NEW YORK STATE | **Office of Children and Family Services**

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June 13, 2018

Kathleen McHugh, Director
Division of Policy – Children's Bureau
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street SW
Washington, D.C. 20024

Submitted via Federal eRulemaking Portal: https://www.regulations.gov

Re: March 15, 2018 Advance Notice of Proposed Rulemaking concerning the Adoption and Foster Care Analysis and Reporting System ("AFCARS") **FR Doc. 2018-05042**

Dear Ms. McHugh:

The New York State (NYS) Office of Children and Family Services (OCFS) respectfully submits these comments regarding the Advance Notice of Proposed Rulemaking (ANPRM) on the Adoption and Foster Care Analysis and Reporting System ("AFCARS") that was published in the Federal Register, 83 FR 11449 on Thursday, March 15, 2018.

OCFS commends the Administration for Children and Families (ACF) for identifying the December 2016 final AFCARS regulation as a potential area of regulatory reform under the President's February 24, 2017 Executive Order aimed at alleviating unnecessary regulatory burdens. OCFS responded to prior requests for comments about the AFCARS regulations and submitted comments in 2008, 2015 and 2016 that raised concerns about the costs, utility, and redundancy of many of the AFCARS data elements. We appreciate this opportunity to provide additional comments and specificity related to the costs and burden estimates of the December 2016 final AFCARS regulations (AFCARS 2.0) and strongly support ACF revisiting and revising the AFCARS rule.

Child welfare programs in New York State are generally state supervised and locally administered. OCFS is the state agency that oversees the local departments of social services' (LDSS) delivery of child welfare services. While OCFS shares ACF's commitment for a Federal reporting system

that contains comprehensive case level data on all children in foster care, we respectfully submit that the AFCARS 2.0 regulations impose significant burdens on OCFS, LDSS, and private not-for-profit voluntary agencies (VA) that administer child welfare programs. Many of the data elements that are required to be collected by AFCARS 2.0 involve overly intrusive data collection which is difficult to verify and of questionable value. The number of additional elements and significant revisions to existing requirements also create burdens on our caseworkers and likely diverts them from critically important contact with children and families. OCFS has already incurred significant costs and devoted considerable resources in time and workload to assess the system, reporting, and develop changes needed to comply with the AFCARS 2.0 requirements.

As part of these ongoing implementation activities, an OCFS team composed of personnel from administration, case management, policy, research, legal and information technology conducted gap analysis work and reviewed each AFCARS 2.0 requirement to assess the changes that are needed based on New York State's current data collection and reporting status. Based on this review, each AFCARS 2.0 item was classified into one of three groups: an existing item, an item requiring revision, or a new item. Existing items refer to those AFCARS 2.0 items for which New York State already has a data collection and reporting infrastructure in place and minimal or no modifications are needed to meet the new federal reporting requirements. Items requiring revision include those items for which New York State would need to substantially modify its data collection screens, rules and/or reporting programming to conform to AFCARS 2.0 requirements. New items indicate those AFCARS 2.0 requirements that are not currently captured within the New York State child welfare information system and therefore would require considerable time and expense to develop. To meet associated reporting requirements, OCFS must develop field guidance, policies and/or training, create new data collection and/or data exchange mechanisms, and develop extraction and reporting programming as well as additional mechanisms for data quality assurance.

As reflected in the summary charts below, in the foster care file, there are 151 new items and 68 items that will require substantial revisions to meet AFCARS 2.0 requirements in New York State. Of these, 72 items are related to the Indian Child Welfare Act (ICWA) and 16 are financial items. In the AFCARS 2.0 adoption file, there is 1 new item and 6 items that will require substantial revision. The new data collection requirements in AFCARS 2.0 impose significant burdens on New York State and we therefore support the rescission of the AFCARS 2.0 rule in its entirety. Besides the increased costs and burdens on caseworkers in collecting the AFCARS 2.0 data elements, many of the elements are redundant and unnecessary, and for some cases such as casework contacts, there are other mechanisms in place for Federal reporting.

AFCARS 2.0: Foster Care File	Total # of Items	# ICWA Items	# Financial Items
Existing Items (with minor modifications, if any)	51	0	0
Item Revision (practice/code and/or infrastructure exists but must be modified/expanded to meet need)	68	1	8
New Item (no current reporting practice or system infrastructure)	151	71	8
Total	270	72	16

AFCARS 2.0: Adoption File	Total # of Items
Existing Items (with minor modifications, if any)	4
Item Revision (practice/code and/or infrastructure exists but must be modified/expanded to meet need)	6
New Item (no current reporting practice or system infrastructure)	1
Total	11

In particular, we highlight the **ICWA, adoption and financial data elements in AFCARS 2.0** as areas where the reporting and collection requirements impose burdens and costs on New York State that far outweigh the benefits.   Together these additional data elements impose implementation costs associated with system upgrades and training as well as increased burdens on the workforce. Given these costs and burdens, we respectfully recommend the removal of all the ICWA-related data elements, the additional financial items, and the new adoption file format. We also request that consideration be given to the removal of the AFCARS 2.0 requirement that a longitudinal file be provided with each submission. OCFS was unable to evaluate the associated burdens and costs with providing a longitudinal file as the file requirements have not yet been released as of this time, but we project that complying with this requirement will impose substantial burdens on the state.

