



Center for American Progress



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Kathleen McHugh
U.S. Department of Health and Human Services
Administration for Children and Families
Director, Policy Division
330 C Street S.W.
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Re: Proposed Rulemaking amending the Adoption and Foster Care Analysis and Reporting System (AFCARS) System to remove questions relating to sexual orientation (Apr. 19, 2019) [RIN 0970-AC72]

Dear Ms. McHugh:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking (“NPRM”) at 84 FR 16572 that proposes to eliminate data collection on sexual orientation for foster children and youth, foster and adoptive parents, and guardians in the Adoption and Foster Care Analysis and Reporting System (“AFCARS”). **Family Equality Council, Lambda Legal, the National Center for Lesbian Rights, the Center for American Progress, and the National Center on Adoption and Permanency urge you to retain all of the data elements from the AFCARS 2016 Final Rule and to add in gender identity questions for foster youth, foster and adoptive parents, and guardians as outlined below.**

The collection of sexual orientation and gender identity (“SOGI”) data from foster youth, foster and adoptive parents, and guardians is critical to help identify trends in types of placements, rate of disruptions, and the number of foster placements within lesbian, gay, bisexual, transgender, queer and questioning (“LGBTQ”) families that will translate into permanent adoptive placements. The data will inform federal law, policy, and funding determinations. Eliminating this national dataset will undermine the ability to track demographic trends and identify gaps in services; place LGBTQ youth, foster and adoptive parents, and guardians at continued risk of harassment and discrimination; and result in additional costs to state and tribal child welfare agencies. We urge you to retain in AFCARS the questions on sexual orientation of foster youth, foster and adoptive parents, and guardians. We also urge you to add to AFCARS gender identity data elements for foster youth, parents, and guardians.

Family Equality Council connects, supports, and represents the three million LGBTQ parents and their six million children. We are a community of parents and children, grandparents and grandchildren that reaches across this country. For nearly 40 years we have raised our voices toward fairness for all families. Family Equality Council also supports LGBTQ youth, including foster youth, seeking family formation.

Lambda Legal is the oldest and largest national legal organization whose mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexual, transgender people, and everyone living with HIV through litigation, education, and public policy work. Lambda Legal's Youth in Out-of-Home Care Project specifically advocates for the rights of LGBTQ young people in foster care, juvenile justice settings, and systems of care for youth experiencing homelessness.

The National Center for Lesbian Rights ("NCLR") is a non-profit, public interest law firm that litigates precedent-setting cases at the trial and appellate court levels, advocates for equitable public policies affecting the LGBTQ community, provides free legal assistance to LGBTQ people and their legal advocates, and conducts community education on LGBTQ issues. NCLR's Youth Project, established in 1993, engages in litigation, public policy advocacy and system reform efforts to promote the health and well-being of LGBTQ youth in their families, schools and public systems of care.

The Center for American Progress ("CAP") is a leading independent, nonprofit, nonpartisan policy institute that is dedicated to improving the lives of all Americans. Since 2003, CAP has pursued that goal by developing bold, progressive, evidence-based policy ideas and advocating for those ideas. Our aim is not just to change the conversation, but to change the country.

The National Center on Adoption and Permanency ("NCAP") is a unique nonprofit organization that provides a broad range of information, resources, consultation, and multidisciplinary services relating to adoption, foster care, and child welfare. NCAP's mission is to achieve permanency for all children—in their families of origin when possible and in new ones when necessary—by advancing child welfare policy and practice in the U.S. from its current "child placement" model to a new paradigm with the goal of enabling children and families to succeed.

The Exclusion of Data Elements Related to Foster Youth's Sexual Orientation and Gender Identity Would Negatively Impact the Safety, Permanency, and Well-being of LGBTQ Children.

The lack of federal data related to the number and unique needs of LGBTQ youth in foster care is deeply troubling in light of the fact that LGBTQ youth are disproportionately represented in out-of-home care. This data is critical to understanding how LGBTQ youth experience the child welfare system and how states can best ensure their safety, permanency, and well-being.

