

SUBCHAPTER G—THE ADMINISTRATION ON CHILDREN, YOUTH AND FAMILIES, FOSTER CARE MAINTENANCE PAYMENTS, ADOPTION ASSISTANCE, AND CHILD AND FAMILY SERVICES

PART 1355—GENERAL

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

§ 1355.10 Scope.

Unless otherwise specified, part 1355 applies to States and Indian Tribes and contains general requirements for Federal financial participation under titles IV-B and IV-E of the Social Security Act.

[61 FR 58653, Nov. 18, 1996]

§ 1355.20 Definitions.

(a) Unless otherwise specified, the following terms as they appear in 45 CFR parts 1355, 1356 and 1357 of this title are defined as follows—

Act means the Social Security Act, as amended.

ACYF means the Administration on Children, Youth and Families, Administration for Children and Families (ACF), U. S. Department of Health and Human Services.

Adoption means the method provided by State law, or for a Tribal title IV-E agency, Tribal law, which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed “adoption” after the legal process is complete.

Child abuse and neglect means the definition contained in 42 U.S.C. 5106(g)(2).

Child care institution means a private child care institution, or a public child care institution which accommodates no more than twenty-five children, and is licensed by the licensing authority responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing. The licensing authority must be a State authority in the State in which the child care institution is located, a Tribal authority with respect to a child care institution on or near an Indian Reservation, or a Tribal authority of a Tribal title IV-E agency with respect to a child care institution in the Tribal title IV-E agency’s service area. This

definition must 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.

Commissioner means the Commissioner on Children, Youth and Families, Administration for Children and Families, U.S. Department of Health and Human Services.

Date a child is considered to have entered foster care means the earlier of: The date of the first judicial finding that the child has been subjected to child abuse or neglect; or, the date that is 60 calendar days after the date on which the child is removed from the home pursuant to §1356.21(k). A title IV-E agency may use a date earlier than that required in this definition, such as the date the child is physically removed from the home. This definition determines the date used in calculating all time period requirements for the periodic reviews, permanency hearings, and termination of parental rights provision in section 475(5) of the Act and for providing time-limited reunification services described at section 431(a)(7) of the Act. The definition has no relationship to establishing initial title IV-E eligibility.

Department means the United States Department of Health and Human Services.

Detention facility in the context of the definition of child care institution in section 472(c)(2) of the Act means a physically restricting facility for the care of children who require secure custody pending court adjudication, court disposition, execution of a court order or after commitment.

Entity, as used in §1355.38, means any organization or agency (e.g., a private child placing agency) that is separate and independent of the title IV-E agency; performs title IV-E functions pursuant to a contract or subcontract with the title IV-E agency; and, receives title IV-E funds. A State or Tribal court is not an “entity” for the purposes of §1355.38 except if an administrative arm of the State or Tribal court carries out title IV-E administrative functions pursuant to a contract with the title IV-E agency.

Foster care means 24-hour substitute care for children placed away from

their parents or guardians and for whom the title IV-E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Foster care maintenance payments are payments made on behalf of a child eligible for title IV-E foster care to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel for a child’s visitation with family, or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described in the preceding sentences. “Daily supervision” for which foster care maintenance payments may be made includes:

(1) *Foster family care*—licensed child care, when work responsibilities preclude foster parents from being at home when the child for whom they have care and responsibility in foster care is not in school, licensed child care when the foster parent is required to participate, without the child, in activities associated with parenting a child in foster care that are beyond the scope of ordinary parental duties, such as attendance at administrative or judicial reviews, case conferences, or foster parent training. Payments to cover these costs may be: included in the basic foster care maintenance payment; a separate payment to the foster parent, or a separate payment to the child care provider; and

(2) *Child care institutions*—routine day-to-day direction and arrangements to ensure the well-being and safety of the child.

Foster family home means, for the purpose of title IV–E eligibility, the home of an individual or family licensed or approved as meeting the standards established by the licensing or approval authority(ies), that provides 24-hour out-of-home care for children. The licensing or approval authority must be a state authority in the state in which the foster family home is located, a tribal authority with respect to a foster family home on or near an Indian Reservation, or a tribal authority of a tribal title IV–E agency with respect to a foster family home in the tribal title IV–E agency’s service area. Agencies may establish one set of foster family home licensing or approval standards for all relative or kinship foster family homes that are different from the set of standards used to license or approve all non-relative foster family homes. Anything less than full licensure or approval is insufficient for meeting title IV–E eligibility requirements. Title IV–E agencies may, however, claim title IV–E reimbursement during the period of time between the date a prospective foster family home satisfies all requirements for licensure or approval and the date the actual license is issued, not to exceed 60 days.

Full review means the joint Federal and title IV–E agency review of all federally-assisted child and family services programs, including family preservation and support services, child protective services, foster care, adoption, and independent living services, for the purpose of determining the title IV–E agency’s substantial conformity with the plan requirements of titles IV–B and IV–E as listed in §1355.34 of this part. A full review consists of two phases, the statewide assessment (or for a Tribal title IV–E agency, an assessment of the service area) and a subsequent on-site review, as described in §1355.33 of this part.

Legal guardianship means a judicially-created relationship between child and caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights

with respect to the child: protection, education, care and control of the person, custody of the person, and decision-making. The term *legal guardian* means the caretaker in such a relationship.

National Child Abuse and Neglect Data System (NCANDS) means the voluntary national data collection and analysis system established by the Administration for Children and Families in response to a requirement in the Child Abuse Prevention and Treatment Act (Pub. L. 93–247), as amended.

Partial review means:

(1) For the purpose of the child and family services review, the joint Federal and State/Tribal review of one or more federally-assisted child and family services program(s), including family preservation and support services, child protective services, foster care, adoption, and independent living services. A partial review may consist of any of the components of the full review, as mutually agreed upon by the title IV–E agency and the Administration for Children and Families as being sufficient to determine substantial conformity of the reviewed components with the plan requirements of titles IV–B and IV–E as listed in §1355.34 of this part;

(2) For the purpose of title IV–B and title IV–E State plan compliance issues that are outside the prescribed child and family services review format, e.g., compliance with AFCARS requirements, a review of State laws, policies, regulations, or other information appropriate to the nature of the concern, to determine State compliance; or

(3) For the purpose of title IV–E plan compliance issues for a Tribal title IV–E agency which are outside of the prescribed child and family services review format, a review of Tribal laws, policies, regulations, or other information appropriate to the nature of the concern, to determine plan compliance.

Permanency hearing means:

(1) The hearing required by section 475(5)(C) of the Act to determine the permanency plan for a child in foster care. Within this context, the court (including a Tribal court) or administrative body determines whether and, if applicable, when the child will be:

(i) Returned to the parent;

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(ii) Placed for adoption, with the title IV-E agency filing a petition for termination of parental rights;

(iii) Referred for legal guardianship;

(iv) Placed permanently with a fit and willing relative; or

(v) Placed in another planned permanent living arrangement, but only in cases where the title IV-E agency has documented to the State or Tribal court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(2) The permanency hearing must be held no later than 12 months after the date the child is considered to have entered foster care in accordance with the definition at §1355.20 of this part or within 30 days of a judicial determination that reasonable efforts to reunify the child and family are not required. After the initial permanency hearing, subsequent permanency hearings must be held not less frequently than every 12 months during the continuation of foster care. The permanency hearing must be conducted by a family or juvenile court or another court of competent jurisdiction or by an administrative body appointed or approved by the court which is not a part of or under the supervision or direction of the title IV-E agency. Paper reviews, *ex parte* hearings, agreed orders, or other actions or hearings which are not open to the participation of the parents of the child, the child (if of appropriate age), and foster parents or preadoptive parents (if any) are not permanency hearings.

State means, for title IV-B, the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and American Samoa. For title IV-E the term "State" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

State agency means the State agency administering or supervising the administration of the title IV-B and title IV-E State plans and the title XX social services block grant program. An exception to this requirement is permitted by section 103(d) of the Adop-

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tion Assistance and Child Welfare Act of 1980 (Pub. L. 96-272). Section 103(d) provides that, if on December 1, 1974, the title IV-B program (in a State or local agency) and the social services program under section 402(a)(3) of the Act (the predecessor program to title XX) were administered by separate agencies, that separate administration of the programs could continue at State option.

Statewide assessment (or Tribal assessment) means the initial phase of a full review of all federally-assisted child and family services programs in the States (or for a Tribal title IV-E agency, in the service area), including family preservation and support services, child protective services, foster care, adoption, and independent living services as described in §1355.33(b) of this part, for the purpose of determining substantial conformity with the plan requirements of titles IV-B and IV-E as listed in §1355.34 of this part.

Title IV-E agency means the State or Tribal agency administering or supervising the administration of the title IV-B and title IV-E plans.

Tribal agency means, for the purpose of title IV-E, the agency of the Indian Tribe, Indian Tribal organization (as those terms are defined in section 479B(a) of the Act) or consortium of Indian Tribes that is administering or supervising the administration of the title IV-E and title IV-B, subpart 1 plan.

(b) Unless otherwise specified, the definitions contained in section 475 of the Act apply to all programs under titles IV-E and IV-B of the Act.

[48 FR 23114, May 23, 1983, as amended at 57 FR 30429, July 9, 1992; 58 FR 67924, Dec. 22, 1993; 61 FR 58653, Nov. 18, 1996; 65 FR 4076, Jan. 25, 2000; 66 FR 58675, Nov. 23, 2001; 77 FR 925, Jan. 6, 2012; 83 FR 66708, Sept. 28, 2023]

§ 1355.21 Plan requirements for titles IV-E and IV-B.

(a) The plans for titles IV-E and IV-B must provide for safeguards on the use and disclosure of information which meet the requirements contained in section 471(a)(8) of the Act.

(b) The plans for titles IV-E and IV-B must provide for compliance with the Department's regulations applicable to

the State and/or Tribe as listed in 45 CFR 1355.30.

(c) The State agency and the Indian Tribe must make available for public review and inspection the Child and Family Services Plan (CFSP) and the Annual Progress and Services Reports. (See 45 CFR 1357.15 and 1357.16.) The title IV–E agency also must make available for public review and inspection the title IV–E Plan.

[48 FR 23114, May 23, 1983, as amended at 61 FR 58654, Nov. 18, 1996; 77 FR 926, Jan. 6, 2012]

§ 1355.22 Designated Placement requirements under titles IV–E and IV–B for LGBTQI+ children.

LGBTQI+ children (including children with lesbian, gay, bisexual, transgender, queer, or questioning, and intersex status or identity) shall be placed and receive services in accordance with the following requirements:

(a) *Protections generally applicable.* As part of meeting the requirement to provide a safe and appropriate placement for all children in foster care, the title IV–E/IV–B agency must ensure that all placements, including those for LGBTQI+ children, are free from harassment, mistreatment, or abuse.

(b) *Designated Placements and services for LGBTQI+ children.* The title IV–E/IV–B agency must meet the following requirements for each LGBTQI+ child in foster care:

(1) *Designated Placements.* The title IV–E/IV–B agency must ensure there is a Designated Placement available for all LGBTQI+ children in foster care who request or would benefit from such a placement. Nothing in this section requires any provider to become or serve as a Designated Placement. As used in this section, for a placement to be specifically designated for an LGBTQI+ child, the provider must meet the protections generally applicable as defined at paragraph (a) of this section and:

(i) Commit to establish an environment that supports the child's LGBTQI+ status or identity;

(ii) Be trained with the appropriate knowledge and skills to provide for the needs of the child related to the child's self-identified sexual orientation, gender identity, and gender expression. The training must reflect evidence,

and research about the impacts of rejection, discrimination, and stigma on the safety and wellbeing of LGBTQI+ children, and provide information for providers about professional standards and recommended practices that promote the safety and wellbeing of LGBTQI+ children; and

(iii) Facilitate the child's access to age- or developmentally appropriate resources, services, and activities that support their health and well-being as described in paragraph (e) of this section.

