve a child's connections to the child's tribe and how well the state engages in consultation with tribal representatives.

Lastly, in the 2019 NPRM preamble (84 FR 16578), we reported that we will not release specific information regarding a child's tribal membership or ICWA applicability to requestors, except for the Indian tribe of which the child is or may be a member, due to the low numbers of children in the out-of-home care reporting population where ICWA applies in order to protect the confidentiality of these children. This means that the 2016 final rule ICWA-related data elements would not be available for ICWA compliance purposes because ACF is unable to release information to other entities that could use it for this purpose.

#### *Response to Comments on Removing the Sexual Orientation Data Elements*

We did not propose data elements on the sexual orientation of children and their foster or adoptive parents and legal guardians in the 2019 NPRM, nor are we including them in this final rule. However, we would like to respond to the comments received.

*Comment:* Numerous private individuals, national advocacy organizations and other commenters suggested that we add the data elements requiring agencies to report the sexual orientation of children and their foster or adoptive parents and legal guardians in the final rule. The common reasons provided, which were the same or similar reasons provided by these commenters in response to the 2018 ANPRM, are that the data would (1) enhance recruitment of foster homes; (2) aid permanency and case decision-making; (3) promote visibility for marginalized groups; (4) help to analyze youth outcomes; (5) address disparities; and (6) enable Congress to legislate appropriately at the national level. Some of the national advocacy organizations provided information about a set of professional guidelines

developed in 2013 to address the need to collect sexual orientation information for such purposes as developing case plans and tracking individual case outcomes in support of their recommendation. However, state and local child welfare agency commenters generally acknowledged that information about a youth's or provider's sexual orientation can be collected as part of the title IV–E agency's casework and should be documented in the case file, if it pertains to the circumstances of the child, and reporting it to a national database would not enhance their work with children and families.

*Response:* For the reasons set forth in the 2019 NPRM, we continue to disagree with the commenters that suggested this final rule should include this sexual orientation data and have made no changes. We have examined the 2013 professional guidelines which largely provide best practice guidelines related to *client/caseworker/agency interaction* in gathering and managing sexual orientation and gender identity (SOGI) information *from clients*. They are a practice guide, or set of professional standards, for *child welfare staff and child welfare agencies* on how they interact with clients, and gather and manage SOGI information at the case, local, and state level. We conclude that those guidelines are not relevant to collecting sexual orientation information through a Federal administrative data collection. We continue to rely on the 2016 Office of Management and Budget (OMB) guidance to ground our decision making because it provides direction for Federal agencies to consider before requiring SOGI information in surveys and administrative databases (84 FR 16576).

#### *Section 1355.40 Foster Care and Adoption Data Collection*

In this final rule, we modify the dates in § 1355.40 to require title IV–E agencies to submit AFCARS data in accordance with AFCARS regulations at § 1355.40 and the appendices to part 1355 until the dates listed in the **DATES** section of this rule. This means that title IV–E agencies must continue to report AFCARS data in the same manner they do currently until the implementation date of this final rule, which is October 1, 2022 (Fiscal Year (FY) 2023). We did not propose these changes in the 2019 NPRM, however these are technical conforming edits needed to implement this final rule.

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

This section sets forth the scope of AFCARS. In the 2019 NPRM, we proposed to make technical amendments to paragraph (c) to update citations. However, in this final rule, we make a technical revision to remove paragraph (c) which prescribed definitions, specifically citing to the ICWA statute and DOI regulations. We make this edit based on the comments we received as we described and responded to above, as we are concerned we may have unintentionally created misperceptions related to our authority over ICWA compliance. Accordingly, we are removing specific definitions because they relate to ICWA requirements and could create confusion for AFCARS reporting. Instead, in the description of the data element itself, we indicate if there is an applicable ICWA citation for reporting on a data element.

#### *Section 1355.43 Data Reporting Requirements*

This section contains the AFCARS data reporting requirements. In the 2019 NPRM, we proposed to amend paragraph (b)(3), which required that the title IV–E agency must 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. This means that title IV–E agencies do not need to report complete historical and current information for these children. We did not receive comments relevant to our proposal for this section. In this final rule, we change the date to October 1, 2022, to conform to the implementation date in the **DATES** section of this final rule.

#### *Section 1355.44 Out-of-Home Care Data File Elements*

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

##### *Section 1355.44(a) General Information*

In the 2019 NPRM, we proposed in paragraph (a) that the title IV–E agency must collect and report general information that identifies the reporting title IV–E agency as well as the child in out-of-home care. We did not receive comments relevant to the data elements proposed in § 1355.44(a), thus we finalize paragraph (a) as proposed:

*Title IV–E agency.* Under paragraph (a)(1), the title IV–E agency must 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.** Under paragraph (a)(2), the title IV–E agency must indicate the report period date, which is the last month and year that corresponds with the end of the report period.

**Local agency.** Under paragraph (a)(3), the title IV–E agency must 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.** Under paragraph (a)(4), the title IV–E agency must report the child's record number, which is a unique person identification number, as an encrypted number as instructed.

#### Section 1355.44(b) Child Information

In the 2019 NPRM, we proposed in paragraph (b) that the title IV–E agency must report certain child-specific information for the identified child in out-of-home care. Below are the finalized data elements and a discussion of whether we received comments on each data element.

**Child's date of birth.** In the 2019 NPRM, we proposed in paragraph (b)(1) that the title IV–E agency must report the child's date of birth including the month, day, and year, as instructed. We did not receive comments relevant to our proposal for this paragraph, thus we finalize this data element as proposed.

**Child's sex.** In the 2019 NPRM, we proposed in paragraph (b)(2) that the title IV–E agency must report the child's sex from the response options of “male” and “female”.

**Comment:** Two states suggested that we include a third gender option, such as “other”, because other agencies within the state have this ability (e.g., motor vehicles), so it promotes consistency. Sixteen national advocacy organizations suggested we add data elements on gender identity.

**Response:** We do not adopt changes based on public comments to this data element nor do we provide additional response options in this final rule because we did not receive a significant number of comments from title IV–E agencies requesting changes. Further, we have no compelling reason to increase the agency's burden to require this information be reported to AFCARS as we have no need for it at the Federal level.

**Reason to know a child is an “Indian Child” as defined in the Indian Child Welfare Act.** In the 2019 NPRM, we

proposed in paragraph (b)(3) that the state title IV–E agency must report whether it made inquiries to determine if the child is an Indian child as defined in the Indian Child Welfare Act of 1978 (ICWA) by indicating “yes” or “no”. We did not receive comments specific to this data element, and finalize this data element as proposed.

