

**Donaldson Adoption Institute
Comments re: AFCARS February 9, 2015 NPRM to the
Administration for Children and Families,
Department of Health and Human Services**

The [Donaldson Adoption Institute](#) (DAI) respectfully submits the below recommendations in response to the February 9, 2015 Administration for Children and Families, Department of Health and Human Services' Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis and Reporting System (AFCARS). DAI appreciates HHS and ACF's commitment and efforts to ensure foster care, adoption and guardianship data collection is more thorough and robust and the opportunity for stakeholders to provide comments on the new proposed regulations.

DAI was established in 1996 to meet the need for an independent and objective adoption research and policy organization to address the rights and interests of first/birth parents, adopted children and adults, and adoptive parents. DAI's mission is to better the lives of everyone touched by adoption through sound research, education and advocacy that improves laws, policies and practices. Among DAI's top priorities are eliminating barriers to adoption for children in foster care who cannot be safely reunified with their biological families, as well as supporting family stability with post-adoption services.

As Congress and ACF recognize, AFCARS serves a vital purpose in achieving child welfare objectives to facilitate and promote permanency for children in temporary care, to analyze factors associated with stable and successful placements and identify challenges that must be addressed. Data collection and reporting promote transparency and accountability and allow research- and performance-based assessments. ACF's proposed rules advance these goals in a more meaningful way than the current system, and DAI offers suggestions below to enhance the system further. Unfortunately, even with improved AFCARS data collection, significant information will be missing that is critical to achieving the agency's goals of child/youth safety, permanency and wellbeing; examples include unregulated child custody transfers (referred to in recent media stories as "re-homing"), children/youth who are no longer in their permanent placement but who have not re-entered care, longitudinal child/youth outcomes, and qualitative data.

DAI supports ACF's requirements for states to report the most recent and historical information for data elements §1355.43(c) through (h) that "will allow ACF to develop a comprehensive picture of a child's full range of experience with entries, living arrangements and permanency plans while in the title IV-E agency's placement and care responsibility, as well as exits from the out-of-home care population." DAI also supports the addition of guardianship and sibling¹ data elements in the proposed regulations.

DAI offers general and section-specific recommendations below on issues on which it has expertise, specifically data collection on children who exit to adoption, as well as their adoptive parents, to allow improved understanding of factors related to adoptive parent recruitment and placement stability.²

¹ We also recommend the addition of sibling data reporting in one other section discussed below.

² These recommendations are not exhaustive and lack of discussion of particular NPRM elements does not imply endorsement as is.

General Recommendations

In order to fulfill its statutory responsibility to “assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies,”³ DAI urges ACF to:

- Make data element fields under the new regulations comparable to those in the prior system for data that states are required to collect under both systems.
- Ensure that state files on children currently in out-of-home care and in the current AFCARS data collection system are transferred to the new system as seamlessly and efficiently as possible.
- Ensure states use the same record number for each child’s lifecycle of out-of-home care entries and exits as required by §1355.43(a)(4) and §1355.44(a)(3).
- Define any new or significant terms that are not included in 45 CFR [§1355.20](#), such as disruption and dissolution, and ensure that they are referred to and used consistently throughout the regulations. As defined by the [Child Welfare Information Gateway](#):
 - “The term disruption is used to describe an adoption process that ends after the child is placed in an adoptive home and before the adoption is legally finalized, resulting in the child’s return to (or entry into) foster care or placement with new adoptive parents.”
 - “The term dissolution is generally used to describe an adoption in which the legal relationship between the adoptive parents and adoptive child is severed, either voluntarily or involuntarily, after the adoption is legally finalized. This results in the child’s return to (or entry into) foster care or placement with new adoptive parents.”
- Enable new AFACRS systems’ compatibility with relevant new title IVE adoption assistance and savings processes/systems that are the subjects of recently released HHS NPRMs, Title IV-E Adoption Assistance Program’s Suspension and Termination Policies and Title IV–E Programs Quarterly Financial Report.
- Inform the public about the national and state data elements, their definitions, and the methodology used to determine aggregate data that ACF will provide in AFCARS Reports, Child Welfare Outcomes Reports to Congress and any other analyses, as well as how data sets will be available to researchers.