(2) *Process for notification of and request for Designated Placements.* The IV–E/IV–B agency must implement a process by which an LGBTQI+ child may request a Designated Placement as described in paragraph (b)(1) of this section or request that their current placement be offered services to become a Designated Placement. The title IV–E/IV–B agency's process for considering such a request must provide the child with an opportunity to express their needs and concerns. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50, and must include the following components:

(i) Notice of the availability of Designated Placements and the ability to request that services be offered to their current placement must be provided to, at minimum:

- (A) All children age 14 and over; and
- (B) Children under age 14 who:

(1) Have been removed from their home due, in whole or part, to familial conflict about their sexual orientation, gender identity, gender expression or sex characteristics; or

(2) Have disclosed their LGBTQI+ status or identity or whose LGBTQI+ status or identity is otherwise known to the agency;

(ii) The notice must be provided in an age- or developmentally appropriate manner, both verbally and in writing, and must inform the child of how they may request a Designated Placement or services for their current placement and the process the title IV–E/IV–B agency will use in responding to their request; and

(iii) The notice must inform the child of the nonretaliation protections described at paragraph (d) of this section and describe the process by which a child may report a concern about retaliation.

(3) *Placement and services decisions and changes.* When making placement and service decisions related to an LGBTQI+ child, the title IV–E/IV–B agency shall give substantial weight to the child’s expressed concerns or requests when determining the child’s best interests. To promote placement stability, when an LGBTQI+ child requests a Designated Placement and before initiating any placement changes, the title IV–E/IV–B agency must consider whether additional services and training would allow the current provider to meet the conditions for a Designated Placement. If so, and if the current provider is willing to meet the conditions for a Designated Placement, the IV–E/IV–B agency must use the case review system to regularly review the provider’s progress towards meeting the conditions of such a designation.

(c) *Process for reporting concerns about placements and concerns about retaliation.* The title IV–E/IV–B agency must implement a process for LGBTQI+ children to report concerns about a placement that fails to meet the applicable requirements of this section, and to report concerns about retaliation as described in paragraph (d) of this section. The process must safeguard the privacy and confidentiality of the child, consistent with section 471(a)(8) of the Act and 45 CFR 205.50. The title IV–E/IV–B agency must respond promptly to an LGBTQI+ child’s reported concern, consistent with the agency’s timeframes for investigating child abuse and neglect reports depending on the nature of the child’s report.

(d) *Retaliation prohibited.* (1) The title IV–E/IV–B agency must have a procedure to ensure that neither the title IV–E/IV–B agency, nor any provider, nor any entity or person acting on behalf of the agency or a provider retaliates against an LGBTQI+ child in foster care based on the child’s actual or perceived LGBTQI+ status or identity, any disclosure of that status or identity by the child or a third party, or

the child’s request or report related to the requirements for placements or services under this part.

(2) Conduct by the title IV–E/IV–B agency, provider, or any entity or person acting on behalf of the agency or a provider that will be considered retaliation includes, but is not limited to:

(i) Harassment, mistreatment, or abuse as described in paragraph (a) of this section.

(ii) Attempts to undermine, suppress, change, or stigmatize a child’s sexual orientation or gender identity or expression through “conversion therapy.”

(iii) Unwarranted placement changes, including unwarranted placements in congregate care facilities, or restricting an LGBTQI+ child’s access to LGBTQI+ peers, siblings, family members, or age- or developmentally appropriate materials and community resources.

(iv) Disclosing the child’s LGBTQI+ status or identity in ways that cause harm or risk the privacy of the child or that infringe on any privacy rights of the child.

(v) Using information about the child’s LGBTQI+ status or identity to initiate or sustain a child protection investigation or disclosing information about the child’s LGBTQI+ status or identity to law enforcement in any manner not permitted by law.

(vi) Taking action against current or potential caregivers (including foster parents, pre-adoptive parents, adoptive parents, kin caregivers and birth families) because they support or have supported a child’s LGBTQI+ status or identity.

(e) *Access to supportive and age- or developmentally appropriate services.* The title IV–E/IV–B agency must ensure that LGBTQI+ children have access to age- or developmentally appropriate services that are supportive of their sexual orientation and gender identity or expression, including clinically appropriate mental and behavioral health supports.

(f) *Placement of transgender and gender non-conforming children in foster care.* When considering placing a child, the title IV–E/IV–B agency must offer the child a placement consistent with their gender identity. The title IV–E/IV–B

agency must also consult with the child to provide an opportunity to voice any concerns related to placement.

(g) *Compliance with privacy laws.* The title IV-E/IV-B agency must comply with all applicable privacy laws, including section 471(a)(8) of the Act and 45 CFR 205.50, in all aspects of its implementation of this section. Information that reveals a child's LGBTQI+ status or identity may only be disclosed in accordance with law and any such disclosure must be the minimum necessary to accomplish the legally-permitted purposes.

(h) *Training and notification requirements.* In addition to meeting the requirements of paragraph (b)(1)(ii) of this section, the title IV-E/IV-B agency must:

(1) Ensure that its employees who have responsibility for placing children in foster care, making placement decisions, or providing services:

(i) Are trained to implement the procedural requirements of this section; and

(ii) Are adequately prepared with the appropriate knowledge and skills to serve an LGBTQI+ child related to their sexual orientation, gender identity, and gender expression.

(2) Ensure that all its contractors and subrecipients who have responsibility for placing children in foster care, making placement decisions, or providing services are informed of the procedural requirements to comply with this section, including the required non-retaliation provisions outlined in paragraph (d) of this section.

(3) Ensure that all placement providers are informed of the procedural requirements to comply with this section, including the required non-retaliation provision outlined in paragraph (d) of this section.

(i) *Protections for religious freedom, conscience, and free speech.* Insofar as the application of any requirement under this section would violate applicable Federal protections for religious freedom, conscience, and free speech, such application shall not be required.

(j) *No penalties for providers that do not seek to qualify as Designated Placements.* Nothing in this section shall be construed to require or authorize a

State or Tribe to penalize a provider in the titles IV-E or IV-B programs because the provider does not seek or is determined not to qualify as a Designated Placement under this section.

(k) *Severability.* Any provision of this section held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this section and shall not affect the remainder thereof.

(l) *Implementation.* Title IV-E/IV-B agencies must follow the requirements of this section beginning on October 1, 2026.

(m) *No effect on more protective laws or policies.* Nothing in this section shall limit any State, Tribe, or local government from imposing or enforcing, as a matter of law or policy, requirements that provide greater protection to LGBTQI+ children than this section provides.

[89 FR 34859, Apr. 30, 2024]

§ 1355.25 Principles of child and family services.

The following principles, most often identified by practitioners and others as helping to assure effective services for children, youth, and families, should guide the States and Indian Tribes in developing, operating, and improving the continuum of child and family services.

(a) The safety and well-being of children and of all family members is paramount. When safety can be assured, strengthening and preserving families is seen as the best way to promote the healthy development of children. One important way to keep children safe is to stop violence in the family including violence against their mothers.

(b) Services are focused on the family as a whole; service providers work with families as partners in identifying and meeting individual and family needs; family strengths are identified, enhanced, respected, and mobilized to

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help families solve the problems which compromise their functioning and well-being.

(c) Services promote the healthy development of children and youth, promote permanency for all children and help prepare youth emancipating from the foster care system for self-sufficiency and independent living.

(d) Services may focus on prevention, protection, or other short or long-term interventions to meet the needs of the family and the best interests and need of the individual(s) who may be placed in out-of-home care.

(e) Services are timely, flexible, coordinated, and accessible to families and individuals, principally delivered in the home or the community, and are delivered in a manner that is respectful of and builds on the strengths of the community and cultural groups.

(f) Services are organized as a continuum, designed to achieve measurable outcomes, and are linked to a wide variety of supports and services which can be crucial to meeting families' and children's needs, for example, housing, substance abuse treatment, mental health, health, education, job training, child care, and informal support networks.

(g) Most child and family services are community-based, involve community organizations, parents and residents in their design and delivery, and are accountable to the community and the client's needs.

(h) Services are intensive enough and of sufficient duration to keep children safe and meet family needs. The actual level of intensity and length of time needed to ensure safety and assist the family may vary greatly between preventive (family support) and crisis intervention services (family preservation), based on the changing needs of children and families at various times in their lives. A family or an individual does not need to be in crisis in order to receive services.

[61 FR 58654, Nov. 18, 1996]

§ 1355.30 Other applicable regulations.

Except as specified, the following regulations are applicable to State and Tribal programs funded under titles IV-B and IV-E of the Act.

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(a) 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board.

(b) 45 CFR Part 30—Claims Collection.

(c) 2 CFR part 376—Nonprocurement Debarment and Suspension.

(d) 2 CFR part 382—Requirements for Drug-Free Workplace (Financial Assistance).

(e) 45 CFR Part 80—Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964.

(f) 45 CFR Part 81—Practice and Procedure for Hearings Under Part 80 of This Title.

(g) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance.

(h) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance.

(i) 45 CFR part 75—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. Part 75 of this title is applicable to title IV-B programs and the John H. Chafee Foster Care Independence Program under Section 477 of the Act that are operated by States and/or Tribes. Part 75 of this title is applicable to title IV-E foster care and adoption assistance programs operated by a State title IV-E agency, except that section 75.306 Cost sharing or matching and section 75.341 Financial reporting do not apply. Part 75 of this title is applicable to title IV-E foster care and adoption assistance programs operated by a Tribal title IV-E agency pursuant to section 479B, except that section 75.341 and the sections specified in §1356.68 do not apply to a Tribal title IV-E agency.

(j) 45 CFR Part 93—New Restrictions on Lobbying.

(k) 45 CFR part 95—General Administration—Grant Programs (Public Assistance and Medical Assistance). Part 95 of this title is applicable to State and Indian Tribe operated title IV-B and title IV-E programs, except:

(1) Notwithstanding 45 CFR 95.1(a), subpart A, Time Limits for States to File Claims, does not apply to State

and Indian Tribe-operated title IV-B (subparts 1 and 2) program and the John H. Chafee Foster Care Independence Program; and

(2) 45 CFR part 95 Subpart E, Cost Allocation Plans, is not applicable to Indian Tribe-operated title IV-E foster care and adoption assistance pursuant to section 479B of the Act (ACYF-CB-PI-10-13).

(1) 45 CFR Part 97—Consolidation of Grants to the Insular Areas. (Applicable only to the title IV-B programs).

(m) 45 CFR part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities. Only one section is applicable: 45 CFR 100.12, How may a State simplify, consolidate, or substitute federally required State plans? This section is applicable to a State title IV-E agency only.

(n) 45 CFR part 201—Grants to States for Public Assistance Programs. Only the following sections are applicable:

(1) § 201.5—Grants. Applicable to title IV-E foster care and adoption assistance only.

(2) § 201.6—Withholding of payment; reduction of Federal financial participation in the costs of social services and training. Applicable only to an unapprovable change in an approved plan, or the failure of the agency to change its approved plan to conform to a new Federal requirement for approval of plans.

(3) § 201.15—Deferral of claims for Federal financial participation. Applicable only to title IV-E foster care and adoption assistance.

(4) § 201.66—Repayment of Federal funds by installments. Applicable only to title IV-E foster care and adoption assistance.

(o) 45 CFR 204.1—Submittal of State Plans for Governor's Review. Applicable to State title IV-E agencies only.

(p) 45 CFR Part 205—General Administration—Public Assistance Programs. Only the following sections are applicable:

(1) § 205.5—Plan amendments.

(2) § 205.10—Hearings.

(3) § 205.50—Safeguarding information for the financial assistance programs.

(4) § 205.100—Single State agency.

[61 FR 58654, Nov. 18, 1996, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 926, Jan. 6, 2012; 81 FR 3022, Jan. 20, 2016]

§ 1355.31 Elements of the child and family services review system.

Scope. Sections 1355.32 through 1355.37 of this part apply to reviews of child and family services programs under subparts 1 and 2 of title IV-B of the Act, and reviews of foster care and adoption assistance programs under title IV-E of the Act.

[77 FR 926, Jan. 6, 2012]

§ 1355.32 Timetable for the reviews.