**Child's tribal membership.** In the 2019 NPRM, we proposed in paragraph (b)(4) that the state title IV–E agency must report whether the child is a member of, or eligible for membership in, a federally recognized Indian tribe from the response options of “yes,” “no”, or “unknown”. If the state title IV–E agency indicated “yes”, it would have to indicate all federally recognized Indian tribe(s) that may potentially be the Indian child's tribe(s) in a format according to ACF's specifications. We did not receive comments specific to these data elements. We finalize these data elements as proposed, with a conforming change to paragraph (b)(4)(i) to specify a “federally recognized” Indian tribe, consistent with the language used in paragraph (b)(4)(ii).

**Application of ICWA.** In the 2019 NPRM, we proposed in paragraph (b)(5) that the state title IV–E agency must report whether ICWA applies for the child from the response options of “yes,” “no”, or “unknown”. If the state title IV–E agency indicated “yes”, it would be required to indicate the date that the Indian tribe or state or tribal court notified the state title IV–E agency that ICWA applies. We did not receive comments specific to this data element, and finalize this data element as proposed.

**Notification.** In the 2019 NPRM, we proposed in paragraph (b)(6) that the state title IV–E agency must report whether the child's Indian tribe was sent legal notice, if the state title IV–E agency indicated “yes” in the data element established in paragraph (b)(5)(i).

**Comment:** Commenters who opposed streamlining the data elements we proposed in the 2019 NPRM requested that we add data elements for reporting whether the state sent notice to the parent and Indian custodian and the date of the notice.

**Response:** As we explained earlier in the section-by-section discussion, we did not make revisions to the proposal because we are moving forward with requiring a streamlined set of data elements from states for identifying the number of children in out-of-home care nationally who should be afforded the protections of ICWA and we do not need more details in federally reported AFCARS data related to ICWA

notifications. We finalize this data element as proposed.

**Child's race.** In the 2019 NPRM, we proposed in paragraph (b)(7) that the title IV–E agency must report the race of the child. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

**Child's Hispanic or Latino ethnicity.** In the 2019 NPRM, we proposed in paragraph (b)(8) that the title IV–E agency must report the Hispanic or Latino ethnicity of the child. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

**Health assessment.** In the 2019 NPRM, we proposed in paragraph (b)(9) that the title IV–E agency must report whether the child had a health assessment during the current out-of-home care episode from the response options of “yes” or “no”.

**Comment:** Several states expressed support for streamlining this data element because they agreed that any further detail regarding health assessments should be part of a qualitative review. Eighteen national advocacy groups opposed the proposal to streamline reporting on health assessments, stating that more details on the dates of health assessments and whether they were timely are needed to provide insight into the health of children in foster care.

**Response:** We did not make changes to include more details about the health assessment because we did not receive additional evidence to support the need for this data at a Federal level. Furthermore, we do not need additional details on health assessments reported to AFCARS to monitor compliance with section 422(b)(15)(A) of the Act. We finalize this data element as proposed.

**Health, behavioral or mental health conditions.** In the 2019 NPRM, we proposed in paragraph (b)(10) that the title IV–E agency must 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, and additional information as instructed on whether the child had an exam or assessment.

**Comment:** Six states and local agencies recommended streamlining this data element further, by either reducing the response options or reducing the health, behavioral, or mental health conditions.

*Response:* We did not make changes to this data element in response to comments because further streamlining will render the information not useful for informing the annual outcomes report to Congress. Additionally, the conditions are based on a combination of the Diagnostic and Statistical Manual of Mental Disorders and definitions from the National Institutes of Health, and the suggestion to further streamline by combining conditions was not overwhelmingly supported by commenters. We finalize this data element as proposed.

*School enrollment.* In the 2019 NPRM, we proposed in paragraph (b)(11) that the title IV–E agency must report whether or not the child is enrolled as a full-time student in elementary or secondary education, or is a full or part-time student enrolled in post-secondary education or training, or college.

*Comment:* Four states suggested removing this data element believing it is duplicative of paragraph (b)(12) *Educational level*.

*Response:* We retained this data element as proposed because we are specifically seeking information on school enrollment and the highest educational level a child has completed. We will use the combined information to assess, on a national basis, 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. We finalize this data element as proposed.

*Educational level.* In the 2019 NPRM, we proposed in paragraph (b)(12) that the title IV–E agency must 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.

*Comment:* One state asked for clarification as to when the child's highest educational level must be reported.

*Response:* The title IV–E agency must report the highest educational level the child completed as of the last day of the report period. We finalize this data element as proposed.

*Pregnant or parenting.* In the 2019 NPRM, we proposed in paragraph (b)(13)(i) that the title IV–E agency must report whether the child is pregnant as of the end of the report period from the response options of “yes” or “no”. In the 2019 NPRM, we proposed in paragraph (b)(13)(ii) that the title IV–E agency must indicate whether the child has ever fathered or bore a child by indicating from the response options of

“yes” or “no”. In the 2019 NPRM, we proposed in paragraph (b)(13)(iii) that the title IV–E agency must 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”. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize these data elements as proposed.

*Special education.* In the 2019 NPRM, we proposed in paragraph (b)(14) that the title IV–E agency must report on the child's special education status by indicating if the child has an Individualized Education Program (IEP) or an Individualized Family Service Plan (IFSP). We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Prior adoption.* In the 2019 NPRM, we proposed in paragraph (b)(15) that the title IV–E agency must report whether the child experienced a prior legal adoption, prior to the current out-of-home care episode. If the title IV–E agency indicates “yes”, then the title IV–E agency must report the month and year of the most recent prior finalized adoption (in paragraph (b)(15)(i)) and whether the child's most recent prior adoption was an intercountry adoption (in paragraph (b)(15)(ii)).

*Comment:* Two states commented that reporting this information is discretionary and recommended we remove these data elements.

*Response:* We did not make changes based on comments because reporting on prior adoptions and intercountry adoptions is required by sections 479(c)(3)(C)(ii) and 479(d) of the Act. Currently, the information is reported via a narrative in the Child and Family Services Plan (CFSP) and annual updates. Quantitative reporting through AFCARS is preferred because the accuracy, reliability, and consistency of the data will improve. We finalize these data elements as proposed.

*Prior guardianship.* In the 2019 NPRM, we proposed in paragraph (b)(16)(i) that the title IV–E agency must report whether the child experienced any prior public, private or independent guardianship(s). If so, the title IV–E agency must report the month and year of the most recent prior finalized legal guardianship (in paragraph (b)(16)(ii)).