In 2011, guidance from the U.S. Department of Health and Human Services' Administration on Children, Youth and Families ("ACF") confirmed and reiterated "the fundamental belief that every child and youth who is unable to live with his or her parents is entitled to safe, loving and affirming foster care placement, irrespective of the young person's sexual orientation, gender identity or gender expression."¹ ACF further stated that LGBTQ youth are overrepresented in foster care and in the population of youth experiencing homelessness.² A federally-funded study of Los Angeles county's foster care system in 2013 similarly found that nearly 20% of youth

¹ Administration for Children and Families, *ACYF-CB-IM-11-03, Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (April 6, 2011), <https://www.acf.hhs.gov/sites/default/files/cb/im1103.pdf> [hereinafter "ACYF-CB-IM-11-03"].

² *Id.*

identified as LGBTQ—almost twice the percentage of LGBTQ youth estimated to be living outside of foster care.³

In addition to showing that LGBTQ youth are disproportionately represented in the system, ACF has also found that LGBTQ youth are more than twice as likely to report being treated poorly by the foster care system.⁴ LGBTQ foster youth also suffer worse outcomes in foster care than straight and cisgender youth, including higher total numbers of placements, higher rates of placement in group homes, longer stays in residential care, greater rates of hospitalization for emotional reasons, higher rates of homelessness, and greater rates of justice-system involvement.⁵ These findings are consistent with the growing body of research demonstrating that LGBTQ youth suffer from a range of health and mental health disparities associated with family rejection, school bullying, and societal stigma and discrimination.⁶ In fact, family rejection is one of the most commonly cited reasons for LGBTQ youth entering out-of-home care.⁷

Placement instability and the associated disruption of education disproportionately experienced by LGBTQ foster youth compromises their wellbeing and educational outcomes. LGBTQ youth are more likely to experience multiple placements, which often requires them to switch schools; such school mobility is associated with significantly lower tests scores and higher frequency of repeating grades.⁸ Further, placement instability is associated with negative mental health effects: a 2007 study found that youth who experience placement instability are at a heightened risk (36% to 63% higher) of behavioral problems.⁹ Children who experience unstable placements are also at heightened risk of aging out of care without a permanent placement, which is associated with increased rates of homelessness and risky behaviors. A 2012 study found that placement instability is associated with increased rates of substance use in young adulthood, risky sexual practices and unplanned pregnancies, and experiences of intimate partner violence.¹⁰

³ Bianca D.M. Wilson et al., *New Report: Sexual and Gender Minority Youth in Foster Care*, WILLIAMS INST., at 6 (Aug. 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf [hereinafter “*Sexual and Gender Minority Youth*”].

⁴ *ACYF-CB-IM-11-03*, supra note 1 (12.9% of LGBTQ youth report being treated poorly compared to 5.8% of non-LGBTQ youth).

⁵ *Sexual and Gender Minority Youth*, at 6, 35-38; Bianca D. M. Wilson et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. OF YOUTH & ADOLESCENCE 1547 (2017), <https://link.springer.com/article/10.1007/s10964-017-0632-5>.

⁶ *Sexual and Gender Minority Youth*, at 11 (“LGB young adults who reported higher levels of family rejection during adolescence were 8.4 times more likely to report having attempted suicide, 5.9 times more likely to report high levels of depression, 3.4 times more likely to use illegal drugs, and 3.4 times more likely to report having engaged in unprotected sexual intercourse, compared to their peers who reported no to low levels of family rejection.”) (citing Caitlyn Ryan, David Huebner, Rafael M. Diaz, & Jorge Sanchez, *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, 123 PEDIATRICS 346 (2009)).

⁷ Shannan Wilber et al., *CWLA Best Practice Guidelines for Serving Youth in Out-of-Home Care*, CHILD WELFARE LEAGUE OF AMERICA, 4 (2006), <http://www.nclrights.org/wp-content/uploads/2013/07/bestpracticeslgbyouth.pdf>.

⁸ ADVOCATES FOR CHILDREN OF NEW YORK, *The Importance of School Stability for Youth in Foster Care* (Sept. 2009), https://www.advocatesforchildren.org/sites/default/files/library/school_stability_youth_fostercare.pdf?pt=1.

⁹ David M. Rubin et al., *The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care*, 119 PEDIATRICS 336 (Feb. 2007).