(a) *Initial reviews.* Each State must complete an initial full review as described in § 1355.33 of this part during the four-year period after the final rule becomes effective. Each Tribal title IV-E agency must complete an initial full review as described in § 1355.33 of this part, during the four-year period after the ACF determines that the Tribe has approved title IV-B, subpart 1 and 2 and title IV-E plans and has sufficient cases for ACF to apply the procedures in § 1355.33(c).

(b) *Reviews following the initial review.* (1) A title IV-E agency found to be operating in substantial conformity during an initial or subsequent review, as defined in § 1355.34 of this part, must:

(i) Complete a full review every five years; and

(ii) Submit a completed statewide assessment, or in the case of a Tribal title IV-E agency, a completed Tribal assessment of the service area, to ACF three years after the on-site review. The assessment will be reviewed jointly by the title IV-E agency and ACF to determine the State's or Indian Tribe's continuing substantial conformity with the plan requirements subject to review. No formal approval of this interim assessment by ACF is required.

(2) A program found not to be operating in substantial conformity during an initial or subsequent review will:

(i) Be required to develop and implement a program improvement plan, as defined in § 1355.35 of this part; and

(ii) Begin a full review two years after approval of the program improvement plan.

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(c) *Reinstatement of reviews based on information that a title IV–E agency is not in substantial conformity.* (1) ACF may require a full or a partial review at any time, based on any information, regardless of the source, that indicates the title IV–E agency may no longer be operating in substantial conformity.

(2) Prior to reinstating a full or partial review, ACF will conduct an inquiry and require the title IV–E agency to submit additional data whenever ACF receives information that the title IV–E agency may not be in substantial conformity.

(3) If the additional information and inquiry indicates to ACF’s satisfaction that the title IV–E agency is operating in substantial conformity, ACF will not proceed with any further review of the issue addressed by the inquiry. This inquiry will not substitute for the full reviews conducted by ACF under § 1355.32(b).

(4) ACF may proceed with a full or partial review if the title IV–E agency does not provide the additional information as requested, or the additional information confirms that the title IV–E agency may not be operating in substantial conformity.

(d) *Partial reviews based on noncompliance with plan requirements that are outside the scope of a child and family services review.* When ACF becomes aware of a title IV–B or title IV–E compliance issue that is outside the scope of the child and family services review process, we will:

(1) Conduct an inquiry and require the title IV–E agency to submit additional data.

(2) If the additional information and inquiry indicates to ACF’s satisfaction that the title IV–E agency is in compliance, we will not proceed with any further review of the issue addressed by the inquiry.

(3) ACF will institute a partial review, appropriate to the nature of the concern, if the title IV–E agency does not provide the additional information as requested, or the additional information confirms that the title IV–E agency may not be in compliance.

(4) If the partial review determines that the title IV–E agency is not in compliance with the applicable plan requirement, the title IV–E agency must

enter into a program improvement plan designed to bring the title IV–E agency into compliance, if the provisions for such a plan are applicable. The terms, action steps and timeframes of the program improvement plan will be developed on a case-by-case basis by ACF and the title IV–E agency. The program improvement plan must take into consideration the extent of noncompliance and the impact of the noncompliance on the safety, permanency or well-being of children and families served through the title IV–E agency’s title IV–B or IV–E allocation. If the title IV–E agency remains out of compliance, the title IV–E agency will be subject to a penalty related to the extent of the noncompliance.

[65 FR 4076, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 926, Jan. 6, 2012]

§ 1355.33 Procedures for the review.

(a) The full child and family services reviews will:

(1) Consist of a two-phase process that includes a statewide assessment and an on-site review; and

(2) Be conducted by a team of Federal, and State or Tribal reviewers that includes:

(i) Staff of the child and family services agency, including the offices that represent the service areas that are the focus of any particular review;

(ii) Representatives selected by the title IV–E agency, in collaboration with the ACF Regional Office, from those with whom the title IV–E agency was required to consult in developing its CFSP, as described and required in 45 CFR 1357.15(1);

(iii) Federal staff of HHS; and

(iv) Other individuals, as deemed appropriate and agreed upon by the title IV–E agency and ACF.

(b) *Statewide or Tribal Assessment.* The first phase of the full review will be a statewide assessment, or for a Tribal title IV–E agency a service area assessment, conducted by the title IV–E agency’s internal and external members of the review team. The assessment must:

(1) Address each systemic factor under review including the statewide/Tribal information system; case review system; quality assurance system; staff

training; service array; agency responsiveness to the community; and foster and adoptive parent licensing, recruitment and retention;

(2) Assess the outcome areas of safety, permanence, and well-being of children and families served by the title IV-E agency using data from AFCARS and NCANDS. For the initial review, ACF may approve another data source to substitute for AFCARS, and in all reviews, ACF may approve another data source to substitute for NCANDS. The title IV-E agency must also analyze and explain its performance in meeting the national standards for the statewide/Tribal service area data indicators;

(3) Assess the characteristics of the title IV-E agency that have the most significant impact on the agency's capacity to deliver services to children and families that will lead to improved outcomes;

(4) Assess the strengths and areas of the title IV-E agency's child and family services programs that require further examination through an on-site review;

(5) Include a listing of all the persons external to the title IV-E agency who participated in the preparation of the assessment pursuant to § 1355.33(a)(2)(ii) and (iv); and

(6) Be completed and submitted to ACF within 4 months of the date that ACF transmits the information for the assessment to the title IV-E agency.

(c) *On-site review.* The second phase of the full review will be an on-site review.

(1) The on-site review will cover the title IV-E agency's programs under titles IV-B and IV-E of the Act, including in-home services and foster care. It will be jointly planned by the title IV-E agency and ACF, and guided by information in the completed assessment that identifies areas in need of improvement or further review.

(2) The on-site review may be concentrated in several specific political subdivisions or jurisdictions of the title IV-E agency, as agreed upon by the ACF and the title IV-E agency; however, for a State title IV-E agency, a State's largest metropolitan subdivision must be one of the locations selected.

(3) ACF has final approval of the selection of specific areas of the title IV-E agency's child and family services continuum described in paragraph (c)(1) of this section and selection of the political subdivisions or jurisdiction referenced in paragraph (c)(2) of this section.

(4) Sources of information collected during the on-site review to determine substantial conformity must include, but are not limited to:

(i) Case records on children and families served by the agency;

(ii) Interviews with children and families whose case records have been reviewed and who are, or have been, recipients of services of the agency;

(iii) Interviews with caseworkers, foster parents, and service providers for the cases selected for the on-site review; and

(iv) Interviews with key stakeholders, both internal and external to the agency, which, at a minimum, must include those individuals who participated in the development of the State's or Tribal title IV-E agency's CFSP required at 45 CFR 1357.15(1), courts, administrative review bodies, children's guardians ad litem and other individuals or bodies assigned responsibility for representing the best interests of the child.

(5) The sample will range from 30-50 cases. Foster care cases must be drawn randomly from AFCARS, or, for the initial review, from another source approved by ACF and include children who entered foster care during the year under review. In-home cases must be drawn randomly from NCANDS or from another source approved by ACF. To ensure that all program areas are adequately represented, the sample size may be increased.

(6) The sample of 30-50 cases reviewed on-site will be selected from a randomly drawn oversample of no more than 150 foster care and 150 in-home services cases. The oversample must be statistically significant at a 90 percent compliance rate (95 percent in subsequent reviews), with a tolerable sampling error of 5 percent and a confidence coefficient of 95 percent. The additional cases in the oversample not selected for the on-site review will

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form the sample of cases to be reviewed, if needed, in order to resolve discrepancies between the statewide/Tribal assessment and the on-site review in accordance with paragraph (d)(2) of this section.

(d) *Resolution of discrepancies between the assessment and the findings of the on-site portion of the review.* Discrepancies between the statewide or Tribal assessment and the findings of the on-site portion of the review will be resolved by either of the following means, at the title IV–E agency’s option:

(1) The submission of additional information by the title IV–E agency; or

(2) ACF and the title IV–E agency will review additional cases using only those indicators in which the discrepancy occurred. ACF and the title IV–E agency will determine jointly the number of additional cases to be reviewed, not to exceed 150 foster care cases or 150 in-home services cases to be selected as specified in paragraph (c)(6) of this section.

(e) *Partial review.* A partial child and family services review, when required, will be planned and conducted jointly by ACF and the title IV–E agency based on the nature of the concern. A partial review does not substitute for the full reviews as required under § 1355.32(b).

(f) *Notification.* Within 30 calendar days following either a partial child and family services review, full child and family services review, or the resolution of a discrepancy between the assessment and the findings of the on-site portion of the review, ACF will notify the title IV–E agency in writing of whether the title IV–E agency is, or is not, operating in substantial conformity.

[65 FR 4077, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 927, Jan. 6, 2012]

§ 1355.34 **Criteria for determining substantial conformity.**

(a) *Criteria to be satisfied.* ACF will determine a title IV–E agency’s substantial conformity with title IV–B and title IV–E plan requirements based on the following:

(1) Its ability to meet national standards, set by the Secretary, for the statewide/Tribal service area data indi-

cators associated with specific outcomes for children and families;

(2) Its ability to meet criteria related to outcomes for children and families; and

(3) Its ability to meet criteria related to the title IV–E agency’s capacity to deliver services leading to improved outcomes.

(b) *Criteria related to outcomes.* (1) A title IV–E agency’s substantial conformity will be determined by its ability to substantially achieve the following child and family service outcomes:

(i) *In the area of child safety:*

(A) Children are, first and foremost, protected from abuse and neglect; and,

(B) Children are safely maintained in their own homes whenever possible and appropriate;

(ii) *In the area of permanency for children:*

(A) Children have permanency and stability in their living situations; and

(B) The continuity of family relationships and connections is preserved for children; and

(iii) *In the area of child and family well-being:*

(A) Families have enhanced capacity to provide for their children’s needs;

(B) Children receive appropriate services to meet their educational needs; and

(C) Children receive adequate services to meet their physical and mental health needs.

(2) A title IV–E agency’s level of achievement with regard to each outcome reflects the extent to which a title IV–E agency has:

(i) Met the national standard(s) for the statewide/Tribal service area data indicator(s) associated with that outcome, if applicable; and,

(ii) Implemented the following CFSP requirements or assurances:

(A) The requirements in 45 CFR 1357.15(p) regarding services designed to assure the safety and protection of children and the preservation and support of families;

(B) The requirements in 45 CFR 1357.15(q) regarding the permanency provisions for children and families in sections 422 and 471 of the Act;

(C) The requirements in section 422(b)(7) of the Act regarding recruitment of potential foster and adoptive families;

(D) The assurances as required by section 422(b)(8)(B) of the Act regarding policies and procedures for abandoned children;

(E) The requirements in section 422(b)(9) of the Act regarding the State's compliance with the Indian Child Welfare Act;

(F) The requirements in section 422(b)(10) of the Act regarding a title IV-E agency's plan for effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements; and,

(G) The requirements in section 471(a)(15) of the Act regarding reasonable efforts to prevent removals of children from their homes, to make it possible for children in foster care to safely return to their homes, or, when the child is not able to return home, to place the child in accordance with the permanency plan and complete the steps necessary to finalize the permanent placement.

(3) A title IV-E agency will be determined to be in substantial conformity if its performance on:

(i) Each statewide/Tribal service area data indicator developed pursuant to paragraph (b)(4) of this section meets the national standard described in paragraph (b)(5) of this section; and,

(ii) Each outcome listed in paragraph (b)(1) of this section is rated as "substantially achieved" in 95 percent of the cases examined during the on-site review (90 percent of the cases for an initial review). Information from various sources (case records, interviews) will be examined for each outcome and a determination made as to the degree to which each outcome has been achieved for each case reviewed.

(4) The Secretary may, using AFCARS and NCANDS, develop statewide/Tribal service area data indicators for each of the specific outcomes described in paragraph (b)(1) of this section for use in determining substantial conformity. The Secretary may add, amend, or suspend any such statewide/Tribal service area data indicator(s) when appropriate. To the extent practical and feasible, the state-

wide/Tribal service area data indicators will be consistent with those developed in accordance with section 203 of the Adoption and Safe Families Act of 1997 (Pub. L. 105-89).