Our suggestion for the removal of all the ICWA-related items is based on our contention that the burdens outweigh the benefits. While the intention behind many of these ICWA-related items, such as reason to believe and active efforts questions, appears to be monitoring adherence to policies and good practice standards, we question the ability of the actual items to accomplish those goals in a useful way. For example, knowing that a worker inquired with the biological mother as to whether the child is an "Indian Child" as defined in ICWA, simply documents that

something was asked. It does not tell us when or how the question was asked, if an inquiry was attempted but could not be completed, if a response was received, or the nature of the response. As such, these items cannot replace a comprehensive case note, but rather increase the burdens imposed on caseworkers by requiring that both a progress note and checklist be completed. Similarly, building new system screens to capture active efforts in a quantitative format is time consuming and expensive and is relevant for only a small percentage of cases. Value-add is also an issue. Good case work practice requires that caseworkers monitor "progress and participation in services." It is hard to conceive of cases where this would not "apply," so we also question the necessity of these active efforts items. We further respectfully question the Department of Health and Human Services' (DHHS) authority and interest in collecting the ICWA-related data elements as they do not directly relate to statutory or regulatory standards set forth in CAPTA, Title IV-B or Title IV-E of the Social Security Act under the purview of DHHS and instead involve a statute and regulations that are under the direct purview and oversight of the Department of Interior.

In calculating the burden and cost estimates requested by this ANPRM, OCFS referred to its current AFCARS 2.0 implementation activities and prior system development efforts as well as experience in activities associated with AFCARS 1.0. OCFS identified the major steps and activities that must be undertaken for AFCARS 2.0 implementation and compliance, and divided our burden and cost analysis into two core phases. Phase one includes one-time costs, such as initial system development and training costs; phase two captures annual burden and cost estimates, including caseworker time spent on data collection, and on-going continuous quality improvement (CQI) and reporting activities. We estimated the total time burden by multiplying the number of staff involved, by the time per item, and the number of items. Fiscal burden was calculated by multiplying the total time burden by the estimated hourly wage. Given that the various process steps outlined in our burden model engage multiple types of workers, hourly wage is estimated for three district groups: OCFS central administrative staff (child welfare program administrators, policy, research, training and legal staff), case workers (field staff responsible for data collection and entry), and information technology staff (ITS) (staff responsible for business analysts, systems design, and report development).

As reflected in the summary chart below, the estimated hourly time burden for phase one is a total of 70,648 hours for the foster care file. The estimated time costs for the ICWA component is 24,063 hours and financial is 4,725 hours. The associated total time burden for the adoption file is 21,436 hours. The fiscal burden for phase one is estimated to be $13,665,184. For phase two, OCFS estimates the annual time burden to be 211,216 hours for the foster care file, 52,255 hours for ICWA, 11,459 hours for financial and 17,436 hours for the adoption file. The fiscal burden for phase two is estimated to be $11,736,744 annually.

New York State Burden Estimates for AFCARS 2.0 in Hours

	Foster Care File				Adoption	Total			
	ICWA	Financial	Other	Total	File	Burden (Foster	Cost per Hour		Total Burden Cost
Phase One: Initial Start-up/ System Review and Adaptation									
1. Initial Reivew (e.g., compare each 2.0 requirement to existing system, classify as existing, revision, or new)	144	32	364	540	22	562	$ 90	$	50,580
2. Gap Assessment (Program, ITS, Research, Policy, Counsel, Field)- identify potential locations for system change, formatting options,	2,296	448	3,720	6,464	176	6,640	$ 90	$	597,600
Research)- finalize screen location, detail system edits & restrictions, schedule	3,432	576	4,872	8,880	192	9,072	$ 90	$	816,480
4. Development (ITS- code changes)	1,724	352	2,908	4,984	144	5,128	$ 86	$	441,008
5. Test System Changes – ITS	2,280	320	2,776	5,376	80	5,456	$ 86	$	469,216
6. Development of Training/Guidance/Policy (Program, Policy, Counsel, Research)	864	192	1,572	2,628	84	2,712	$ 90	$	244,080
7. Worker initial training (2 staff per county, trainers, HO staff)	6,575	1,461	11,963	20,000	20,000	40,000	$ 71	$	2,840,000
8. CQI: Report development and monitoring (Data Warehouse Staff)	2,860	480	4,570	7,910	200	8,110	$ 86	$	697,460
9. CQI: Report training (CONX implementation and regional staff)	2,880	640	38,480	42,000	42,000	84,000	$ 86	$	7,224,000
10. Initial programming to process the file (Performance Analytics Staff)	1,008	224	1,834	3,066	98	3,164	$ 90	$	284,760
Total	**24,063**	**4,725**	**41,859**	**70,648**	**21,436**	**92,084**		$	**13,665,184**
Phase Two: Annual Tasks									
1. Searching data sources, gathering information and entering information	47,520	10,560	120,120	178,200	7,260	185,460	$ 52	$	9,643,920
2. Developing or modifying procedures and systems to collect, validate and verify and training and administrative tasks	3,243	721	6,613	10,576	10,088	20,664	$ 86	$	1,777,104
3. Data extraction and monitoring (Performance analytics staff)	1,492	178	1,749	3,420	88	3,508	$ 90	$	315,720
Total Annual	**52,255**	**11,459**	**130,066**	**193,780**	**17,436**	**211,216**		$	**11,736,744**