¹⁰ Tonia Scott, *Placement Instability and Risky Behaviors of Youth Aging Out of Foster Care*, 29 CHILD ADOLESC. SOC. WORK J. 61 (2012).

Ultimately, placement instability has been shown to be associated with an increased risk of experiencing homelessness after leaving the child welfare system.¹¹

In order to identify and address these risks which are disproportionately experienced by LGBTQ foster youth, the child welfare system must affirmatively collect information about the sexual orientation and gender identity of the children in its custody. Failure to understand these aspects of a child's identity can lead to poor, uninformed decisions that seriously undermine the child's stability, permanency, safety, and well-being. When agencies know the characteristics and experiences of youth in out-of-home care, they are able to analyze whether there are gaps in care and provide needed supports to groups experiencing disparities. Eliminating questions related to sexual orientation and gender identity in AFCARS keeps invisible the experiences of LGBTQ foster youth, parents, guardians, and families and leaves the Federal government blind to the unique needs of LGBTQ individuals and families. The absence of administrative data on the national level will continue to obscure the experiences of this vulnerable population and will make it impossible to track whether the system is making improvements to address almost twenty percent of youth in out-of-home care. More data about the experiences and needs of LGBTQ youth is needed, not less.

Having more longitudinal data will allow for a better understanding of LGBTQ youths' experiences in care and will inform evidence-based policies and practices. Thus we urge you to retain the sexual orientation data elements for foster youth.

The Educational Stability Data Element Should be Retained.

Further, the data element relating to educational stability should be retained as it is critical to measure stability for all foster children as well as to measure effective implementation of federal child welfare and education law. Without this data, the federal government will be unable to measure progress and trends or gauge effectiveness of policies and practices established under the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections) and Every Student Succeeds Act of 2015. By monitoring trends and analyzing longitudinal information about the school stability of children in care, agencies can better inform and improve their practices and policies, ensuring the educational and well-being needs of children in foster care are met. As such, we strongly support retaining the education stability-related data element included in the 2016 AFCARS Final Rule.

Little national data about the education of children in foster care currently exists, particularly about school stability. AFCARS is the most effective way to collect educational stability data because it allows for straightforward quantitative reporting of how often children change schools and the reason. No other vehicle is better suited to tracking this type of data on a national scale. Child welfare agencies are already required to keep school stability information as part of their case plans pursuant to Fostering Connections; capturing this data element via AFCARS will encourage uniformity across states, which will result in more accurate data. In addition, maintaining data elements regarding sexual orientation and gender identity for youth and educational stability will provide an opportunity to track progress and measure interventions to

¹¹ Amy Dworsky et al., *Homelessness During the Transition From Foster Care to Adulthood*, 103 AM. J. OF PUB. HEALTH 318, 320 (2013).

address educational disparities for LGBTQ youth who, as described above, have disproportionately negative educational experiences.

All Data Elements in the 2016 AFCARS Final Rule Relating to the Indian Child Welfare Act Should be Retained.

We oppose eliminating data elements relating to the Indian Child Welfare Act (“ICWA”) from the 2016 AFCARS Final Rule. Under the 2016 AFCARS Final Rule, states and tribal entities will only be required to report most of the ICWA-related data elements if ICWA applies in a child’s case, greatly reducing any burden associated with collecting and reporting these elements. Eliminating the collection of demographic information regarding American Indian and Alaska Native youth not only negatively impacts another vulnerable population with poor outcomes, but inhibits the ability to learn more about the specific experiences of LGBTQ-identified American Indian and Alaska Native youth.

The Date of Health Assessment and Timely Health Assessment Data Elements Should Be Retained.

We oppose the proposed removal of health assessment data elements, which note the date and timeliness of a child’s health assessment within AFCARS. This information is important for assessing access to care for a significant portion of the foster care population at the state and national level. This is an important aspect of measuring a state’s compliance with its Title IV-B Health Oversight and Coordination Plan. The inclusion of health assessment dates in the 2016 Final Rule provided a baseline understanding of the health of children entering the child welfare system. ACF needs this data to assess whether states are complying with important federal requirements under the Title IV-B program.