(5) The initial national standards for the statewide data indicators described in paragraph (b)(4) of this section will be based on the 75th percentile of all State performance for that indicator, as reported in AFCARS or NCANDS. The Secretary may adjust these national standards if appropriate. The initial national standard will be set using the following data sources:

(i) The 1997 and 1998 submissions to NCANDS (or the most recent and complete 2 years available), for those statewide data indicators associated with the safety outcomes; and,

(ii) The 1998b, 1999c, and 2000a submissions to AFCARS (or the most recent and complete report periods available), for those statewide data indicators associated with the permanency outcomes.

(c) *Criteria related to title IV-E agency capacity to deliver services leading to improved outcomes for children and families.* In addition to the criteria related to outcomes contained in paragraph (b) of this section, the title IV-E agency also must satisfy criteria related to the delivery of services. Based on information from the assessment and onsite review, the title IV-E agency must meet the following criteria for each systemic factor in paragraphs (c)(2) through (c)(7) of this section to be considered in substantial conformity: All of the plan requirements associated with the systemic factor must be in place, and no more than one of the plan requirements fails to function as described in paragraphs (c)(2) through (c)(7) of this section. The systemic factor in paragraph (c)(1) of this section is rated on the basis of only one plan requirement. To be considered in substantial conformity, the plan requirement associated with statewide/Tribal information system capacity must be both in place and functioning as described in the requirement. ACF will use a rating scale to make the determinations of substantial conformity. The systemic factors under review are:

(1) *Statewide/Tribal information system:* The State/Tribal title IV-E agency is

operating a statewide/Tribal information system that, at a minimum, can readily identify the status, demographic characteristics, location, and goals for the placement of every child who is (or within the immediately preceding 12 months, has been) in foster care (section 422(b)(8)(A)(i) of the Act);

(2) *Case review system:* The title IV–E agency has procedures in place that:

(i) Provide, for each child, a written case plan to be developed jointly with the child’s parent(s) that includes provisions: for placing the child in the least restrictive, most family-like placement appropriate to the child’s needs, and in close proximity to the parents’ home where such placement is in the child’s best interests; for visits with a child placed out of State/Tribal service area at least every 12 months by a caseworker of the agency or of the agency in the State/Tribal service area where the child is placed; for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home; and for implementation of the requirements of §1355.22(b) and (d) as applicable (sections 422(b)(8)(A)(ii), 471(a)(16), and 475(5)(A) of the Act and §1355.22(b) and (d));

(ii) Provide for periodic review of the status of each child no less frequently than once every six months by either a court or by administrative review (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(B) of the Act);

(iii) Assure that each child in foster care under the supervision of the title IV–E agency has a permanency hearing in a family or juvenile court or another court of competent jurisdiction (including a Tribal court), or by an administrative body appointed or approved by the court, which is not a part of or under the supervision or direction of the title IV–E agency, no later than 12 months from the date the child entered foster care (and not less frequently than every 12 months thereafter during the continuation of foster care) (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(C) of the Act);

(iv) Provide a process for termination of parental rights proceedings in accordance with sections 422(b)(8)(A)(ii), 475(5)(E) and (F) of the Act; and,

(v) Provide foster parents, preadoptive parents, and relative caregivers of children in foster care with notice of and a right to be heard in permanency hearings and six-month periodic reviews held with respect to the child (sections 422(b)(8)(A)(ii), 475(5)(G) of the Act, and 45 CFR 1356.21(o)).

(3) *Quality assurance system:* The title IV–E agency has developed and implemented standards to ensure that children in foster care placements are provided quality services that protect the safety and health of the children (section 471(a)(22)) and is operating an identifiable quality assurance system (45 CFR 1357.15(u)) as described in the CFSP that:

(i) Is in place in the jurisdictions within the State/Tribal service area where services included in the CFSP are provided;

(ii) Is able to evaluate the adequacy and quality of services provided under the CFSP;

(iii) Is able to identify the strengths and needs of the service delivery system it evaluates;

(iv) Provides reports to agency administrators on the quality of services evaluated and needs for improvement; and

(v) Evaluates measures implemented to address identified problems.

(4) *Staff training:* The title IV–E agency is operating a staff development and training program (45 CFR 1357.15(t)) that:

(i) Supports the goals and objectives in the title IV–E agency’s CFSP;

(ii) Addresses services provided under both subparts of title IV–B and the training plan under title IV–E of the Act;

(iii) Provides training for all staff who provide family preservation and support services, child protective services, foster care services, adoption services and independent living services soon after they are employed and that includes the basic skills and knowledge required for their positions;

(iv) Provides ongoing training for staff that addresses the skills and knowledge base needed to carry out their duties with regard to the services included in the CFSP; and,

(v) Provides training for current or prospective foster parents, adoptive

parents, and the staff of State/Tribal-licensed or State/Tribal-approved child care institutions providing care to foster and adopted children receiving assistance under title IV–E that addresses the skills and knowledge base needed to carry out their duties with regard to caring for foster and adopted children.

(5) *Service array:* Information from the assessment and on-site review determines that the title IV–E agency has in place an array of services (45 CFR 1357.15(n) and section 422(b)(8)(A)(iii) and (iv) of the Act) that includes, at a minimum:

(i) Services that assess the strengths and needs of children and families assisted by the agency and are used to determine other service needs;

(ii) Services that address the needs of the family, as well as the individual child, in order to create a safe home environment;

(iii) Services designed to enable children at risk of foster care placement to remain with their families when their safety and well-being can be reasonably assured;

(iv) Services designed to help children achieve permanency by returning to families from which they have been removed, where appropriate, be placed for adoption or with a legal guardian or in some other planned, permanent living arrangement, and through post-legal adoption services;

(v) Services that are accessible to families and children in all political subdivisions and/or the entire service area covered in the CFSP; and,

(vi) Services that can be individualized to meet the unique needs of children and families served by the agency.

(6) *Agency responsiveness to the community:*

(i) The title IV–E agency, in implementing the provisions of the CFSP, engages in ongoing consultation with a broad array of individuals and organizations representing the State/Tribal and county/local agencies responsible for implementing the CFSP and other major stakeholders in the services delivery system including, at a minimum, Tribal representatives, consumers, service providers, foster care providers, the juvenile court, and other

public and private child and family serving agencies (45 CFR 1357.15(1)(3));

(ii) The agency develops, in consultation with these or similar representatives, annual reports of progress and services delivered pursuant to the CFSP (45 CFR 1357.16(a));

(iii) There is evidence that the agency's goals and objectives included in the CFSP reflect consideration of the major concerns of stakeholders consulted in developing the plan and on an ongoing basis (45 CFR 1357.15(m)); and

(iv) There is evidence that the services under the plan are coordinated with services or benefits under other Federal or federally-assisted programs serving the same populations to achieve the goals and objectives in the plan (45 CFR 1357.15(m)).

(7) *Foster and adoptive parent licensing, recruitment and retention:*

(i) The State or Tribe has established and maintains standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes (section 471(a)(10) of the Act);

(ii) The standards so established are applied by the State or Tribe to every licensed or approved foster family home or child care institution receiving funds under title IV–E or IV–B of the Act (section 471(a)(10) of the Act);

(iii) The title IV–E agency complies with the safety requirements for foster care and adoptive placements in accordance with sections 471(a)(16), 471(a)(20) and 475(1) of the Act and 45 CFR 1356.30;

(iv) The title IV–E agency has in place an identifiable process for assuring the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State or Tribe for whom foster and adoptive homes are needed (section 422(b)(7) of the Act); and,

(v) The title IV–E agency has developed and implemented plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children (section 422(b)(10) of the Act).

(d) *Availability of review instruments.* ACF will make available to the title

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IV–E agencies copies of the review instruments, which will contain the specific standards to be used to determine substantial conformity, on an ongoing basis, whenever significant revisions to the instruments are made.

[65 FR 4078, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 928, Jan. 6, 2012; 89 FR 34861, Apr. 30, 2024]

§ 1355.35 Program improvement plans.

(a) *Mandatory program improvement plan.* (1) Title IV–E agencies found not to be operating in substantial conformity shall develop a program improvement plan. The program improvement plan must:

(i) Be developed jointly by title IV–E agency and Federal staff in consultation with the review team;

(ii) Identify the areas in which the title IV–E agency’s program is not in substantial conformity;

(iii) Set forth the goals, the action steps required to correct each identified weakness or deficiency, and dates by which each action step is to be completed in order to improve the specific areas;

(iv) Set forth the amount of progress the statewide/Tribal data will make toward meeting the national standards;

(v) Establish benchmarks that will be used to measure the title IV–E agency’s progress in implementing the program improvement plan and describe the methods that will be used to evaluate progress;

(vi) Identify how the action steps in the plan build on and make progress over prior program improvement plans;

(vii) Identify the technical assistance needs and sources of technical assistance, both Federal and non-Federal, which will be used to make the necessary improvements identified in the program improvement plan.

(2) In the event that ACF and the title IV–E agency cannot reach consensus regarding the content of a program improvement plan or the degree of program or data improvement to be achieved, ACF retains the final authority to assign the contents of the plan and/or the degree of improvement required for successful completion of the plan. Under such circumstances, ACF will render a written rationale for as-

signing such content or degree of improvement.

(b) *Voluntary program improvement plan.* Title IV–E agencies found to be operating in substantial conformity may voluntarily develop and implement a program improvement plan in collaboration with the ACF Regional Office, under the following circumstances:

(1) The title IV–E agency and Regional Office agree that there are areas of the title IV–E agency’s child and family services programs in need of improvement which can be addressed through the development and implementation of a voluntary program improvement plan;

(2) ACF approval of the voluntary program improvement plan will not be required; and

(3) No penalty will be assessed for the title IV–E agency’s failure to achieve the goals described in the voluntary program improvement plan.

(c) *Approval of program improvement plans.* (1) A title IV–E agency determined not to be in substantial conformity must submit a program improvement plan to ACF for approval within 90 calendar days from the date the title IV–E agency receives the written notification from ACF that it is not operating in substantial conformity.

(2) Any program improvement plan will be approved by ACF if it meets the provisions of paragraph (a) of this section.

(3) If the program improvement plan does not meet the provisions of paragraph (a) of this section, the title IV–E agency will have 30 calendar days from the date it receives notice from ACF that the plan has not been approved to revise and resubmit the plan for approval.

(4) If the title IV–E agency does not submit a revised program improvement plan according to the provisions of paragraph (c)(3) of this section or if the plan does not meet the provisions of paragraph (a) of this section, withholding of funds pursuant to the provisions of §1355.36 of this part will begin.

(d) *Duration of program improvement plans.* (1) ACF retains the authority to establish time frames for the program improvement plan consistent with the

seriousness and complexity of the remedies required for any areas determined not in substantial conformity, not to exceed two years.

(2) Particularly egregious areas of nonconformity impacting child safety must receive priority in both the content and time frames of the program improvement plans and must be addressed in less than two years.

(3) The Secretary may approve extensions of deadlines in a program improvement plan not to exceed one year. The circumstances under which requests for extensions will be approved are expected to be rare. The title IV-E agency must provide compelling documentation of the need for such an extension. Requests for extensions must be received by ACF at least 60 days prior to the affected completion date.

(4) Title IV-E agencies must provide quarterly status reports (unless ACF and the title IV-E agency agree to less frequent reports) to ACF. Such reports must inform ACF of progress in implementing the measures of the plan.

(e) *Evaluating program improvement plans.* Program improvement plans will be evaluated jointly by the title IV-E agency and ACF, in collaboration with other members of the review team, as described in the title IV-E agency's program improvement plan and in accordance with the following criteria:

(1) The methods and information used to measure progress must be sufficient to determine when and whether the title IV-E agency is operating in substantial conformity or has reached the negotiated standard with respect to statewide/Tribal service area data indicators that failed to meet the national standard for that indicator;

(2) The frequency of evaluating progress will be determined jointly by the title IV-E agency and Federal team members, but no less than annually. Evaluation of progress will be performed in conjunction with the annual updates of the title IV-E agency's CFSP, as described in paragraph (f) of this section;

(3) Action steps may be jointly determined by the title IV-E agency and ACF to be achieved prior to projected completion dates, and will not require any further evaluation at a later date; and

(4) The title IV-E agency and ACF may jointly renegotiate the terms and conditions of the program improvement plan as needed, provided that:

(i) The renegotiated plan is designed to correct the areas of the title IV-E agency's program determined not to be in substantial conformity and/or achieve a standard for the statewide/Tribal service area data indicators that is acceptable to ACF;

(ii) The amount of time needed to implement the provisions of the plan does not extend beyond three years from the date the original program improvement plan was approved;

(iii) The terms of the renegotiated plan are approved by ACF; and

(iv) The Secretary approves any extensions beyond the two-year limit.