*Comment:* Three states commented that reporting on this information is discretionary and recommended these data elements be removed.

*Response:* We did not make changes to remove these data elements because reporting on prior guardianships is required by section 479(d) of the Act.

We finalize these data elements as proposed.

*Child financial and medical assistance.* In the 2019 NPRM, we proposed in paragraph (b)(17) that the title IV–E agency must report whether the child received financial and medical assistance, other than title IV–E foster care maintenance payments, from a list of eight sources. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Title IV–E foster care during report period.* In the 2019 NPRM, we proposed in paragraph (b)(18) that the title IV–E agency must report whether a title IV–E foster care maintenance payment was paid on behalf of the child at any point during the report period from the response options of “yes” or “no”. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Siblings.* In the 2019 NPRM, we proposed in paragraphs (b)(19) through (21) that the title IV–E agency must report the number of siblings that the child has, the number of siblings who are in foster care and the number of siblings who are in the same living arrangement as the child, on the last day of the report period.

*Comment:* Two states suggested modifications to the sibling data elements to require agencies to report if siblings were living together at any time during the six-month report period and on the last day of the reporting period, and to not ask for numbers of siblings.

*Response:* We did not make changes based on the comments because these data elements as were proposed in the 2019 NPRM will meet our needs for monitoring the title IV–B and IV–E programs better than the states' proposal because they suggested to provide limited information on siblings of children in foster care and only whether siblings lived together during a report period. Their suggestion is not robust enough for us to understand the entire situation of a child in foster care and the child's siblings. We finalize these data elements as proposed.

#### Section 1355.44(c) Parent or Legal Guardian Information

In the 2019 NPRM, we proposed in paragraph (c) that the title IV–E agency must report certain information on the child's parent(s) or legal guardian(s). Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Year of birth of parent(s) or legal guardian(s).* In the 2019 NPRM, we proposed in paragraphs (c)(1) and (2) that the title IV–E agency must report

the birth year of the child's parent(s) or legal guardian(s). We did not receive comments relevant to our proposal for this paragraph and we finalize these data elements as proposed.

*Tribal membership mother and father.* In the 2019 NPRM, we proposed in paragraphs (c)(3) and (4) that the title IV-E agency must report whether the biological or adoptive mother and father are members of an Indian tribe, if known. We did not receive comments specific to this data element and we finalize these data elements as proposed.

*Termination/modification of parental rights.* In the 2019 NPRM, we proposed in paragraph (c)(5) that the title IV-E agency must report whether the rights for each parent were terminated or modified on a voluntary or involuntary basis. In the 2019 NPRM, we proposed in paragraph (c)(5)(i) that the title IV-E agency must report each date a petition to terminate/modify parental rights was filed, if applicable. In the 2019 NPRM, we proposed in paragraph (c)(5)(ii) that the title IV-E agency must report the date parental rights were terminated/modified, if applicable.

*Comment:* One local agency asked how to report the information in paragraph (c)(5)(i) if a petition is not filed because the parent voluntarily relinquished the rights without a court order.

*Response:* The agency would report this to be a voluntary termination of parental rights and leave paragraph (c)(5)(i) blank as we instruct to only complete that paragraph "if applicable". However, to make this clearer, we modified the regulation to add an instruction in paragraph (c)(5)(i) that if a petition has not been filed, to leave the paragraph (c)(5)(i) data element blank. We finalize the data elements in paragraphs (c)(5)(ii) and (iii) as proposed.

#### Section 1355.44(d) Removal Information

In the 2019 NPRM, we proposed in paragraph (d) that the title IV-E agency must report information on each of the child's removal(s). Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Date of child's removal.* In the 2019 NPRM, we proposed in paragraph (d)(1) that the title IV-E agency must 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 as instructed. We did not receive comments relevant to our proposal for

this paragraph and we finalize this data element as proposed.

*Removal transaction date.* In the 2019 NPRM, we proposed in paragraph (d)(2) that the title IV-E agency must 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. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Environment at removal.* In the 2019 NPRM, we proposed paragraph (d)(3) that the title IV-E agency must 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). We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child and family circumstances at removal.* In the 2019 NPRM, we proposed in paragraph (d)(4) that the title IV-E agency must report on all of the circumstances surrounding the child and family at the time of each removal reported in paragraph (d)(1) from a list of 34 circumstances.

*Comment:* Two states and one local agency made suggestions to modify paragraph (d)(4) such as combining certain circumstances and rearranging the circumstances into ones that are "reasons" for removal and circumstances that "existed" at the time of removal.

*Response:* We did not make changes based on the comments because the data element as proposed in the 2019 NPRM will meet our needs, better than the states' proposal, for monitoring, and reporting on, the title IV-B and IV-E programs, and no concerns were raised by the vast majority of title IV-E agency commenters in response to the 2019 NPRM. Additionally, title IV-E agencies are required to report the full set of circumstances that surround the child at the time of removal and not just the "reason" for a child's removal, because, in almost every case, there is not only one reason for the child's removal. This has been an AFCARS requirement since 1993, described currently as "Actions or Conditions Associated With Child's Removal". Additionally, the circumstances in this data element inform program monitoring and budgeting, such as knowing nationally the number of children whose removal was impacted by a caretaker's substance

abuse. For these reasons, we finalize these data elements as proposed.

*Victim of sex trafficking prior to entering foster care.* In the 2019 NPRM, we proposed in paragraph (d)(5) that the title IV-E agency must 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. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Victim of sex trafficking while in foster care.* In the 2019 NPRM, we proposed in paragraph (d)(6) that the title IV-E agency must 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. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

#### Section 1355.44(e) Living Arrangement and Provider Information

In the 2019 NPRM, we proposed in paragraph (e) that the title IV-E agency must report information on each of the child's living arrangements for each out-of-home care episode. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Date of living arrangement.* In the 2019 NPRM, we proposed in paragraph (e)(1) that the title IV-E agency must report the date of each living arrangement. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Foster family home.* In the 2019 NPRM, we proposed in paragraph (e)(2) that the title IV-E agency must report whether or not a child resides in a foster family home for each living arrangement, and if yes, the agency must complete paragraph (e)(3). We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Foster family home type.* In the 2019 NPRM, we proposed in paragraph (e)(3) that the title IV-E agency must report the type of foster family home from a list of six. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Other living arrangement type.* In the 2019 NPRM, we proposed in paragraph (e)(4) that the title IV-E agency must



report whether a child who is not placed in a foster family home is placed in one of 14 mutually exclusive living arrangements.

*Comment:* A national advocacy organization suggested adding “skilled nursing facility” as a living arrangement.