The inclusion of the date of a child’s health assessment is particularly important given the nationwide increase in parental substance use disorders, which has resulted in more children entering the foster care system with significant trauma. Children can manifest this trauma by developing various physical, developmental, educational, and mental health conditions. Timeliness of health assessment is critical to ensuring that child welfare agencies can appropriately identify health needs such as trauma-related behavioral challenges and developmental delay and provide access to appropriate services as indicated by the assessment. Given that Alaska Native and American Indian children as well as LGBTQ youth experience trauma at disproportionately high levels, the ability to cross reference health assessment data elements with identity-related demographic information is critical to ensuring well-being.

The Sexual Orientation and Gender Identity and Gender Expression Data Elements of Foster Youth can be Administered Safely and Effectively.

The NPRM justifies the erasure of sexual orientation data collection of LGBTQ youth based on an unsubstantiated conclusion—unsupported by empirical evidence—that the collected data would be inaccurate and that the data could lead to breaches of confidentiality because a case worker would be gathering the information.¹²

¹² Adoption and Foster Care Analysis and Reporting System, 84 Fed. Reg. 16572, 16576 (April 19, 2019) (to be codified at 45 C.F.R. pt. 1355), available at <https://www.federalregister.gov/documents/2019/04/19/2019-07827/adoption-and-foster-care-analysis-and-reporting-system> [hereinafter “2019 NPRM”].

The child welfare profession has acknowledged the importance of collecting sexual orientation and gender identity and expression (“SOGIE”) information about children, along with other critical information about the child’s circumstances, in order to tailor an individualized case plan. In 2013, the Center for the Study of Social Policy, Legal Services for Children, the National Center for Lesbian Rights, and Family Builders by Adoption issued a set of professional guidelines addressing all aspects of managing SOGIE information in child welfare systems.¹³ The guidelines address the need to collect SOGIE information in order to develop case plans and track outcomes in individual cases, and to engage in agency planning and assessment.

As a means of assessing risk and tracking disparities and outcomes, many public agencies already collect SOGIE information on youth without experiencing the speculative harms cited in the NPRM. Sexual orientation questions have been included on school-based surveys of adolescents for decades through versions of the current Youth Risk Behavior Surveillance Survey distributed by the Center for Disease Control, and SOGIE information is collected by many health care providers. Researchers have surveyed LGBTQ youth in the juvenile justice system, significantly increasing the profession’s understanding of the disproportionate numbers of LGBTQ youth in detention, as well as differences in offense and detention patterns.¹⁴ The regulations promulgated under the Prison Rape Elimination Act (“PREA”) require youth and adult correctional officers to collect SOGIE information as part of their initial screening process to identify residents who may be vulnerable to sexual assault.¹⁵ More and more state and local child welfare and juvenile justice agencies, as well as providers serving youth experiencing homelessness, have developed protocols to collect SOGIE data.

In addition, child welfare agencies routinely collect, record, and manage sensitive information. AFCARS already requires case workers to collect information that is highly personal, private, and confidential information, such as physical and sexual abuse backgrounds, histories of sexual exploitation, emotional and psychological abuse histories, and mental health diagnoses and medications. Child welfare personnel should, after ensuring protections against discrimination are in place and completing training, collect SOGIE data in the same manner as they collect other sensitive information. Federal law already protects the confidentiality of information contained in child welfare records.

Further, the rule already requires agencies to collect and report data on family conflict over the child’s SOGIE in the *Child and family circumstances at removal* data element. Thus, the rule effectively requires some inquiry into the SOGIE of children experiencing family conflict. Contrary to the rationale cited in the NPRM, collecting data about a child’s SOGIE from third parties is likely to lead to speculation rather than accurate data. As written, the NPRM would require caseworkers to make decisions about children based on their SOGIE without requiring training and education to ensure that these decisions are made by informed and culturally competent staff.

¹³ Shannan Wilber, *Guidelines for Managing Information Related to the Sexual Orientation and Gender Identity and Expression of Children in Child Welfare Systems*, FAMILY BUILDERS BY ADOPTION (2013), <http://cssr.berkeley.edu/cwscmsreports/documents/Information%20Guidelines%20P4.pdf>.

¹⁴ Angela Irvine, “We’ve Had Three of Them”: *Addressing the Invisibility of Lesbian, Gay, Bisexual and Gender Non-Conforming Youths in the Juvenile Justice System*, 19 COLUM. J. OF GENDER & L. 675 (2012).