(f) *Integration of program improvement plans with CFSP planning.* The elements of the program improvement plan must be incorporated into the goals and objectives of the title IV-E agency's CFSP. Progress in implementing the program improvement plan must be included in the annual reviews and progress reports related to the CFSP required in 45 CFR 1357.16.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970-0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4080, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 929, Jan. 6, 2012]

§ 1355.36 Withholding Federal funds due to failure to achieve substantial conformity or failure to successfully complete a program improvement plan.

(a) *For the purposes of this section:*

(1) The term "title IV-B funds" refers to the title IV-E agency's combined allocation of title IV-B subpart 1 and subpart 2 funds; and

(2) The term "title IV-E funds" refers to the title IV-E agency's reimbursement for administrative costs for the foster care program under title IV-E.

(b) *Determination of the amount of Federal funds to be withheld.* ACF will determine the amount of title IV-B and

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IV-E funds to be withheld due to a finding that the title IV-E agency is not operating in substantial conformity, as follows:

(1) A title IV-E agency will have the opportunity to develop and complete a program improvement plan prior to any withholding of funds.

(2) Title IV-B and IV-E funds will not be withheld from a title IV-E agency if the determination of nonconformity was caused by the title IV-E agency's correct use of formal written statements of Federal law or policy provided the title IV-E agency by DHHS.

(3) A portion of the title IV-E agency's title IV-B and IV-E funds will be withheld by ACF for the year under review and for each succeeding year until the title IV-E agency either successfully completes a program improvement plan or is found to be operating in substantial conformity.

(4) The amount of title IV-B and title IV-E funds subject to withholding due to a determination that a title IV-E agency is not operating in substantial conformity is based on a pool of funds defined as follows:

(i) The title IV-E agency's allotment of title IV-B funds for each of the years to which the withholding applies; and

(ii) An amount equivalent to 10 percent of the title IV-E agency's Federal claims for title IV-E foster care administrative costs for each of the years to which withholding applies;

(5) The amount of funds to be withheld from the pool in paragraph (b)(4) of this section will be computed as follows:

(i) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven outcomes listed in §1355.34(b)(1) of this part that is determined not to be in substantial conformity; and

(ii) Except as provided for in paragraphs (b)(7) and (b)(8) of this section, an amount equivalent to one percent of the funds described in paragraph (b)(4) of this section for each of the years to which withholding applies will be withheld for each of the seven systemic factors listed in §1355.34(c) of this part

that is determined not to be in substantial conformity.

(6) Except as provided for in paragraphs (b)(7), (b)(8), and (e)(4) of this section, in the event the title IV-E agency is determined to be in nonconformity on each of the seven outcomes and each of the seven systemic factors subject to review, the maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply is 14 percent per year of the funds described in paragraph (b)(4) of this section for each year.

(7) Title IV-E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the second full review following the first full review in which a determination of nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to two percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply on the second full review following the first full review in which the determination of nonconformity was made is 28 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(8) Title IV-E agencies determined not to be in substantial conformity that fail to correct the areas of nonconformity through the successful completion of a program improvement plan, and are determined to be in nonconformity on the third and any subsequent full reviews following the first full review in which a determination of

nonconformity was made will be subject to increased withholding as follows:

(i) The amount of funds described in paragraph (b)(5) of this section will increase to three percent for each of the seven outcomes and each of the seven systemic factors that continues in nonconformity since the immediately preceding child and family services review;

(ii) The increased withholding of funds for areas of continuous nonconformity is subject to the provisions of paragraphs (c), (d), and (e) of this section;

(iii) The maximum amount of title IV-B and title IV-E funds to be withheld due to the title IV-E agency's failure to comply on the third and any subsequent full reviews following the first full review in which the determination of nonconformity was made is 42 percent of the funds described in paragraph (b)(4) of this section for each year to which the withholding of funds applies.

(c) *Suspension of withholding.* (1) For title IV-E agencies determined not to be operating in substantial conformity, ACF will suspend the withholding of the title IV-E agencies' title IV-B and title IV-E funds during the time that a program improvement plan is in effect, provided that:

(i) The program improvement plan conforms to the provisions of § 1355.35 of this part; and

(ii) The title IV-E agency is actively implementing the provisions of the program improvement plan.

(2) Suspension of the withholding of funds is limited to three years following each review, or the amount of time approved for implementation of the program improvement plan, whichever is less.

(d) *Terminating the withholding of funds.* For title IV-E agencies determined not to be in substantial conformity, ACF will terminate the withholding of the title IV-E agency's title IV-B and title IV-E funds related to the nonconformity upon determination by the title IV-E agency and ACF that the title IV-E agency has achieved substantial conformity or has successfully completed a program improvement plan. ACF will rescind the withholding

of the portion of title IV-B and title IV-E funds related to specific goals or action steps as of the date at the end of the quarter in which they were determined to have been achieved.

(e) *Withholding of funds.* (1) Title IV-E agencies determined not to be in substantial conformity that fail to successfully complete a program improvement plan will be notified by ACF of this final determination of nonconformity in writing within 10 business days after the relevant completion date specified in the plan, and advised of the amount of title IV-B and title IV-E funds which are to be withheld.

(2) Title IV-B and title IV-E funds will be withheld based on the following:

(i) If the title IV-E agency fails to submit status reports in accordance with § 1355.35(d)(4), or if such reports indicate that the title IV-E agency is not making satisfactory progress toward achieving goals or actions steps, funds will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the specified completion date for the affected goal or action step.

(ii) Funds related to goals and action steps that have not been achieved by the specified completion date will be withheld at that time for a period beginning October 1 of the fiscal year for which the determination of nonconformity was made and ending on the completion date of the affected goal or action step; and

(iii) The withholding of funds commensurate with the level of nonconformity at the end of the program improvement plan will begin at the latest completion date specified in the program improvement plan and will continue until a subsequent full review determines the title IV-E agency to be in substantial conformity or the title IV-E agency successfully completes a program improvement plan developed as a result of that subsequent full review.

(3) When the date the title IV-E agency is determined to be in substantial conformity or to have successfully completed a program improvement plan falls within a specific quarter, the amount of funds to be withheld will be computed to the end of that quarter.

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(4) A title IV–E agency that refuses to participate in the development or implementation of a program improvement plan, as required by ACF, will be subject to the maximum increased withholding of 42 percent of its title IV–B and title IV–E funds, as described in paragraph (b)(8) of this section, for each year or portion thereof to which the withholding of funds applies.

(5) The title IV–E agency will be liable for interest on the amount of funds withheld by the Department, in accordance with the provisions of 45 CFR 30.18.

[65 FR 4081, Jan. 25, 2000, as amended at 66 FR 58675, Nov. 23, 2001; 77 FR 930, Jan. 6, 2012]

§ 1355.37 Opportunity for public inspection of review reports and materials.

The title IV–E agency must make available for public review and inspection all statewide or Tribal assessments (§1355.33(b)), report of findings (§1355.33(e)), and program improvement plans (§1355.35(a)) developed as a result of a full or partial child and family services review.

[77 FR 931, Jan. 6, 2012]

§ 1355.38 Enforcement of section 471(a)(18) of the Act regarding the removal of barriers to interethnic adoption.

(a) *Determination that a violation has occurred in the absence of a court finding.* (1) If ACF becomes aware of a possible section 471(a)(18) violation, whether in the course of a child and family services review, the filing of a complaint, or through some other mechanism, it will refer such a case to the Department's Office for Civil Rights (OCR) for investigation.

(2) Based on the findings of the OCR investigation, ACF will determine if a violation of section 471(a)(18) has occurred. A section 471(a)(18) violation occurs if a title IV–E agency or an entity in the State/Tribe:

(i) Has denied to any person the opportunity to become an adoptive or foster parent on the basis of the race, color, or national origin of the person, or of the child, involved;

(ii) Has delayed or denied the placement of a child for adoption or into foster care on the basis of the race, color,

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or national origin of the adoptive or foster parent, or the child involved; or,

(iii) With respect to a title IV–E agency, maintains any statute, regulation, policy, procedure, or practice that on its face, is a violation as defined in paragraphs (a)(2)(i) and (2)(ii) of this section.

(3) ACF will provide the title IV–E agency or entity with written notification of its determination.

(4) If there has been no violation, there will be no further action. If ACF determines that there has been a violation of section 471(a)(18), it will take enforcement action as described in this section.

(5) Compliance with the Indian Child Welfare Act of 1978 (Pub. L. 95–608) does not constitute a violation of section 471(a)(18).

(b) *Corrective action and penalties for violations with respect to a person or based on a court finding.* (1) A title IV–E agency or entity found to be in violation of section 471(a)(18) of the Act with respect to a person, as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, will be penalized in accordance with paragraph (g)(2) of this section. A title IV–E agency or entity determined to be in violation of section 471(a)(18) of the Act as a result of a court finding will be penalized in accordance with paragraph (g)(4) of this section. The title IV–E agency may develop, obtain approval of, and implement a plan of corrective action any time after it receives written notification from ACF that it is in violation of section 471(a)(18) of the Act.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV–E agency must revise and resubmit the plan for approval until it has an approved plan.

(4) A title IV–E agency or entity found to be in violation of section 471(a)(18) of the Act by a court must notify ACF within 30 days from the date of entry of the final judgment once all appeals have been exhausted, declined, or the appeal period has expired.

(c) *Corrective action for violations resulting from a title IV–E agency's statute,*

regulation, policy, procedure, or practice.

(1) A title IV–E agency found to have committed a violation of the type described in paragraph (a)(2)(iii) of this section must develop and submit a corrective action plan within 30 days of receiving written notification from ACF that it is in violation of section 471(a)(18). Once the plan is approved the title IV–E agency will have to complete the corrective action and come into compliance. If the title IV–E agency fails to complete the corrective action plan within six months and come into compliance, a penalty will be imposed in accordance with paragraph (g)(3) of this section.

(2) Corrective action plans are subject to ACF approval.

(3) If the corrective action plan does not meet the provisions of paragraph (d) of this section, the title IV–E agency must revise and resubmit the plan within 30 days from the date it receives a written notice from ACF that the plan has not been approved. If the title IV–E agency does not submit a revised corrective action plan according to the provisions of paragraph (d) of this section, withholding of funds pursuant to the provisions of paragraph (g) of this section will apply.

(d) *Contents of a corrective action plan.* A corrective action plan must:

(1) Identify the issues to be addressed;

(2) Set forth the steps for taking corrective action;

(3) Identify any technical assistance needs and Federal and non-Federal sources of technical assistance which will be used to complete the action steps; and,

(4) Specify the completion date. This date will be no later than 6 months from the date ACF approves the corrective action plan.

(e) *Evaluation of corrective action plan.* ACF will evaluate corrective action plans and notify the title IV–E agency (in writing) of its success or failure to complete the plan within 30 calendar days. If the title IV–E agency has failed to complete the corrective action plan, ACF will calculate the amount of reduction in the title IV–E agency’s title IV–E payment and include this information in the written notification of failure to complete the plan.

(f) *Funds to be withheld.* The term “title IV–E funds” refers to the amount of Federal funds advanced or paid to the title IV–E agency for allowable costs incurred by a title IV–E agency for: foster care maintenance payments, adoption assistance payments, administrative costs, and training costs under title IV–E and includes the title IV–E agency’s allotment for the Chafee Foster Care Independence Program under section 477 of the Act.