For phase two annual tasks, OCFS calculated specific cost and burden estimates as requested by the ANPRM. Our methodology and conclusions are explained below.

Searching data sources, gathering information, and entering the information: The number of children who are served in foster care in New York State annually is about 30,000 children. This number includes the total number of children remaining in foster care throughout the year, as well as children who enter and/or exit during the 12-month period. OCFS therefore used 30,000 in calculating the burden associated with data gathering and entry for the foster care file calculations. It is estimated that it takes a worker about 6 hours per child in a year to enter the new and/or modified items associated with AFCARS 2.0. Six hours divided by 30,000 children (6/30,000) is 0.022 hours per child and was used to calculate the burden associated with searching data sources, gathering information, and entering the information. Based on these calculations, OCFS estimated a total burden for data gathering and entry per foster child to be about 178,200 hours per year for the foster care file, 47,520 hours per year for the ICWA-related data elements, and 10,560 hours per year for the financial data elements. The annual fiscal cost was estimated to be $9,643,920.

Developing or modifying procedures and systems to collect, validate, and verify the information; training and administrative tasks: In calculating the burden associated with report modification and monitoring, OCFS assumed that 4 staff assigned to the State's data

warehouse will have to spend on the average 2 hours per data item to modify reports every year based on our experience with AFCARS 1.0. It is further anticipated that about 10 CONNECTIONS (New York State's child welfare management system) implementation and OCFS regional staff will be involved every year in monitoring reports developed by data warehouse staff. The estimate provided for CONNECTIONS implementation staff was a total of 10,000 hours. It is assumed that each hour of a CONNECTIONS implementation staff involves 2 LDSS/VA staff, which results in a total of 30,000 staff hours. However, since quite a bit of training is required for the annual work, it is assumed that that 2/3rd (20,000 hours) is required for phase 1 initial and 1/3rd (10,000 hours) annually. This 10,000 hours was divided equally among the 270 items for the 10 staff involved and resulted in an estimate of 4 hours per item (10,000/(10*270)) is 4).

OCFS estimated the hourly burden for developing or modifying procedures, training and administrative tasks to be 10,576 annual hours for the foster care file, 3,243 annual hours for the ICWA-related data elements, and 721 annual hours for the financial data elements. The total annual fiscal cost was estimated to be $1,777,104.

Data extraction and monitoring: To compute the burden associated with data extraction and monitoring, OCFS estimated the total annual time for one staff doing the primary programming and another staff member doing backup and/or oversight. On the average, it is estimated that 7 hours per item will be spent based on past experience. It is estimated that there will be 3,420 annual hours for the foster care file, 1,492 annual hours for the ICWA-related data elements, and 178 annual hours for the financial data elements. The annual fiscal cost for data extraction and monitoring was estimated to be $315,720.

In conclusion, OCFS supports the collection and reporting of information on children and families in the child welfare system, but is concerned that the burdens may outweigh the benefits. There is the likelihood under the AFCARS 2.0 requirements that more time will be spent on data entry and related tasks, and less time will be allocated for providing direct services to vulnerable children and families. The additional costs and burdens that are borne by AFCARS 2.0 come at a time when New York State is still deciding whether to develop a Comprehensive Child Welfare Information System (CCWIS). Should New York decide to develop a CCWIS, that effort will require a significant dedication of resources. In addition, New York is dedicating resources to implement the extensive data changes that are anticipated to be necessary as a result of the recent enactment of the Family First Prevention Services Act. Therefore, OCFS commends ACF for identifying AFCARS 2.0 as a rule ripe for regulatory reform. We recommend the rescission of the AFCARS 2.0 rule in its entirety, and if a complete rescission of the AFCARS 2.0 rule is not possible, we urge the removal of all the ICWA-related data elements, the additional financial items, the new adoption file format, and the AFCARS 2.0 requirement that a longitudinal file be provided with each submission.

Thank you again for this opportunity to submit additional comments on the AFCARS 2.0 regulations and consideration of our recommendations. Should you have any questions or need further clarification, we would be pleased to provide additional information.

Sincerely,

Sheila J. Poole
Acting Commissioner