*Response:* We did not make changes to add another living arrangement as suggested because the living arrangements proposed cover the range of placement types necessary for our purposes and we do not need any additional level of detail. We finalize this data element as proposed.

*Location of living arrangement.* In the 2019 NPRM, we proposed in paragraph (e)(5) that the title IV–E agency must report whether the location of each of the child’s living arrangement is within or outside of the reporting state or tribal service area or is outside of the country. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Jurisdiction or country where child is living.* In the 2019 NPRM, we proposed in paragraph (e)(6) that the title IV–E agency must report the jurisdiction or country where the child is living if it is outside of the reporting state or tribal service area or is outside of the country. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Marital status of the foster parent(s).* In the 2019 NPRM, we proposed in paragraph (e)(7) that the title IV–E agency must report the marital status of the foster parent(s). We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child’s relationship to the foster parent(s).* In the 2019 NPRM, we proposed in paragraph (e)(8) that the title IV–E agency must report the child’s relationship to the foster parent(s) from the following three response options: “relative(s)”, “nonrelative(s)”, and “kin”. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Year of birth for foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(9) and (14) that the title IV–E agency must report the year of birth of the foster parent(s). We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Foster parent(s) tribal membership.* In the 2019 NPRM, we proposed in paragraphs (e)(10) and (15) that the title

IV–E agency must report the tribal membership of the foster parent(s). We did not receive comments specific to these data elements and we finalize these data elements as proposed.

*Race of foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(11) and (16) that the title IV–E agency must report the race of the foster parent(s). We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Hispanic or Latino ethnicity of foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(12) and (17) that the title IV–E agency must report the Hispanic or Latino ethnicity of the foster parent(s), as appropriate. We did not receive comments relevant to our proposal for this paragraph and we finalize these data elements as proposed.

*Sex of foster parent(s).* In the 2019 NPRM, we proposed in paragraphs (e)(13) and (18) that the title IV–E agency must report the sex of the foster parent(s).

*Comment:* Two states suggested that we include a third gender option, such as “other”, because other agencies within the state have this ability (e.g., motor vehicles), so it promotes consistency. Sixteen national advocacy organizations suggested we add data elements on gender identity.

*Response:* We did not make changes to this data element and did not add data elements because we did not receive a significant enough number of comments from title IV–E agencies that identified reasons to revise the response options to include a third gender response option. Further, we have no compelling reason to increase the agency’s burden to require this information be included in AFCARS as we have no need for it at the Federal level. We finalize these data elements as proposed.

#### Section 1355.44(f) Permanency Planning

In the 2019 NPRM, we proposed in paragraph (f) that the title IV–E agency must report information related to permanency planning for children in out-of-home care, which includes permanency plans, hearings, and caseworker visits with the child. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Permanency plan and date.* In the 2019 NPRM, we proposed in paragraphs (f)(1) and (2) that the title IV–E agency must report each permanency plan established for the child. We did not receive comments relevant to our

proposal for these paragraphs and we finalize these data elements as proposed.

*Date of periodic review(s) and permanency hearing(s).* In the 2019 NPRM, we proposed in paragraph (f)(3) that the title IV–E agency must report the date of each periodic review. In the 2019 NPRM, we proposed in paragraph (f)(4) that the title IV–E agency must report the date of each permanency hearing. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Caseworker visit dates and locations.* In the 2019 NPRM, paragraph (f)(5) that the title IV–E agency must report the date of each in-person, face-to-face caseworker visit with the child. In the 2019 NPRM, we proposed in paragraph (f)(6) that the title IV–E agency must report each caseworker visit location from two response options.

*Comment:* Two states and one local agency suggested that caseworker visit information is better suited for a qualitative review and should not be reported in AFCARS.

*Response:* We continue to believe that reporting caseworker visit information in AFCARS instead of the CFSP 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. Thus, we finalize these data elements as proposed.

#### Section 1355.44(g) General Exit Information

In the 2019 NPRM, we proposed in paragraph (g) that the title IV–E agency must report exit information for each out-of-home care episode when the title IV–E agency’s placement and care responsibility for the child ends. We did not receive comments on our proposal for section 1355.44(g), thus we finalize paragraph (g) as proposed.

*Date of exit.* Under paragraph (g)(1), the title IV–E agency must report the date for each of the child’s exits from out-of-home care.

*Exit transaction date.* Under paragraph (g)(2), the title IV–E agency must report a non-modifiable, computer-generated date which accurately indicates the date of each response to paragraph (g)(1) of this section.

*Exit reason.* Under paragraph (g)(3), the title IV–E agency must report the reason for each of the child’s exits from out-of-home care from nine response options.

*Transfer to another agency.* Under paragraph (g)(4), the title IV–E agency must 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) from seven response options.

#### Section 1355.44(h) Exit to Adoption and Guardianship Information

In the 2019 NPRM, we proposed in paragraph (h) that the title IV–E agency must report certain information only if the title IV–E agency indicated the child exited to adoption or legal guardianship in paragraph (g)(3) *Exit reason*.

Otherwise, the title IV–E agency must leave paragraph (h) blank. Below are the finalized data elements and a discussion of whether we received comments on each data element.

*Marital status of the adoptive parent(s) or guardian(s).* In the 2019 NPRM, we proposed in paragraph (h)(1) that the title IV–E agency must report the marital status of the adoptive parent(s) or legal guardian(s). We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Child's relationship to the adoptive parent(s) or guardian(s).* In the 2019 NPRM, we proposed in paragraph (h)(2) that the title IV–E agency must report the type of relationship between the child and the adoptive parent(s) or legal guardian(s) from four response options. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Date of birth of the adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(3) and (8), the title IV–E agency must report the date of the birth of the adoptive parent(s) or legal guardian(s). We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Adoptive parent or guardian tribal membership.* In the 2019 NPRM, we proposed in paragraphs (h)(4) and (9) that the title IV–E agency must report whether the adoptive parent(s) or legal guardian(s) is a member of an Indian tribe as instructed. We did not receive comments specific to these paragraphs and we finalize these data elements as proposed.

*Race of adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(5) and (10) that the title IV–E agency must report the adoptive parent(s) or legal guardian(s) race as instructed. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Hispanic or Latino ethnicity of adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(6) and (11) that the title IV–E agency must report whether the adoptive parent(s) or legal guardian(s) is of Hispanic or Latino ethnicity as instructed. We did not receive comments relevant to our proposal for these paragraphs and we finalize these data elements as proposed.