(g) *Reduction of title IV–E funds.* (1) Title IV–E funds shall be reduced in specified amounts in accordance with paragraph (h) of this section under the following circumstances:

(i) A determination that a title IV–E agency or entity is in violation of section 471(a)(18) of the Act with respect to a person as described in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, or:

(ii) After a title IV–E agency’s failure to implement and complete a corrective action plan and come into compliance as described in paragraph (c) of this section.

(2) Once ACF notifies a title IV–E agency (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the title IV–E agency’s title IV–E funds will be reduced for the fiscal quarter in which the title IV–E agency received written notification and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is earlier. Once ACF notifies an entity (in writing) that it has committed a section 471(a)(18) violation with respect to a person, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the entity is notified of the violation.

(3) For title IV–E agencies that fail to complete a corrective action plan within 6 months, title IV–E funds will be reduced by ACF for the fiscal quarter in which the title IV–E agency received notification of its violation. The reduction will continue for each succeeding quarter within that fiscal year or until the title IV–E agency completes the corrective action plan and comes into compliance, whichever is earlier.

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(4) If, as a result of a court finding, a title IV–E agency or entity is determined to be in violation of section 471(a)(18) of the Act, ACF will assess a penalty without further investigation. Once the title IV–E agency is notified (in writing) of the violation, its title IV–E funds will be reduced for the fiscal quarter in which the court finding was made and for each succeeding quarter within that fiscal year or until the title IV–E agency completes a corrective action plan and comes into compliance, whichever is sooner. Once an entity is notified (in writing) of the violation, the entity must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency during the quarter in which the court finding was made.

(5) The maximum number of quarters that a title IV–E agency will have its title IV–E funds reduced due to a finding of a title IV–E agency’s failure to conform to section 471(a)(18) of the Act is limited to the number of quarters within the fiscal year in which a determination of nonconformity was made. However, an uncorrected violation may result in a subsequent review, another finding, and additional penalties.

(6) No penalty will be imposed for a court finding of a violation of section 471(a)(18) until the judgement is final and all appeals have been exhausted, declined, or the appeal period has expired.

(h) *Determination of the amount of reduction of Federal funds.* ACF will determine the reduction in title IV–E funds due to a section 471(a)(18) violation in accordance with section 474(d)(1) and (2) of the Act.

(1) Title IV–E agencies that violate section 471(a)(18) with respect to a person or fail to implement or complete a corrective action plan as described in paragraph (c) of this section will be subject to a penalty. The penalty structure will follow section 474(d)(1) of the Act. Penalties will be levied for the quarter of the fiscal year in which the title IV–E agency is notified of its section 471(a)(18) violation, and for each succeeding quarter within that fiscal year until the title IV–E agency comes into compliance with section 471(a)(18). The reduction in title IV–E funds will be computed as follows:

(i) 2 percent of the title IV–E agency’s title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the first finding of noncompliance in that fiscal year;

(ii) 3 percent of the title IV–E agency’s title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the second finding of noncompliance in that fiscal year;

(iii) 5 percent of the title IV–E agency’s title IV–E funds for the fiscal year quarter, as defined in paragraph (f) of this section, for the third or subsequent finding of noncompliance in that fiscal year.

(2) Any entity (other than the title IV–E agency) which violates section 471(a)(18) of the Act during a fiscal quarter must remit to the Secretary all title IV–E funds paid to it by the title IV–E agency in accordance with the procedures in paragraphs (g)(2) or (g)(4) of this section.

(3) No fiscal year payment to a title IV–E agency will be reduced by more than 5 percent of its title IV–E funds, as defined in paragraph (f) of this section, where the title IV–E agency has been determined to be out of compliance with section 471(a)(18) of the Act.

(4) The title IV–E agency or an entity, as applicable, will be liable for interest on the amount of funds reduced by the Department, in accordance with the provisions of 45 CFR 30.18.

(This requirement has been approved by the Office of Management and Budget under OMB Control Number 0970–0214. In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.)

[65 FR 4082, Jan. 25, 2000, as amended at 66 FR 58676, Nov. 23, 2001; 77 FR 931, Jan. 6, 2012]

§ 1355.39 Administrative and judicial review.

A title IV–E agency determined not to be in substantial conformity with titles IV–B and IV–E plan requirements, or a title IV–E agency or an entity in violation of section 471(a)(18) of the Act:

(a) May appeal, pursuant to 45 CFR part 16, the final determination and

any subsequent withholding of, or reduction in, funds to the HHS Departmental Appeals Board within 60 days after receipt of a notice of nonconformity described in §1355.36(e)(1) of this part, or receipt of a notice of non-compliance by ACF as described in §1355.38(a)(3) of this part; and

(b) Will have the opportunity to obtain judicial review of an adverse decision of the Departmental Appeals Board within 60 days after the title IV-E agency or entity receives notice of the decision by the Board. Appeals of adverse Department Appeals Board decisions must be made to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(c) The procedure described in paragraphs (a) and (b) of this section will not apply to a finding that a title IV-E agency or an entity has been determined to be in violation of section 471(a)(18) which is based on a judicial decision.

[65 FR 4083, Jan. 25, 2000, as amended at 77 FR 932, Jan. 6, 2012]

§ 1355.40 [Reserved]

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

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

(b) An agency described in paragraph (a) of this section must report information on the characteristics and experiences of a child in the reporting populations described in §1355.42. The title IV-E agency must submit the information collected to ACF on a semi-annual basis in an out-of-home care data file and adoption assistance data file as required in §1355.43, pertaining to information described in §§1355.44 and 1355.45 and in a format according to ACF's specifications.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28424, May 12, 2020]

§ 1355.42 Reporting populations.

(a) *Out-of-home care reporting population.* (1) A title IV-E agency must re-

port a child of any age who is in out-of-home care for more than 24 hours. The out-of-home care reporting population includes a child in the following situations:

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

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

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

(2) Once a child enters the out-of-home care reporting population, the child remains in the out-of-home care reporting population through the end of the report period in which the title IV-E agency's placement and care responsibility ends, or a child's title IV-E foster care maintenance payment pursuant to a title IV-E agreement per section 472(a)(2) of the Act ends, regardless of any subsequent living arrangement.

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

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

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

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

[81 FR 90569, Dec. 14, 2016]

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§ 1355.43 Data reporting requirements.

(a) *Report periods and deadlines.* There are two six-month report periods based on the Federal fiscal year: October 1 to March 31 and April 1 to September 30. The title IV–E agency must submit the out-of-home care and adoption assistance data files to ACF within 45 days of the end of the report period (*i.e.*, by May 15 and November 14). If the reporting deadline falls on a weekend, the title IV–E agency has through the end of the following Monday to submit the data file.

(b) *Out-of-home care data file.* A title IV–E agency must report the information required in §1355.44 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV–E agency must report the most recent information for the applicable data elements in §1355.44(a) and (b).

(2) Except as provided in paragraph (b)(3) of this section, the title IV–E agency must report the most recent information and all historical information for the applicable data elements described in §1355.44(c) through (h).

(3) For a child who had an out-of-home care episode(s) as defined in §1355.42(a) prior to October 1, 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.

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

(d) *Missing information.* If the title IV–E agency fails to collect the information for a data element, the title IV–E agency must report the element as blank or otherwise missing. The title IV–E agency is not permitted to default or map missing information that was not collected to a valid response option.

(e) *Electronic submission.* The title IV–E agency must submit the required data files electronically and in a format according to ACF’s specifications.

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(f) *Record retention.* The title IV–E agency must retain all records necessary to comply with the data requirements in §§1355.41 through 1355.45. The title IV–E agency’s retention of such records is not limited to the requirements of 45 CFR 92.42(b) and (c).

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28424, May 12, 2020]

§ 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, re-

petitive, 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 anomaly 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 of lifelong or extended duration and are individually planned and coordinated. If a child is given the diagnosis of "developmental disability," do not indicate the individual conditions that form the basis of this diagnosis separately in other data elements.

(xi) *Other diagnosed condition.* The child has, or had previously, a diagnosed condition or other health impairment other than those described in paragraphs (b)(10)(i) through (x) of this section, which requires special medical care, such as asthma, diabetes, chronic illnesses, a diagnosis as HIV positive or AIDS, epilepsy, traumatic brain injury, other neurological disorders, speech/language impairment, learning disability, or substance use issues.

(11) *School enrollment.* Indicate whether the child is a full-time student at, and enrolled in (or in the process of enrolling in), "elementary" or "secondary" education, or is a full or part-time student at and enrolled in 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)(i) 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 care-giving 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 re-

sponse 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.

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(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

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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 per-

manency 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.”

[85 FR 28424, May 12, 2020]

§ 1355.45 Adoption and guardianship assistance data file elements.

A title IV–E agency must report the following information for each child in

the adoption and guardianship assistance reporting population, if applicable based on § 1355.42(b).

(a) *General information*—(1) *Title IV-E agency*. Indicate the title IV-E agency responsible for submitting the AFCARS data to ACF per requirements issued by ACF.

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

(3) *Child record number*. The child record number is the encrypted, unique person identification number. The record number must be encrypted in accordance with ACF standards. Indicate the record number for the child.

(b) *Child demographics*—(1) *Child's date of birth*. Indicate the month, day and year of the child's birth.

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

(3) *Child's race*. In general, a child's race is determined by the child or the child's parent(s) or legal guardian(s). Indicate whether each race category listed in the data elements described in paragraphs (b)(2)(i) through (viii) of this section applies with a "yes" or "no."

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

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

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

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

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

(vi) *Race—Unknown*. The child or parent or legal guardian does not know the race, or at least one race of the child. 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 parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven."

(viii) *Race—Declined*. The child or parent or legal guardian has declined to identify a race.

(4) *Hispanic or Latino ethnicity*. In general, a child's ethnicity is determined by the child or the child's parent(s) or legal guardian(s). A child is of Hispanic or Latino ethnicity if the child is a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race. Indicate whether this category applies with a "yes" or "no." If the child or the child's parent or legal guardian does not know or cannot communicate whether the child is of Hispanic or Latino ethnicity, indicate "unknown." If the child was abandoned indicate "abandoned." Abandoned means that the child was left alone or with others and the parent(s) or legal guardian(s)' identity is unknown and cannot be ascertained. This includes a child left at a "safe haven." If the child or the child's parent(s) or legal guardian(s) refuses to identify the child's ethnicity, indicate "declined."

(c) *Adoption and guardianship assistance agreement information*—(1) *Assistance agreement type*. Indicate whether the child is or was in a finalized adoption with a title IV-E adoption assistance agreement or in a legal guardianship with a title IV-E guardianship assistance agreement, pursuant to sections 473(a) and 473(d) of the Act, in effect during the report period. Indicate "title IV-E adoption assistance agreement" or "title IV-E guardianship assistance agreement," as appropriate.

(2) *Adoption or guardianship subsidy amount*. Indicate the per diem dollar amount of the financial subsidy paid to

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the adoptive parent(s) or legal guardian(s) on behalf of the child during the last month of the current report period, if any. The title IV–E agency must indicate “0” if a financial subsidy was not paid during the last month of the report period.

(d) *Adoption finalization or guardianship legalization date.* Indicate the month, day and year that the child’s adoption was finalized or the guardianship became legalized.

(e) *Agreement termination date.* If the title IV–E agency terminated the adoption assistance or guardianship assistance agreement or the agreement expired during the report period, indicate the month, day and year that the agreement terminated or expired; otherwise leave this data element blank.

(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.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28433, May 12, 2020]

§ 1355.46 Compliance.

(a) *Files subject to compliance.* ACF will evaluate the out-of-home care and adoption and guardianship assistance data files that a title IV–E agency submits to determine whether the data complies with the requirements of §1355.43 and the data file submission and data quality standards described in paragraphs (c) and (d) of this section. ACF will exempt records related to a child in either data file whose 18th birthday occurred in a prior report period and will exempt records relating to a child in the adoption and guardianship assistance data file who is in a title IV–E guardianship from a compliance determination as described in paragraph (e) of this section.

(b) *Errors.* ACF will utilize the error definitions in paragraphs (b)(1) through (5) of this section to assess a title IV–E agency’s out-of-home care and adoption and guardianship assistance data files. This assessment of errors will help ACF to determine if the title IV–E agency’s submitted data files meet the data file submission and data quality standards outlined in paragraphs (c) and (d) of this section. ACF will develop and issue error specifications.