¹⁵ National Standards to Prevent, Detect and Respond to Rape, 28 CFR § 115 (2012).

Most advocacy organizations, particularly those that commented on sexual orientation data, opposed streamlining the data and emphasized the important information that collection would yield.¹⁶ Both child welfare professionals and professionals who advocate for the rights and fair treatment of LGBTQ youth have acknowledged the importance of collecting SOGIE information about children in order to tailor individualized case plans. Indeed, the NPRM confirms that states agree that knowing this data about children and families they work with would help in assisting families, but falls back upon the position that there is no statutory requirement that it be reported to an administrative data set.¹⁷ However, the law clearly does not prohibit the collection of this data and, in fact, Congress enacted statutes requiring the Children's Bureau to add data elements to AFCARS and agencies have an obligation that the national data set be comprehensive.¹⁸ Given that an ACF-funded study found that almost twenty percent of youth in care are LGBTQ, it is clear that any AFCARS structure that does not require collection of SOGIE demographic information cannot be comprehensive in nature. While some states may express concern over collecting SOGIE-related information, the role of ACF should be to support and assist states rather than retain a data approach that has left the needs of LGBTQ youth largely unaddressed.

Agencies Should Retain the Sexual Orientation Question for Adoptive and Foster Parents and Guardians.

There is a chronic shortage of foster homes in the United States. Efforts to recruit and retain all qualified families—including LGBTQ families—should be a core part of an agency's recruitment strategy. The LGBTQ community is an important resource for children and youth needing both foster and permanent families. According to a 2007 study, gay, lesbian, and bisexual foster parents are raising six percent of foster children in the United States.¹⁹ And a 2018 study from the Williams Institute found that same-sex couples are seven times more likely to be raising foster and adoptive children than different-sex couples.²⁰ Yet fear of discrimination discourages many prospective LGBTQ parents from contacting foster and adoption agencies. The concern is well founded: in a 2011 national survey of 158 gay and lesbian adoptive parents, nearly half of respondents reported experiencing bias or discrimination from a child welfare worker or birth family member during the adoption process.²¹

Requiring sexual orientation data collection of foster and adoptive parents would encourage training that would lead LGBTQ parents to have more confidence that they would not be discriminated against and would lead to broader efforts to recruit and utilize LGBTQ families, ensuring a more thorough matching and placement process that would provide both a larger number of homes available to children and the greatest chance for success and permanency.

¹⁶ 2019 NPRM, 84 Fed. Reg., at 16577.

¹⁷ 2019 NPRM, 84 Fed. Reg., at 16574-75.

¹⁸ See *Fostering Connections to Success and Increasing Adoptions Act* (public Law 110-351, 2008) and the *Preventing Sex Trafficking and Strengthening Families Act* (Public Law 113-183, 2014); See 42 U.S.C.A. § 679(d) of the Social Security Act.

¹⁹ Gary J. Gates et al., *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, WILLIAMS INST. & URBAN INST. (Mar. 2007), <https://www.urban.org/sites/default/files/publication/46401/411437-Adoption-and-Foster-Care-by-Lesbian-and-Gay-Parents-in-the-United-States.PDF>

²⁰ Shoshana K. Goldberg & Kerith J. Conron, *How Many Same-Sex couples are Raising Children?*, WILLIAMS INST. (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>.

²¹ David M. Brodzinsky & Evan B. Donaldson, *Expanding Resources for Children III: Research-Based Best Practice in Adoption by Gays and Lesbians*, EVAN B. DONALDSON ADOPTION INSTITUTE (2011), https://www.adoptioninstitute.org/wp-content/uploads/2013/12/2011_10_Expanding_Resources_BestPractices.pdf.

Almost 40 years of research has demonstrated that children raised by same-sex couples are just as healthy and psychologically sound as children raised by heterosexual parents.²² Tracking the data of these prospective parents will promote routine discussions between prospective foster parents and Title IV-E agencies, normalize conversations about sexual orientation and signal increased acceptance of LGBTQ caregivers. A national data set capturing information about prospective LGBTQ parents would assist agencies in recruiting, training, and retaining an increased pool of foster care providers who can meet the needs of children in foster care.