*Sex of adoptive parent or guardian.* In the 2019 NPRM, we proposed in paragraphs (h)(7) and (12) that the title IV–E agency must report the sex of the adoptive parent(s) or legal guardian(s) as instructed.

*Comment:* Two states suggested that we include a third gender option, such as “other”, because other agencies within the state have this ability (e.g., motor vehicles), so it promotes consistency. Sixteen national advocacy organizations suggested we add data elements on gender identity.

*Response:* We did not make changes to this data element and did not add data elements because we did not receive a significant enough number of comments from title IV–E agencies that identified reasons to revise the response options to include a third gender response option. Further, we have no compelling reason to increase the agency's burden to require this information be included in AFCARS as we have no need for it at the Federal level. Accordingly, we finalize these data elements as proposed.

*Inter/Intrajurisdictional adoption or guardianship.* In the 2019 NPRM, we proposed in paragraph (h)(13) that the title IV–E agency must 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. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Assistance agreement type.* In the 2019 NPRM, we proposed in paragraph (h)(14) that the title IV–E agency must report the type of assistance agreement between the title IV–E agency and the adoptive parent(s) or legal guardian(s) as appropriate. We did not receive comments relevant to our proposal for this paragraph and we finalize this data element as proposed.

*Siblings in adoptive or guardianship home.* In the 2019 NPRM, we proposed in paragraph (h)(15) that the title IV–E agency must report the number of siblings of the child who are in the same adoptive or legal guardianship home as the child. We did not receive comments relevant to our proposal for this

paragraph and we finalize this data element as proposed.

#### Section 1355.45 Adoption and Guardianship Assistance Data File Elements

This section contains the data elements for the adoption and guardianship assistance data file. We proposed in the 2019 NPRM conforming amendments only to paragraphs (b)(2) and (3) and (f). We did not receive comments on § 1355.45 and we finalize these data elements as proposed.

*Child's sex.* Under paragraph (b)(2), the title IV–E agency must report the sex of the child.

*Child's race.* Under paragraph (b)(3)(vi), for *Race-unknown*, we made edits to match edits in § 1355.44(b)(7)(vi), where we clarify the instructions for reporting the race of the child.

*Adoption or guardianship placing agency.* Under paragraph (f), the title IV–E agency must indicate the agency that placed the child for adoption or legal guardianship from three options.

#### Section 1355.46 Compliance

This section lists compliance requirements for AFCARS data including 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 a title IV–E agency that is initially determined to be out of compliance can correct its data. In the 2019 NPRM, we proposed conforming amendments only to paragraph (c)(2) to update the cross references. We did not receive substantive comments relevant to our proposal for this paragraph and we finalize this paragraph as proposed.

## VI. Regulatory Impact Analysis

#### 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, which determined that this rule does meet the criteria for a significant regulatory action under E.O. 12866. Thus, it was subject to OMB review.

ACF determined that the costs to title IV–E agencies as a result of this rule will not be 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). Because the rule is not economically significant as defined in E.O. 12866, a full cost-benefit analysis per OMB Circular A–4 does not need to be included in this rule. An abbreviated costs and benefits analysis is below.

#### Costs and Benefits

AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in out-of-home care under the placement and care of the title IV–E agency or who are under a title IV–E adoption or guardianship assistance agreement. A regulated national data set on these children is required by section 479(c)(3) of the Act. 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. Section 479(c)(2) of the Act requires that data collected is reliable and consistent over time. This final rule streamlines the information required in the 2016 final rule for title IV–E agencies to report to AFCARS, which will avoid the unnecessary diversion of resources. We removed data elements that 2018 ANPRM and 2019 NPRM commenters identified would not meet the requirements for reliability and consistency, thus are ineffective at providing a national picture of children placed in out-of-home care. Not publishing this final rule, and in effect requiring title IV–E agencies to implement the vast requirements of the 2016 final rule, would not meet these statutory requirements, as demonstrated by the commenters that supported streamlining.

Federal reimbursement under title IV–E will be available for a portion of the costs that title IV–E agencies will incur as a result of the revisions in this final rule, depending on each title IV–E agency's cost allocation plan, information system, and other factors. Estimated burden and costs to the Federal Government are provided below in the Burden estimate section. We estimate the Federal portion of the overall information collection burden to be \$43,093,725. Additional costs to the Federal Government to design a system

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

#### Alternatives Considered

ACF considered not streamlining the data elements, meaning that the 2016 final rule would go into effect. This would not be in line with the findings of the HHS Regulatory Reform Taskforce or the overwhelming majority of state and local agencies that supported streamlining the data elements as proposed in the 2019 NPRM.

Executive Order 13771, entitled Reducing Regulation and Controlling Regulatory Costs (82 FR 9339), was issued on January 30, 2017. Annualizing these costs and cost savings in perpetuity and discounting at 7 percent back to 2016, we estimate that this rule would generate \$26.7 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 rule is considered an E.O. 13771 deregulatory action. As described below, this rule will save approximately 588,094 burden hours over the 2016 final rule. After multiplying the burden hours by the average wage rate of affected individuals, this amounts to \$42,930,862 in savings each year, relative to the estimated costs and burden of the 2016 final rule, in the year this final rule will become effective, which is in FY 2023. As a result, we estimate that this rule generates \$26.7 million in annualized cost savings in 2016 dollars, discounted at 7 percent over a perpetual time horizon relative to year 2016.

#### 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 rule does not affect small entities because it is applicable only to state and tribal title IV–E agencies, and those entities are not considered to be small entities for purposes of the Regulatory Flexibility Act.

#### 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 finalizing 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 2019, that threshold is approximately

\$154 million. This 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 rule will not have an impact on family well-being as defined in the law.

#### Executive Order 13132 on Federalism

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 for the 2019 NPRM was open for 60 days and closed on June 18, 2019. During this time, we solicited comments via *regulations.gov* and email. During this comment period, we held three informational calls on April 30, May 2, and 28, 2019 for states, Indian tribes, and the public. During these calls, we provided an overview of the 2019 NPRM provisions and where to submit comments. Prior to issuing the 2019 NPRM, we solicited comments via an ANPRM in 2018.

- “A summary of the nature of their concerns and the agency's position supporting the need to issue the regulation”—As we discussed in section III of the preamble to this final rule, state commenters supported the revisions proposed in the 2019 NPRM to streamline the AFCARS regulation because they believe it would reduce the burden of reporting on title IV–E agencies and that the proposal kept the data elements that are essential to understanding nationally the population

of children in foster care. We continue to believe that, in order to reduce the burden on title IV–E agencies, which are required to submit the AFCARS data to ACF and will be held to penalties for non-compliant data submissions, we must finalize the proposed revisions to AFCARS in this rule.