(1) *Missing data.* Missing data refers to instances in which a data element has a blank or otherwise missing response, when such a response is not a valid option as described in §§1355.44 or 1355.45.

(2) *Invalid data.* Invalid data refers to instances in which a data element contains a value that is outside the parameters of acceptable responses or exceeds, either positively or negatively, the acceptable range of response options as described in §§1355.44 or 1355.45.

(3) *Internally inconsistent data.* Internally inconsistent data refers to instances in which a data element fails an internal consistency check designed to validate the logical relationship between data elements within each record. This assessment will identify all data elements involved in a particular check as in error.

(4) *Cross-file errors.* A cross-file error occurs when a cross-file check determines that a response option for a data element recurs across the records in either the out-of-home care data file or adoption and guardianship assistance data file beyond a specified acceptable threshold as specified per ACF.

(5) *Tardy transactions.* Tardy transactions are instances in which the removal transaction date or exit transaction date described in §1355.44(d)(2) and (g)(2) respectively, are entered into the title IV–E agency’s information system more than 30 days after the event.

(c) *Data file standards.* To be in compliance with the AFCARS requirements, the title IV–E agency must submit a data file in accordance with the data file standards described in paragraphs (c)(1) through (3) of this section.

(1) *Timely submission.* ACF must receive the data files on or before the reporting deadline described in §1355.43(a).

(2) *Proper format.* The data files must meet the technical standards issued by ACF for data file construction and transmission. In addition, each record subject to compliance standards within the data file must have the data elements described in §§1355.44(a) 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). ACF will not process a title IV–E agency’s data file that does not meet the proper format standard.

(d) *Data quality standards.* (1) To be in compliance with the AFCARS requirements, the title IV–E agency must submit a data file that has no more than 10 percent total of missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records. These standards are in addition to the formatting standards described in paragraph (c)(2) of this section.

(2) *Acceptable cross-file.* The data files must be free of cross-file errors that exceed the acceptable thresholds, as defined by ACF.

(e) *Compliance determination and corrected data.* (1) ACF will first determine whether the title IV–E agency’s out-of-home care data file and adoption and guardianship assistance data file meets the data file standards in paragraph (c) of this section. Compliance is determined separately for each data file.

(2) If each data file meets the data file standards, ACF will then determine whether each data file meets the data quality standards in paragraph (d) of this section. For every data element, we will divide the total number of applicable records in error (numerator) by the total number of applicable records (denominator), to determine whether the title IV–E agency has met the applicable data quality standards.

(3) In general, a title IV–E agency that has not met either the data file formatting standards or data quality standards must submit a corrected data file(s) no later than when data is due for the subsequent six month re-

port period (*i.e.*, by May 15 and November 14), as applicable. ACF will determine that the corrected data file(s) is in compliance if it meets the data file and data standards in paragraphs (c) and (d) of this section. Exception: If ACF determines initially that the title IV–E agency’s data file has not met the data quality standard related to tardy transactions, ACF will determine compliance with regard to the transaction dates only in the out-of-home care data file submitted for the subsequent report period.

(f) *Noncompliance.* If the title IV–E agency does not submit a corrected data file, or submits a corrected data file that fails to meet the compliance standards in paragraphs (c) and (d) of this section, ACF will notify the title IV–E agency of such and apply penalties as provided in §1355.47.

(g) *Other assessments.* ACF may use other monitoring tools or assessment procedures to determine whether the title IV–E agency is meeting all of the requirements of §§1355.41 through 1355.45.

[81 FR 90569, Dec. 14, 2016, as amended at 85 FR 28434, May 12, 2020]

§ 1355.47 Penalties.

(a) *Federal funds subject to a penalty.* The funds that are subject to a penalty are the title IV–E agency’s claims for title IV–E foster care administration and training for the quarter in which the title IV–E agency is required to submit the data files. For data files due on May 15, ACF will assess the penalty based on the title IV–E agency’s claims for the third quarter of the Federal fiscal year. For data files due on November 14, ACF will assess the penalty based on the title IV–E agency’s claims for the first quarter of the Federal fiscal year.

(b) *Penalty amounts.* ACF will assess penalties in the following amounts:

(1) *First six month period.* ACF will assess a penalty in the amount of one sixth of one percent ($\frac{1}{6}$ of 1%) of the funds described in paragraph (a) of this section for the first six month period in which the title IV–E agency’s submitted corrected data file does not comply with §1355.46.

(2) *Subsequent six month periods.* ACF will assess a penalty in the amount of

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one fourth of one percent ($\frac{1}{4}$ of 1%) of the funds described in paragraph (a) of this section for each subsequent six month period in which the title IV-E agency continues to be out of compliance.

(c) *Penalty reduction from grant.* ACF will offset the title IV-E agency's title IV-E foster care grant award in the amount of the penalty from the title IV-E agency's claims following the title IV-E agency notification of ACF's final determination of noncompliance.

(d) *Appeals.* The title IV-E agency may appeal ACF's final determination of noncompliance to the HHS Departmental Appeals Board pursuant to 45 CFR part 16.

[81 FR 90569, Dec. 14, 2016]

§ 1355.50 Purpose.

Sections 1355.50 through 1355.59 contain the requirements a title IV-E agency must meet to receive Federal financial participation authorized under sections 474(a)(3)(C) and (D), and 474(c) of the Act for the planning, design, development, installation, operation, and maintenance of a comprehensive child welfare information system.

[81 FR 35479, June 2, 2016]

§ 1355.51 Definitions applicable to Comprehensive Child Welfare Information Systems (CCWIS).

(a) The following terms as they appear in §§ 1355.50 through 1355.59 are defined as follows—

Approved activity means a project task that supports planning, designing, developing, installing, operating, or maintaining a CCWIS.

Automated function means a computerized process or collection of related processes to achieve a purpose or goal.

Child welfare contributing agency means a public or private entity that, by contract or agreement with the title IV-E agency, provides child abuse and neglect investigations, placement, or child welfare case management (or any combination of these) to children and families.

Data exchange means the automated, electronic submission or receipt of information, or both, between two automated data processing systems.

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Data exchange standard means the common data definitions, data formats, data values, and other guidelines that the state's or tribe's automated data processing systems follow when exchanging data.

New CCWIS project means a project to build an automated data processing system meeting all requirements in § 1355.52 and all automated functions meet the requirements in § 1355.53(a).

Non-S/TACWIS project means an active automated data processing system or project that, prior to the effective date of these regulations, ACF had not classified as a S/TACWIS and for which:

(i) ACF approved a development procurement; or

(ii) The applicable state or tribal agency approved a development procurement below the thresholds of 45 CFR 95.611(a); or

(iii) The operational automated data processing system provided the data for at least one AFCARS or NYTD file for submission to the federal system or systems designated by ACF to receive the report.

Notice of intent means a record from the title IV-E agency, signed by the governor, tribal leader, or designated state or tribal official and provided to ACF declaring that the title IV-E agency plans to build a CCWIS project that is below the APD approval thresholds of 45 CFR 95.611(a).

S/TACWIS project means an active automated data processing system or project that, prior to the effective date of these regulations, ACF classified as a S/TACWIS and for which:

(i) ACF approved a procurement to develop a S/TACWIS; or

(ii) The applicable state or tribal agency approved a development procurement for a S/TACWIS below the thresholds of 45 CFR 95.611(a).

Transition period means the 24 months after the effective date of these regulations.

(b) Other terms as they appear in §§ 1355.50 through 1355.59 are defined in 45 CFR 95.605.

[81 FR 35479, June 2, 2016]

§ 1355.52 CCWIS project requirements.

(a) *Efficient, economical, and effective requirement.* The title IV-E agency's

CCWIS must support the efficient, economical, and effective administration of the title IV-B and IV-E plans pursuant to section 474(a)(3)(C)(iv) of the Act by:

(1) Improving program management and administration by maintaining all program data required by federal, state or tribal law or policy;

(2) Appropriately applying information technology;

(3) Not requiring duplicative application system development or software maintenance; and

(4) Ensuring costs are reasonable, appropriate, and beneficial.

(b) *CCWIS data requirements.* The title IV-E agency's CCWIS must maintain:

(1) Title IV-B and title IV-E data that supports the efficient, effective, and economical administration of the programs including:

(i) Data required for ongoing federal child welfare reports;

(ii) Data required for title IV-E eligibility determinations, authorizations of services, and expenditures under IV-B and IV-E;

(iii) Data to support federal child welfare laws, regulations, and policies; and

(iv) Case management data to support federal audits, reviews, and other monitoring activities;

(2) Data to support state or tribal child welfare laws, regulations, policies, practices, reporting requirements, audits, program evaluations, and reviews;

(3) For states, data to support specific measures taken to comply with the requirements in section 422(b)(9) of the Act regarding the state's compliance with the Indian Child Welfare Act; and

(4) For each state, data for the National Child Abuse and Neglect Data System.

(c) *Reporting requirements.* The title IV-E agency's CCWIS must use the data described in paragraph (b) of this section to:

(1) Generate, or contribute to, required title IV-B or IV-E federal reports according to applicable formatting and submission requirements; and

(2) Generate, or contribute to, reports needed by state or tribal child

welfare laws, regulations, policies, practices, reporting requirements, audits, and reviews that support programs and services described in title IV-B and title IV-E.

(d) *Data quality requirements.* (1) The CCWIS data described in paragraph (b) of this section must:

(i) Meet the most rigorous of the applicable federal, and state or tribal standards for completeness, timeliness, and accuracy;

(ii) Be consistently and uniformly collected by CCWIS and, if applicable, child welfare contributing agency systems;

(iii) Be exchanged and maintained in accordance with confidentiality requirements in section 471(a)(8) of the Act, and 45 CFR 205.50, and 42 U.S.C. 5106a(b)(2)(B)(viii) through (x) of the Child Abuse Prevention and Treatment Act, if applicable, and other applicable federal and state or tribal laws;

(iv) Support child welfare policies, goals, and practices; and

(v) Not be created by default or inappropriately assigned.

(2) The title IV-E agency must implement and maintain automated functions in CCWIS to:

(i) Regularly monitor CCWIS data quality;

(ii) Alert staff to collect, update, correct, and enter CCWIS data;

(iii) Send electronic requests to child welfare contributing agency systems to submit current and historical CCWIS data to the CCWIS;

(iv) Prevent, to the extent practicable, the need to re-enter data already captured or exchanged with the CCWIS; and

(v) Generate reports of continuing or unresolved CCWIS data quality problems.

(3) The title IV-E agency must conduct biennial data quality reviews to:

(i) Determine if the title IV-E agency and, if applicable, child welfare contributing agencies, meet the requirements of paragraphs (b), (d)(1), and (d)(2) of this section; and

(ii) Confirm that the bi-directional data exchanges meet the requirements of paragraphs (e) and (f) of this section, and other applicable ACF regulations and policies.

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(4) The title IV–E agency must enhance CCWIS or the electronic bi-directional data exchanges or both to correct any findings from reviews described at paragraph (d)(3) of this section.

(5) The title IV–E agency must develop, implement, and maintain a CCWIS data quality plan in a manner prescribed by ACF and include it as part of Annual or Operational APDs submitted to ACF as required in 45 CFR 95.610. The CCWIS data quality plan must:

(i) Describe the comprehensive strategy to promote data quality including the steps to meet the requirements at paragraphs (d)(1) through (3) of this section; and

(ii) Report the status of compliance with paragraph (d)(1) of this section.

(e) *Bi-directional data exchanges.* (1) The CCWIS must support efficient, economical, and effective bi-directional data exchanges to exchange relevant data with:

(i) Systems generating the financial payments and claims for titles IV–B and IV–E per paragraph (b)(1)(ii) of this section, if applicable;

(ii) Systems operated by child welfare contributing agencies that are collecting or using data described in paragraph (b) of this section, if applicable;

(iii) Each system used to calculate one or more components of title IV–E eligibility determinations per paragraph (b)(1)(ii) of this section, if applicable; and

(iv) Each system external to CCWIS used by title IV–E agency staff to collect CCWIS data, if applicable.