The Children’s Bureau Should Add Gender Identity Questions for Foster Youth, Foster and Adoptive Parents, and Guardians.

A recent study found that “[y]outh who are transgender and/or gender-expansive often have a difficult time in child welfare systems; violence enacted upon people who are LGBTQ is often not because they are “out” as LGBTQ, but because service providers, caretakers, and peers are policing the youth’s gender behaviors.”²³ Further, the federally-funded study of Los Angeles county’s foster care demonstrated that transgender youth face even higher rates of over-representation in care compared to their presence in the general population than their lesbian, gay, and bisexual peers.²⁴ Because of the particular challenges faced by transgender foster youth, adding gender identity questions for both foster youth, foster and adoptive parents, and guardians will help states and tribes save costs by identifying affirming placements, reducing placement instability, and reducing over-representation.

Collecting gender identity data as well as sexual orientation data will help states and tribes develop streamlined comprehensive services with no gaps. Collecting gender identity data will be especially useful as new programs are developed with Family First funding. Title IV-E agencies will benefit from and save money by adding these data elements now in conjunction with the new Comprehensive Child Welfare Information System (“CCWIS”).

²² See Alicia Crowl et al., *A Meta-Analysis of Developmental Outcomes for Children of Same-Sex and Heterosexual Parents*, JOURNAL OF GLBT FAMILY STUDIES (Jan. 9, 2007), available at <https://www.tandfonline.com/doi/abs/10.1080/15504280802177615> (“extensive data available from more than 30 years of research reveal that children raised by gay and lesbian parents have demonstrated resilience with regard to social, psychological, and sexual health despite economic and legal disparities and social stigma.”); Ellen C. Perrin & Benjamin S. Siegel, *Promoting the Well-Being of Children Whose Parents are Gay or Lesbian*, AMERICAN ACADEMY OF PEDIATRICS (Apr. 2013), available at <https://pediatrics.aappublications.org/content/131/4/e1374>. (“Analyses revealed statistically significant effect size differences between groups for one of the six outcomes: parent-child relationship. Results confirm previous studies in this current body of literature, suggesting that children raised by same-sex parents fare equally well to children raised by heterosexual parents.”).

²³ Brandon Andrew Robinson, *Child Welfare Systems and LGBTQ Youth Homelessness: Gender Segregation, Instability, and Intersectionality*, 96 CHILD WELFARE 47, 31 (2018). Robinson further states that “mental health treatments and other behavior modifications may be used against youth who are transgender and gender-expansive as a way to try to modify their gender expression (Mallon & DeCrescenzo, 2006; Marksamer, 2011). Youth of color who are transgender and gender expansive face compounding stressors and experiences of discrimination within child welfare systems, whereby racism and racial profiling can shape how some youth’s behaviors, including their gender behaviors, are monitored and disciplined (Mallon & DeCrescenzo, 2006).” *Id.*

²⁴ *Sexual and Gender Minority Youth*, at 7.

The Data Elements in the Final Rule are Not Overly Burdensome and Have Already Been Streamlined through Numerous Comment Periods.

When the Department of Health and Human Services released the proposed rule in 2016, the rule went through an extensive notice and comment period, during which the burden of all data elements was discussed and addressed by scores of researchers, advocates, and child welfare and social service experts. The rule considered and dismissed the purported reasons given in the 2019 NPRM for eliminating this data.

The 2016 Final Rule already represents a "streamlining" of the original proposed rule (2015 NPRM and 2016 SNPRM) and the burdens identified by commenters were addressed in the Final Rule. In fact, states and tribal entities and other stakeholders have had numerous opportunities to provide public comments on AFCARS data elements including in 2003, 2008, 2010, 2015, and 2016. The Final Rule data elements reflect exhaustive public comments, are not overly burdensome, and will provide nationwide information regarding children and families whose existence and experiences have remained officially invisible. Any burden involved in implementing new data elements is outweighed by the benefit of more informed state and federal policy resulting in improved outcomes for some of the most marginalized children in the child welfare system. Reducing instability and achieving permanency for LGBTQ children through placement with affirming, supportive families and providing needed supportive services could also provide cost savings.