- “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 section III of the preamble to this final rule, this rule finalizes the 2019 NPRM proposal for fewer data elements than is in the 2016 final rule. We believe that the states sufficiently argued in both their comments to the 2018 ANPRM and the 2019 NPRM that the 2016 final rule had many data elements that can be streamlined while still providing critical information on the reporting population.

#### Paperwork Reduction Act

This final rule contains information collection requirements (ICRs) that are subject to review by the OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520. A description of these provisions is given in the following paragraphs with an estimate of the annual burden. In the PRA section for the 2019 NPRM on whether an information collection should be approved by OMB, the Department solicited 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 in the 2019 NPRM.
- 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.

OMB did not receive comments in response to the 2019 NPRM PRA.

The information collection for AFCARS is currently authorized under OMB number 0970–0422. This rule contains information collection requirements in § 1355.44, the out-of-home care data file, and § 1355.45, the adoption and guardianship assistance data file, that the Department submitted to OMB for its review. Pursuant to this final rule:

- State and tribal title IV–E agencies must report information on children who are in the out-of-home care reporting population pursuant to § 1355.42(a),
- State and tribal title IV–E agencies must report information on children

who are in the adoption and guardianship assistance reporting population pursuant to § 1355.42(b), and

- State title IV–E agencies must report ICWA-related information in the out-of-home care data file.

#### Burden Estimate

In this section, we provide a burden estimate for this final rule and briefly explain how we calculated it, using the 2019 NPRM burden estimate since we did not make substantive changes in this final rule. Changes in the final rule estimate are attributed to updated input numbers, such as labor rate and number of children in foster care.

**2016 Final Rule:** In the 2016 final rule, we had estimated the total annual burden hours for both recordkeeping and reporting to be 970,226 hours at a total cost of \$81,499,084 (\$40,749,492 at 50 percent Federal Financial Participation (FFP)). As we discovered from analyzing the 2018 ANPRM comments, the 2016 final rule burden estimate was low and did not appropriately account for the time and resources required to collect and report the many and detailed ICWA-related data elements. Through the comments process of the 2018 ANPRM and 2019 NPRM, we are able to provide a more grounded burden estimate that is based on state estimated hours and costs.

**2019 NPRM:** Through the 2018 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. As we explained in the 2019 NPRM (84 FR 16587), we analyzed the 2018 ANPRM comments from states on the burden to complete the 2016 final rule. 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. Based on the 2018 ANPRM comments, we updated our estimate for the total burden of the 2016 final rule to be 1,768,744 hours. To estimate the burden of the 2019 NPRM, we used a revised 2016 final rule estimate that was

based on states' 2018 ANPRM comments and reduced the hours by approximately 33 percent, which represented the approximate workload reduction associated with reporting fewer data elements and 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.

As we explained in the 2019 NPRM (84 FR 16589), adjustments to the recordkeeping burden estimates were based on the information provided by states in response to the 2018 ANPRM:

- For the out-of-home care data file, states provided estimates that ranged from 3 to 15 hours related to the tasks of searching data sources, gathering information, and entering the information into the system for the 2016 final rule. The range depended on whether the work was for the qualitative ICWA-related data elements or not. The average of the hours provided from the states that broke out this information in their 2018 ANPRM comments was 6 hours annually. We used the average because there were not significant outliers in the comments provided. Then we reduced the 6 hours by 33 percent since that represents the reduction in data elements to be reported.

- For the adoption and guardianship assistance data file, the data elements did not significantly change and we did not receive information from state estimates to determine that a change in these estimates was warranted. The only changes are attributable to updated numbers of children in adoption or guardianship assistance agreements, thus we estimated in the 2019 NPRM 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.

- Developing or modifying standard operating procedures and systems to collect, validate, and verify the information and adjust existing ways to comply with the AFCARS requirements was estimated at 6,700 hours annually. States provided estimates in response to the 2018 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.

- 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 estimated would take on average 7,086 hours annually. In response to the 2018 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 2018 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.

For reporting, we explained in the 2019 NPRM (84 FR 16589) that very few states broke out reporting in their 2018 ANPRM comments and the average of the hours provided came to 26 hours. Since the 2019 NPRM reduces the data elements by 33 percent, we reduced the estimated burden related to reporting that amount arriving at 17 hours for this task.

For the labor rate, the 2018 ANPRM comments provided many job titles that

would be involved in implementing, which included a mix of programming, management, caseworkers, and legal staff that varied depending on the size and functions of the state and local governments. The 2016 final rule included mostly computer analysts and social service managers which gave us an estimate of \$84. The 2019 NPRM included more positions, such as office and administrative support occupations, community and social service operations and gave us an estimate of \$72.

*Comments in response to the 2019 NPRM:* We explained in the 2019 NPRM that since the 2018 ANPRM comments were very thorough and helpful to inform the burden estimates, we feel confident that the burden estimate provided in the 2019 NPRM more accurately reflects the burden of reporting AFCARS information. ACF asked the public to respond to the streamlined AFCARS proposed in the 2019 NPRM. States expressed that the burden of the 2019 NPRM will be less than the 2016 final rule, commenting that they supported the streamlined AFCARS because it will be less burdensome than the 2016 final rule. Nine states provided estimates in response to the 2019 NPRM for costs and burden hours to comply with the 2019 NPRM. These estimates ranged considerably depending on the tasks the state attributed the burden to and whether it was a total for all work needed to implement the rule. State estimates for burden hours ranged between 32,900 and 111,000 total hours for all work needed to implement the rule, which included developing/modifying procedures, systems changes, and training, but not all states included training in their estimates, leading to lower burden estimates. State cost estimates ranged from \$88,000 to over \$1 million, the variability due to either including all work over multiple years or only providing total costs for one task, such as systems changes. We did not make changes to the burden

estimates in this final rule based on this additional information because there was not enough detailed information to draw any different conclusions than we did in calculating the burden estimates for the 2019 NPRM. Tribal title IV-E agencies did not provide burden estimates in their comments. In this section, we discuss our assumptions and calculations for the estimates.

*Respondents:* The 69 respondents comprise 52 state title IV-E agencies and 17 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 rule are spread across respondents for the purposes of the PRA estimates. However, we understand 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 percent FFP rate.

Collection—AFCARS	Total annual burden hours	Average hourly labor rate	Total cost	Estimate Federal costs (50% FFP)
Recordkeeping .....	1,178,304	\$73	\$86,016,192	\$43,008,096
Reporting .....	2,346	73	171,258	85,629
Total .....	.....	.....	.....	43,093,725

Cost savings of this final rule over the 2016 final rule: 588,094 hours × \$73 labor rate = \$42,930,862.