§1355.41(b) Adoption and Guardianship Assistance Reporting Population

DAI urges the inclusion of children for whom there are finalized adoptions and guardianships without title IVE assistance agreements (i.e., with state agreements, or without federal or state agreements) in the Adoption and Guardianship Assistance Reporting Population by adding data elements to §1355.43(h) Exit to adoption and guardianship information regarding whether a child is under a title IVE, state or no agreement and §1355.44 Assistance agreement type to capture title IVE, state or no agreement for adoption and guardianship.

Proposed §1355.41(b) unnecessarily limits §1355.44 Adoption and Guardianship Assistance Data File Elements reporting requirements to “any child for whom there is a finalized adoption under a title IV-E adoption assistance agreement....” and “any child in a legal guardianship who is under a title IV-E guardianship assistance agreement.”

Therefore, children with state adoption and guardianship agreements, or neither state nor federal assistance agreements, will not be included in the total number of children receiving assistance, and information about subsidy amounts, inter-jurisdictional placements, dissolutions and agreement termination dates will not be collected. While there will be fewer state adoption assistance agreements as a result of the fully phased-in AFDC-adoption assistance eligibility de-link in 2018, the [Congressional Research Service](#) suggests that federal eligibility will not be comprehensive, but will apply “to nearly all children” the state deems “special needs.”⁴

³ 42 U.S.C. §679(c)(2).

⁴ CRS also explained that because the AFDC income standard is less than 50 percent of the poverty threshold in 75 percent of states, “this criteria may be expected to depress federal eligibility for as long as it continues to apply to some children” (i.e., through 2017).

Additionally, a significant minority of children -- 16 percent in 2011 -- was not considered “special needs.”⁵ One-tenth of the children adopted from care that year did not receive title IV-E or non-title IV-E subsidies. Moreover, guardianship assistance eligibility is tied to prior eligibility for title IV-E foster care maintenance payments and a significant proportion of children exiting to guardianship receive state-funded assistance.

HHS is within its authority to require states to report data on children with state agreements as 42 U.S.C. 679(c)(3)(D) mandates that AFCARS “provide comprehensive national information with respect to...the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided.” This mandate also supports the below recommended changes and additions to the proposed regulations.

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

- Amend §1355.42(b)(1) Child information to require states also to report all historical information, not just the most recent information, concerning prior adoptions and guardianships and child financial and medical assistance (§1355.43(b)(13)-(14), (16)).
- Clarify §1355.42(b)(2) language to explicitly require that title IVE agencies report all of the most recent and historical data elements for children in out-of-home care on and after the effective date of the rule (and that the exception requiring provision of just the three elements in (b)(3) applies only to children in out-of-home care’s previous out-of-home care episodes that occurred prior to the final rule’s effective date).

§1355.43 Out-of-Home Care Data File Elements

§1355.43(b) Child Information

- DAI is concerned that without standard definitions and diagnostic guidelines for the conditions listed in §1355.43(b)(7), children’s health, behavioral and/or mental health conditions may be reported incorrectly or not at all.
- Add a data element in §1355.43(b) for responses to a standard question on whether youth self-identify as lesbian, gay, bisexual, transgender, and questioning gender and sexual identity. A “no answer” option should also be included in recognition of the sensitivity of the issue. The information could help states support placements and services for these youth.
- In order to accurately capture Prior adoptions/guardianships (b)(13)-(14) and allow for longitudinal child records, ensure states use the same record number for each child’s lifecycle of out-of-home care entries and exits as required by §1355.43(a)(4) and §1355.44(a)(3) by providing practical solutions to enable states to determine if a child entering out-of-home care is returning to care from a finalized adoption or guardianship and match them with their prior out-of-home care record (e.g., facilitate continuity of tracking for interstate placements and preclude instances of parents not reporting re-entries).
- Add a Country of origin subsection after §1355.43(b)(13)(ii) Prior Adoption Type for children who were not born in the United States.
- Require states to determine if there is a match between children who re-enter care after a finalized adoption/guardianship (b)(13)-(14) and §1355.44(c)(5) and adoption or guardian assistance agreement §1355.44(c)(1) and if so, whether the agreement was terminated (c)(12) and the parents are still receiving subsidies, or whether the re-entry is a temporary displacement (as well as track whether displacements are a result of parents relinquishing custody to receive residential treatment center services for their children).
- It is unclear why State/Tribal adoption assistance and foster care are elements under §1355.43(b)(16) Child financial and medical assistance, but only federal, not state, assistance is under Living arrangement and provider information §1355.43(e)(23).