(2) To the extent practicable, the title IV–E agency’s CCWIS must support one bi-directional data exchange to exchange relevant data, including data that may benefit IV–E agencies and data exchange partners in serving clients and improving outcomes, with each of the following state or tribal systems:

(i) Child abuse and neglect system(s);

(ii) System(s) operated under title IV–A of the Act;

(iii) Systems operated under title XIX of the Act including:

(A) Systems to determine Medicaid eligibility described in 42 CFR 433.111(b)(2)(ii)(A); and

(B) Medicaid Management Information Systems as defined at 42 CFR 433.111(b)(2)(ii)(B);

(iv) Systems operated under title IV–D of the Act;

(v) Systems operated by the court(s) of competent jurisdiction over title IV–E foster care, adoption, and guardianship programs;

(vi) Systems operated by the state or tribal education agency, or school districts, or both.

(f) *Data exchange standard requirements.* The title IV–E agency must use a single data exchange standard that describes data, definitions, formats, and other specifications upon implementing a CCWIS:

(1) For bi-directional data exchanges between CCWIS and each child welfare contributing agency; and

(2) For data exchanges with systems described under paragraph (e)(1)(iv) of this section.

(g) *Automated eligibility determination requirements.* (1) A state title IV–E agency must use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(2) A tribal title IV–E agency must, to the extent practicable, use the same automated function or the same group of automated functions for all title IV–E eligibility determinations.

(h) *Software provision requirement.* The title IV–E agency must provide a copy of the agency-owned software that is designed, developed, or installed with FFP and associated documentation to the designated federal repository within the Department upon request.

(i) *Submission requirements.* (1) Before claiming funding in accordance with a CCWIS cost allocation, a title IV–E agency must submit an APD or, if below the APD submission thresholds defined at 45 CFR 95.611, a Notice of Intent that includes:

(i) A description of how the CCWIS will meet the requirements in paragraphs (a) through (h) of this section and, if applicable § 1355.54;

(ii) A list of all automated functions included in the CCWIS; and

(iii) A notation of whether each automated function listed in paragraph (i)(1)(ii) of this section meets, or when

implemented will meet, the following requirements:

(A) The automated function supports at least one requirement of this section or, if applicable § 1355.54;

(B) The automated function is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function; and

(C) The automated function complies with the CCWIS design requirements described under § 1355.53(a), unless exempted in accordance with § 1355.53(b).

(2) Annual APD Updates and Operational APDs for CCWIS projects must include:

(i) An updated list of all automated functions included in the CCWIS;

(ii) A notation of whether each automated function listed in paragraph (i)(2)(i) of this section meets the requirements of paragraph (i)(1)(iii)(B) of this section; and

(iii) A description of changes to the scope or the design criteria described at § 1355.53(a) for any automated function listed in paragraph (i)(2)(i) of this section.

(j) *Other applicable requirements.* Regulations at 45 CFR 95.613 through 95.621 and 95.626 through 95.641 are applicable to all CCWIS projects below the APD submission thresholds at 45 CFR 95.611.

[81 FR 35479, June 3, 2016]

§ 1355.53 CCWIS design requirements.

(a) Except as exempted in paragraph (b) of this section, automated functions contained in a CCWIS must:

(1) Follow a modular design that includes the separation of business rules from core programming;

(2) Be documented using plain language;

(3) Adhere to a state, tribal, or industry defined standard that promotes efficient, economical, and effective development of automated functions and produces reliable systems; and

(4) Be capable of being shared, leveraged, and reused as a separate component within and among states and tribes.

(b) CCWIS automated functions may be exempt from one or more of the re-

quirements in paragraph (a) of this section if:

(1) The CCWIS project meets the requirements of § 1355.56(b) or (f)(1); or

(2) ACF approves, on a case-by-case basis, an alternative design proposed by a title IV–E agency that is determined by ACF to be more efficient, economical, and effective than what is found in paragraph (a) of this section.

[81 FR 35481, June 2, 2016]

§ 1355.54 CCWIS options.

If a project meets, or when completed will meet, the requirements of § 1355.52, then ACF may approve CCWIS funding described at § 1355.57 for other ACF-approved data exchanges or automated functions that are necessary to achieve title IV–E or IV–B programs goals.

[81 FR 35481, June 2, 2016]

§ 1355.55 Review and assessment of CCWIS projects.

ACF will review, assess, and inspect the planning, design, development, installation, operation, and maintenance of each CCWIS project on a continuing basis, in accordance with APD requirements in 45 CFR part 95, subpart F, to determine the extent to which the project meets the requirements in §§ 1355.52, 1355.53, 1355.56, and, if applicable, § 1355.54.

[81 FR 35481, June 2, 2016]

§ 1355.56 Requirements for S/TACWIS and non-S/TACWIS projects during and after the transition period.

(a) During the transition period a title IV–E agency with a S/TACWIS project may continue to claim title IV–E funding according to the cost allocation methodology approved by ACF for development or the operational cost allocation plan approved by the Department, or both.

(b) A S/TACWIS project must meet the submission requirements of § 1355.52(i)(1) during the transition period to qualify for the CCWIS cost allocation methodology described in § 1355.57(a) after the transition period.

(c) A title IV–E agency with a S/TACWIS may request approval to initiate a new CCWIS and qualify for the CCWIS cost allocation methodology described in § 1355.57(b) by meeting the

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submission requirements of § 1355.52(i)(1).

(d) A title IV–E agency that elects not to transition a S/TACWIS project to a CCWIS project must:

(1) Notify ACF in an APD or Notice of Intent submitted during the transition period of this election; and

(2) Continue to use the S/TACWIS through its life expectancy in accordance with 45 CFR 95.619.

(e) A title IV–E agency that elects not to transition its S/TACWIS project to a CCWIS and fails to meet the requirements of paragraph (d) of this section is subject to funding recoupment described under § 1355.58(d).

(f) A title IV–E agency with a non-S/TACWIS (as defined in § 1355.51) that elects to build a CCWIS or transition to a CCWIS must meet the submission requirements of § 1355.52(i)(1):

(1) During the transition period to qualify for a CCWIS cost allocation as described at § 1355.57(a); or

(2) At any time to request approval to initiate a new CCWIS and qualify for a CCWIS cost allocation as described at § 1355.57(b).

[81 FR 35481, June 2, 2016]

§ 1355.57 Cost allocation for CCWIS projects.

(a) *CCWIS cost allocation for projects transitioning to CCWIS.* (1) All automated functions developed after the transition period for projects meeting the requirements of § 1355.56(b) or § 1355.56(f)(1) must meet the CCWIS design requirements described under § 1355.53(a), unless exempted by § 1355.53(b)(2).

(2) The Department may approve the applicable CCWIS cost allocation for an automated function of a project transitioning to a CCWIS if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(b) *CCWIS cost allocation for new CCWIS projects.* (1) Unless exempted in

accordance with § 1355.53(b)(2), all automated functions of a new CCWIS project must meet the CCWIS design requirements described under § 1355.53(a).

(2) An automated function of a CCWIS project described in paragraph (b)(1) of this section may qualify for a CCWIS cost allocation if the automated function:

(i) Supports programs authorized under titles IV–B or IV–E, and at least one requirement of § 1355.52 or, if applicable § 1355.54; and

(ii) Is not duplicated within the CCWIS or systems supporting child welfare contributing agencies and is consistently used by all child welfare users responsible for the area supported by the automated function.

(c) *CCWIS cost allocation for approved activities.* The Department may approve a CCWIS cost allocation for an approved activity for a CCWIS project meeting the requirements of paragraph (a) or (b) of this section.

(d) *Project cost allocation.* A title IV–E agency must allocate project costs in accordance with applicable HHS regulations and other guidance.

(e) *CCWIS cost allocation.* (1) A title IV–E agency may allocate CCWIS development and operational costs to title IV–E for the share of approved activities and automated functions that:

(i) Are approved by the Department; (ii) Meet the requirements of paragraphs (a), (b), or (c) of this section; and

(iii) Benefit federal, state or tribal funded participants in programs and allowable activities described in title IV–E of the Act to the title IV–E program.

(2) A title IV–E agency may also allocate CCWIS development costs to title IV–E for the share of system approved activities and automated functions that meet requirements (e)(1)(i) and (ii) of this section and:

(i) Benefit title IV–B programs; or (ii) Benefit both title IV–E and child welfare related programs.

(f) *Non-CCWIS cost allocation.* Title IV–E costs not previously described in this section may be charged to title IV–E in accordance with § 1356.60(d).

[81 FR 35481, June 2, 2016]

§ 1355.58 Failure to meet the conditions of the approved APD.

(a) In accordance with 45 CFR 75.371 through 75.375 and 45 CFR 95.635, ACF may suspend title IV–B and title IV–E funding approved in the APD for a CCWIS if ACF determines that the title IV–E agency fails to comply with APD requirements in 45 CFR part 95, subpart F, or meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(b) Suspension of CCWIS funding begins on the date that ACF determines the title IV–E agency failed to:

(1) Comply with APD requirements in 45 CFR part 95, subpart F; or

(2) Meet the requirements at § 1355.52 or, if applicable, § 1355.53, § 1355.54, or § 1355.56 and has not corrected the failed requirements according to the time frame in the approved APD.

(c) The suspension will remain in effect until the date that ACF:

(1) Determines that the title IV–E agency complies with 45 CFR part 95, subpart F; or

(2) Approves a plan to change the application to meet the requirements at § 1355.52 and, if applicable, § 1355.53, § 1355.54, or § 1355.56.

(d) If ACF suspends an APD, or the title IV–E agency voluntarily ceases the design, development, installation, operation, or maintenance of an approved CCWIS, ACF may recoup all title IV–E funds claimed for the CCWIS project.

[81 FR 35482, June 2, 2016]

§ 1355.59 [Reserved]**PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E**

Sec.

1356.10 Scope.

1356.20 Title IV–E plan document and submission requirements.

1356.21 Foster care maintenance payments program implementation requirements.

1356.22 Implementation requirements for children voluntarily placed in foster care.

1356.30 Safety requirements for foster care and adoptive home providers.

1356.40 Adoption assistance program: Administrative requirements to implement section 473 of the Act.

1356.41 Nonrecurring expenses of adoption.

1356.50 Withholding of funds for non-compliance with the approved title IV–E plan.

1356.60 Fiscal requirements (title IV–E).

1356.65–1356.66 [Reserved]

1356.67 Procedures for the transfer of placement and care responsibility of a child from a State to a Tribal title IV–E agency or an Indian Tribe with a title IV–E agreement.

1356.68 Tribal title IV–E agency requirements for in-kind administrative and training contributions from third-party sources.

1356.69–1356.70 [Reserved]

1356.71 Federal review of the eligibility of children in foster care and the eligibility of foster care providers in title IV–E programs.

1356.80 Scope of the National Youth in Transition Database.

1356.81 Reporting population.

1356.82 Data collection requirements.

1356.83 Reporting requirements and data elements.

1356.84 Sampling.

1356.85 Compliance.

1356.86 Penalties for noncompliance.

APPENDIX A TO PART 1356—NYTD DATA ELEMENTS

APPENDIX B TO PART 1356—NYTD YOUTH OUTCOME SURVEY

APPENDIX C TO PART 1356—CALCULATING SAMPLE SIZE FOR NYTD FOLLOW-UP POPULATIONS

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

§ 1356.10 Scope.

This part applies to title IV–E agency programs for foster care maintenance payments, adoption assistance payments, related foster care and adoption administrative and training expenditures, and the independent living services program under title IV–E of the Act.

[77 FR 946, Jan. 6, 2012]

§ 1356.20 Title IV–E plan document and submission requirements.

(a) To be in compliance with the title IV–E plan requirements and to be eligible to receive Federal financial participation (FFP) in the costs of foster care maintenance payments and adoption assistance under this part, a title IV–E agency must have a plan approved by the Secretary that meets the requirements of this part, part 1355, section 471(a) of the Act and for Tribal title IV–E agencies, section 479B(c) of the