#### Assumptions for Estimates

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

- *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 2018 AFCARS data available: 262,956 children entered foster care during FY 2018. Of those, 5,856 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 previous burden estimate and savings calculations in the 2016 final rule and the 2019 NPRM, which are what we use to estimate the relative savings of the 2019 NPRM and this final rule.

- *Out-of-home care data elements:* For the out-of-home care data file, the 2016 final rule required approximately 272 items on which we require title IV–E agencies to report information. In this final rule, we reduced these data points to approximately 183, representing 170 data points retained without change from the 2016 final rule and 13 modified data points. This represents approximately a 33 percent reduction in the total items that title IV–E agencies must report for this final rule compared to the 2016 final rule.

- *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 2018: 488,870 children received title IV–E adoption assistance and 32,204 children received guardianship assistance.

- *Adoption and guardianship assistance data elements:* There are approximately 20 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 was based in part on the estimates states provided in response to the 2019 NPRM. Most title IV–E agencies will require revisions to electronic case management systems to meet the requirements in this final rule. However, ACF anticipates that a state's

CCWIS will lead to more efficiency and less costs and burden associated with AFCARS reporting.

- *Labor rate:* ACF assumes that there will be a mix of the following positions working to meet both the one-time and annual requirements of this rule. We reviewed 2018 Bureau of Labor Statistics data and for this estimate we used the job roles of: Computer Information and Systems Managers (11–3021) with an average hourly wage of \$73.49; 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 \$44.01; 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 \$18.75; Social and Community Service Managers (11–9151) with an average hourly wage estimate of \$34.46; 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 \$23.69; and Paralegals and Legal Assistants (23–2011) with an average hourly wage estimate of \$26.20. ACF averaged these wages to come to an average labor rate of \$36.77. In order to ensure we took into account overhead costs associated with these labor costs, ACF doubled this rate (\$73).

#### Calculations for Estimates

For the 2019 NPRM estimates, we reduced the estimates that were in the 2016 final rule by 33 percent to represent the reduction in the workload associated with reporting the data proposed in the 2019 NPRM compared to the 2016 final rule. We carried forward this estimated reduction of 33 percent in this final rule because we did not make any substantive changes to the amount of data the title IV–E agency must report. Thus, the reduction in costs and burden hours from the 2016 final rule is reflected.

*Recordkeeping:* We estimated a total of 1,178,304 record keeping hours annually, as summarized below. We are finalizing the data elements as proposed, and therefore, did not need to revise the estimates related to work in

these bullets and only updated population numbers.

- 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 1,057,083 hours annually. The reduction in the estimate from the 2019 NPRM is based on the reduced number of children who entered foster care. (4.02 hours × 262,956 children = 1,057,083 annual hours for this bullet)

- For the adoption and guardianship assistance data file, we estimated in the 2019 NPRM 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 number of children in adoption or guardianship assistance agreements increased, which reflects the most recent data available, FY 2018. The new total annual hours is estimated to be 107,435.2. (0.2 hours × 488,870 children = 97,774 hours. 0.3 hours × 32,204 children = 9,661.2 hours. 97,774 hours + 9,661.2 hours = 107,435 total annual burden hours for this bullet.)

- Developing or modifying standard operating procedures and 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.

- 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. We understand that training hours will vary depending on the size of the agency's workforce needing training.

*Reporting:* We estimate that extracting the information for AFCARS reporting and transmitting the information to ACF would take on average 17 hours annually. The estimate of 17 hours is from the 2019 NPRM. We did not change this estimate because we did not make substantive changes to this final rule and we did not receive any information from commenters to determine that a change in these estimates is warranted.

Collection—AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Recordkeeping .....	69	2	8,538	1,178,304

Collection—AFCARS	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours for NPRM
Reporting .....	69	2	17	2,346
Total .....	.....	.....	.....	1,180,650

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, 2022 (45 CFR 1355.40 and section IV of the preamble to this rule). On October 1, 2022 (FY 2023), title IV–E agencies must comply with §§ 1355.41 through 1355.47. The 2016 final rule was scheduled to become effective on October 1, 2020 (FY 2021). Because this final rule replaces the 2016 final rule, the year in which title IV–E agencies will experience savings from the 2016 final rule is FY

2023. We used fiscal years in this estimate because AFCARS data reporting periods are categorized by fiscal years. The savings is generated by the reductions finalized in this rule, which reduces the data that title IV–E agencies must report from the requirements established in the 2016 final rule. As discussed above, we estimated approximately a 33 percent reduction in the total items that title IV–E agencies must report in this final rule relative to the 2016 final rule; the numbers in the estimate for this final

rule takes this into account. These charts represent the burden hour and cost savings we estimate that this final rule will have over the 2016 final rule's requirements. This final rule will save approximately 588,094 burden hours. After multiplying by the average wage rate of affected individuals, this amounts to \$42,930,862 in savings each year relative to the 2016 final rule, in the year this final rule will become effective, FY 2023.

#### SAVINGS OF 2020 FINAL RULE RELATIVE TO 2016 FINAL RULE

Burden hour savings of this final rule	Total annual burden hours for 2016 final rule	Total annual burden hours for this final rule	Difference (hours)
FY 2023 .....	1,768,744	1,180,650	588,094

In the above estimates, ACF acknowledges: (1) ACF has used average figures for title IV–E agencies of very different sizes and some of which may have larger populations of children served than other agencies, and (2) these are rough estimates based on the 2019 NPRM comments which ranged in the level of detail provided regarding burden hours, costs, and work needing to be completed.

We have submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. The requirements are not effective until they have been approved by OMB.

#### VII. 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*. As we developed this final rule, ACF engaged in consultation with tribes and their leadership as described in further detail below.

##### Description of Consultation

Prior to issuing the 2019 NPRM, we engaged in tribal consultation during the comment period of the ANPRM on

May 15 and 16, 2018. During the 2019 NPRM comment period, we engaged in tribal consultation on June 3, 4, and 6, 2019.

*Consultation during the 2018 ANPRM comment period.* Prior to the May 2018 consultation, we ensured that adequate information and notice was provided to tribes about the 2018 ANPRM and AFCARS and was publicly available by posting this information on the CB website, emailing it to CB's tribal lists, and issuing an Information Memorandum announcing publication of the 2018 ANPRM on March 16, 2018 (ACYF–CB–IM–18–01).