⁵ In other words, do not possess a specific factor or condition that makes it “reasonable to conclude” that the child will not be adopted without assistance.

§1355.43(e) Living Arrangement and Provider Information

- Add a data element in §1355.43(e) for foster parents' responses to a standard question on whether they self-identify as lesbian, gay, bisexual, transgender, and questioning gender and sexual identity. A "no answer" option should also be included in recognition of the sensitivity of the issue. The information could help states support recruitment efforts and services for foster parents and families.
- In §1355.43(e)(16), add aunt and uncle to child's relationship to the foster parents.

§1355.43(f) Permanency Planning

- To enable data collection to calculate disruptions of adoptive/guardianship placements, add disrupted adoptive placement and disrupted guardianship placement as options under §1355.43(f)(4) Reason for permanency plan change and a new subsection for date of permanency plan change.
- In the caseworker section, add after (f)(11) a list of services for states to indicate what types of services the caseworker provides to the child and foster parents to enable analysis of any links among those services, exit reasons and stability/instability.
- Create a subsection to capture whether the child/youth was consulted (when applicable) in developing her/his permanency plan.

§1355.43(h) Exit to Adoption and Guardianship Information

- In §1355.43(h)(2), add aunt and uncle to child's relationship to the adoptive parents or guardians.
- Add a data element in §1355.43(h) for adoptive parents and guardians' responses to a standard question on whether they self-identify as lesbian, gay, bisexual, transgender, and questioning gender and sexual identity. A "no answer" option should also be included in recognition of the sensitivity of the issue. The information could help states support recruitment efforts and services for adoptive parents, guardians and families.
- In §1355.43(h), add siblings who exit to adoption/guardianship with child to continue the sibling data collection required in §1355.43(e).

§1355.44(b) and (c) Title IV-E Child Demographics and Adoption and Guardianship Assistance Arrangement and Agreement Information

- Add a Country of origin subsection after §1355.44(b)(1)(ii) for children who were not born in the United States.
- As recommended above (page 2) add a section to §1355.44(c)(1) Assistance agreement type to capture title IVE, state or no agreement for adoption or guardianship, and account for any existing state agreements that change to title IVE assistance agreements as a result of expanded eligibility from the AFDC-adoption assistance de-link.
- Add a new subsection in §1355.44(c) to capture whether Medicaid is included in the agreement.
- Add a new subsection in §1355.44(c) to capture whether after finalization post-adoption/post-guardianship services (not including subsidy or Medicaid) are included in the agreement. Examples of such services are: information and referral, education programs or materials, support programs, therapeutic/counseling interventions, advocacy, respite, and residential treatment.
- Retain "special needs" status and primary factor in the determination to understand the proportion of children who are "special needs" and better understand how children and families could be supported. In 2011, CRS reported that the primary factor for a "special needs" determination was: membership in a sibling group: 28 percent; medical condition or physical, mental or social disability: 26 percent; age: 17 percent; racial or ethnic background: 11 percent; or "other": 18 percent.
- Add a new subsection under (c)(12) of reasons for agreement termination: parent's death, dissolution, not in caretaker's home.

Please feel free to contact me with any questions or requests for additional information. Thank you for your time and consideration.

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