Because AFCARS has not been updated since 1993, data elements added in the 2016 Final Rule reflect significant advances in child welfare policy and practice and include statutorily required data from the Preventing Sex Trafficking and Strengthening Families Act (P.L. 110-351) and changes in foster care services and oversight in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), and the Child and Family Services Improvement and Innovation Act (P.L. 112-34). The burden on states of implementing new data element collection will be reduced with the current development of the new Comprehensive Child Welfare Information System ("CCWIS"), and many of the data elements will assist states in implementing the recently passed Family First Prevention Services Act ("Family First," P.L. 115-123).

Collecting the Data Elements in the Final Rule will Decrease Costs in the Child Welfare System by Improving Outcomes for LGBTQ Youth.

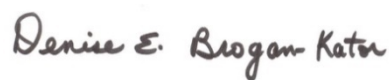
Failing to collect SOGIE information about youth in the foster care system will impose its own burdens, including substantial additional costs. The poor outcomes documented for LGBTQ foster youth, including a greater number of foster care placements, overrepresentation in congregate care, and hospitalization for emotional reasons, carry substantial costs to state and tribal child welfare systems. Identifying LGBQ foster youth through the voluntary sexual orientation question and implementing effective interventions to reduce instability; minimize costly stays in group homes, hospitals, and juvenile justice facilities; and improve permanency in family home settings would provide tremendous cost savings. Adding a gender identity question for foster youth would similarly provide cost savings.

For example, the average annual cost of foster care maintenance payments under Title IV-E and administrative costs per foster child in FY10 was \$25,782.²⁵ That same year, subsidies for adopted children and administrative costs for an adopted child averaged \$10,302 in costs.²⁶ Thus, identifying an affirming, supportive family for an LGBTQ child leading to adoption—which would be impossible to do if the child’s sexual orientation or gender identity was unknown—could lead to an annual cost savings of \$15,480 per child. A more recent Center for American Progress estimate using FY16 figures indicates that a child adopted from foster care costs a state only 25% per year as much as a child who remains in foster care, amounting to a \$29,000 cost savings per year.²⁷ Further, congregate care (in which LGBTQ foster youth are overrepresented) including group homes, residential treatment facilities, psychiatric institutions and emergency shelters costs state governments 3-5 times more than family foster care.²⁸ Based on average annual foster care maintenance payments per child of \$19,107 in FY2010,²⁹ placing an LGBTQ child with an affirming, supportive foster family rather having her remain in congregate care would save a minimum of \$38,214 per child per year.

Conclusion

For these reasons, we strongly oppose eliminating the collection of sexual orientation information for youth and adults, and we urge ACF and HHS to add gender identity data points for foster youth, foster and adoptive parents, and guardians. Without the data in the 2016 AFCARS Final Rule there will be no national data on LGBTQ foster youth or prospective parents to measure and improve outcomes for LGBTQ foster youth and families. Further, we urge ACF and HHS to retain all data elements from the 2016 AFCARS Final Rule on educational stability, health assessments, and the Indian Child Welfare Act. We welcome the opportunity to work with ACF to assist the implementation of these important reforms.

Sincerely,



Denise Brogan-Kator
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²⁵ Nicholas Zill, *Better Prospects, Lower Cost: The Case for Increasing Foster Care Adoption*, NATIONAL COUNCIL FOR ADOPTION (May 2011),

http://www.adoptioncouncil.org/images/stories/NCFA_ADOPTION_ADVOCATE_NO35.pdf.

²⁶ *Id.*

²⁷ Frank J. Bewkes et al., *Welcoming All Families: Discrimination Against LGBTQ Foster and Adoptive Parents Hurts Children*, CENTER FOR AMERICAN PROGRESS (Nov. 20, 2018),

<https://www.americanprogress.org/issues/lgbt/reports/2018/11/20/461199/welcoming-all-families/>.

²⁸ NAT'L CONFERENCE OF STATE LEGISLATURES, *Congregate Care, Residential Treatment and Group Home State Legislative Enactments 2009-2013*, February 2017 <http://www.ncsl.org/research/human-services/congregate-care-and-group-home-state-legislative-enactments.aspx>.

²⁹ Zill, *supra* note 25.



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