*Consultation during the 2019 NPRM comment period.* Prior to the June 2019 consultation, we ensured that adequate information about the 2019 NPRM and AFCARS was provided to tribes and was publicly available. Specifically, in April and May 2019, we emailed notices of the dates and times of tribal consultations to CB's tribal email lists, mailed the notices to tribal leaders and representatives, emailed notification of the publication of the 2019 NPRM to CB's tribal email lists, and issued an Information Memorandum announcing publication of the 2019 NPRM (ACYF–CB–IM–19–02). In preparation for the June 2019 consultations, CB officials held a webinar in May 2019 to provide the background and history of regulation development for AFCARS,

the purpose of the 2019 NPRM including the Executive Order precipitating another look at AFCARS, and an overview of the 2019 NPRM. CB held in-person consultation on June 3, 2019 in New Mexico and tribal consultation via conference calls on June 4 and 6, 2019.

##### Summary of Concerns and Response

During the 2018 consultation, 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 to a child or it provided the basic following information on ICWA's requirements: 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. During the consultation sessions in June 2019, tribal leaders, officials, and representatives expressed a desire to retain all of the ICWA-related data elements from the 2016 final rule, including detailed information on ICWA's requirements that are tied to DOI's regulations, ICWA statute, and court actions and expressed opposition to a modification or reduction of any data elements. They stated that ICWA's importance outweighs the state's burden to report the information to AFCARS

and the information would inform compliance with ICWA.

As we explained earlier, we are retaining only the ICWA-related data elements identified in the 2019 NPRM:

- Inquiries made whether the child is an Indian child under ICWA,
- 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,
- notification to the Indian tribe, and
- tribal membership of child, mother, father, foster parents, adoptive parents, and legal guardians.

We are committed to obtaining more information on Indian children who are in out-of-home care through appropriate and alternative methods that allow for a fuller understanding of ICWA's role in child welfare cases that AFCARS cannot provide. For example, as we noted in the 2019 NPRM (84 FR 16578), the next Court Improvement Program (CIP) program instruction will emphasize collecting and tracking ICWA-related data and 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.

However, as we described in the 2019 NPRM, there are significant barriers in obtaining timely and relevant data in a format that would be useful for the purpose of determining ICWA compliance. Further, HHS is not the cognizant authority over implementing, overseeing, or assessing compliance with ICWA; that agency is DOI.

#### *Agency Position on Need for Regulation*

In section V of this final rule, we responded to comments on the ICWA-related data elements and explained our rationale for not making changes in this final rule. We also provided the parameters of our authority to require title IV–E agencies to report AFCARS data and clarified that the data is not appropriate for AFCARS reporting because the purpose relates to compliance with a law that is not under HHS's purview or authority. As we developed this final rule, our aim was to reduce burden on title IV–E agencies and clarify any misrepresentations of our statutory obligations under section 479 of the Act. We retain the data elements as proposed so that we can understand, on a national level, key information about Native American children in foster care under ACF's statutory authority, for example whether the connections to their communities are preserved. This authority in section 479(c)(3) of the Act does not permit ACF to require states to report specific details

on ICWA's requirements in AFCARS to be used for ICWA compliance.

#### **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: May 1, 2020.

**Lynn A. Johnson,**

*Assistant Secretary for Children and Families.*

Approved: May 4, 2020.

**Alex M. Azar II,**

*Secretary.*

For the reasons set forth in the preamble, ACF amends 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. Revise § 1355.40(a) to read as follows:

##### **§ 1355.40 Foster care and adoption data collection.**

(a) *Scope.* State and tribal title IV–E agencies must follow the requirements of this section and appendices A through E of this part until September 30, 2022. As of October 1, 2022, state and tribal title IV–E agencies must comply with §§ 1355.41 through 1355.47.

\* \* \* \* \*

##### **§ 1355.41 [Amended]**

- 3. Remove § 1355.41(c).
- 4. Revise § 1355.43(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, 2022, 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, 2022.

\* \* \* \* \*

- 5. 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 Adoption and Foster Care Analysis and Reporting

System (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 (ICWA).* 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 a federally recognized 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 (viii) of this section applies with a “yes” or “no.”

(i) *Race—American Indian or Alaska Native.* An American Indian or Alaska Native child has origins in any of the original peoples of North or South America (including Central America), and maintains tribal affiliation or community attachment.

(ii) *Race—Asian.* An Asian child has origins in any of the original peoples of the Far East, Southeast Asia or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand and Vietnam.

(iii) *Race—Black or African American.* A Black or African American child has origins in any of the black racial groups of Africa.

(iv) *Race—Native Hawaiian or Other Pacific Islander.* A Native Hawaiian or Other Pacific Islander child has origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.

(v) *Race—White.* A white child has origins in any of the original peoples of Europe, the Middle East or North Africa.

(vi) *Race—unknown.* The child or parent or legal guardian does not know, or is unable to communicate the race, or at least one race of the child. 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 pursuant to 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) of this section 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 affect 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 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 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 a “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) *Prior guardianship general—(i) Prior guardianship.* Indicate whether the child experienced a prior legal guardianship before the current out-of-home care episode. Include any public, private or independent guardianship(s) in the United States that meets the definition in section 475(7) of the Act. This includes any judicially created relationship between a child and caretaker which is intended to be permanent and self-sustaining, as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: Protection, education, care and control, custody, and decision making. Indicate "yes," "no," or "abandoned" if the information is unknown because the child has been abandoned. "Abandoned" means that the child was left alone or with others and the identity of the parent(s) or legal guardian(s) is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child has experienced a prior legal guardianship, the title IV-E agency must complete paragraph (b)(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 Program.* The child is living independently and is supported by funds under the John H. Chafee Foster Care Program for Successful Transition to Adulthood.

(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 (b)(20) 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 (b)(21) 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 (c)(1). 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 (c)(2). 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. If a petition has not been filed, leave this paragraph (c)(5)(i) blank.

(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) 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

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 Voluntary Placement Agreement 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 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 (e)(4) 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 pursuant to 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 pursuant to 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 pursuant to 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 this paragraph (e)(6) 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 relationship 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 first 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 (e)(14) 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 (e)(16) 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 (e)(17) 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(s).* 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(s).* 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 locations.* 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 (g)(1) blank. If this paragraph (g)(1) 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 this 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 (h)(8) 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 (h)(10) 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 (h)(11) 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."

■ 6. Amend § 1355.45 by revising paragraphs (b)(2) and (b)(3)(vi) and adding 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. 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.

■ 7. Amend § 1355.46(c)(2) by revising the second sentence 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) and (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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