

# **Exceptions to Termination of Parental Rights Timelines for Children in Foster Care**

ASPE Generic Information Collection Request

OMB No. 0990-0421

## **Supporting Statement – Section A**

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**Program Official/Project Officer**

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## Section A – Justification

### 1. Circumstances Making the Collection of Information Necessary

The field of child welfare may be seen as an exercise in balancing competing interests. Paramount among these, per section 471(a)(5) of the Social Security Act, is child safety. But once a child's immediate safety is addressed, children's longer term needs are examined in tandem with parental rights and actions parents take to provide a safe home environment for their child(ren). For children in foster care, children's needs for a stable living situation and permanent adult relationships are balanced against parents' rights and their success in resolving the issues that led to the child's placement to determine what outcome is in the child's best interests.

Since the passage of the Adoption and Safe Families Act of 1997 (ASFA, P.L. 105-89) federal law has required, with certain exceptions, that the state child welfare agency file or join a legal petition to terminate parental rights for any child remaining in foster care for at least 15 of the previous 22 months (section 475(5)(E) of the Social Security Act). This is known colloquially as the "15/22 rule" or "the ASFA TPR timeline." Exceptions include, at state option and examined on an individual basis, if the child is living with a relative, if the state has not yet provided services that would enable the parent to resume parenting roles, or that there is another compelling reason that termination of parental rights is not in the child's best interests. In enacting the requirement, Congress asserted that for cases which have remained open long enough for TPR to be required, roughly a year and a half after foster care entry, the presumption should become that adoption or guardianship, rather than reunification, is the predominant and expected outcome for the child. Exceptions are available that enable judges to exert discretion in cases where the presumption is not warranted.

In the years immediately following ASFA's enactment, the annual number of adoptions from foster care more than doubled and then settled into a new equilibrium of between 50,000 and 60,000 adoptions per year. But while adoption expanded following ASFA, states continue to struggle with achieving timely permanency for children. A Government Accountability Office study in 2001, just a few years after ASFA was enacted, found that in most states that had data available to track the phenomenon, "the number of children exempted from the [15/22] provision greatly exceeded the number of children to whom it was applied" (GAO 2002, p. 27). More recently, current results of ACF's Child and Family Services Reviews (CFSRs) document continuing challenges to timely adoption<sup>1</sup>. In states participating in the first two years of the round 3 CFSRs (about half the states),

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<sup>1</sup> Child and Family Services Reviews, conducted for each state roughly every five years, determine the extent to which states are in compliance with federal child welfare laws and regulations. States found not to be in substantial compliance are required to implement a Program Improvement Plan. ACF recently completed the third round of CFSRs and no state was determined to be in compliance with all of the seven outcomes and seven systemic factors addressed in the reviews. More information on the CFSRs may be found at: <https://www.acf.hhs.gov/cb/monitoring/child-family-services-reviews/round3>

among sample cases examined in the case review portion of the review to whom the 15/22 rule should have applied, in 27 percent of cases the state child welfare agency both failed to file or join a TPR petition in a timely manner and failed to document an exception to the requirement (ACF 2017). In addition, Round 3 CFSR findings from the entire nation indicate that just seven states received positive comments about the timeliness of TPRs (AR, MN, OH, PA, UT, VT and WV).

Some observers argue that further efforts are needed to terminate parental rights expeditiously, in some cases long in advance even of current ASFA timelines, and to move more children into adoptive homes as quickly as possible (Riley 2018; Zill 2011). The termination of parental rights is a necessary precondition to adoption by another family. As of 2011, 18 states had enacted state level TPR timelines faster than those required in ASFA (Vesnecki 2011). Other efforts to expedite adoptions have also been implemented in some states, such as streamlining the parental appeals process (Keith and Flango 2002). However, recent work by Wulczyn and colleagues (2016) finds that the existence of state “fast track statutes” are not by themselves associated with higher adoption rates in practice. If those statutes are used infrequently (as is the norm where they exist), they have little actual effect.

This study is revisiting issues related to the 15/22 rule to try and understand why, 20 years after efforts to speed adoption, timely terminations of parental rights remain the exception rather than the rule.

As a first step toward understanding current TPR practice, ASPE conducted intramural analyses of administrative data to understand the patterns in which TPRs are occurring. Using data from the Adoption and Foster Care Analysis and Reporting System (AFCARS) we have examined the experiences of an entry cohort of children who entered foster care for the first time during 2013 and followed the children through 2017. The cohort totals 205,674 children, of whom 25% experienced termination of parental rights (TPR) during the period of observation. Highlights of the analysis to date are as follows:

- The proportion of children entering foster care who experienced TPR ranged from a low of 8.9% in Wyoming and 10 states with rates of below 20%, to a high of Maine at 44.2% and 5 states with rates over 35%.
- In 7 states, 80% or more of TPRs happened within 17 months of entry, or generally in line with ASFA timelines. On the other end of the distribution, in 6 states and DC, more than 75% of TPRs took place more than 17 months after foster care entry.
- Of those children with TPRs, the TPRs were more rapid both for the youngest children and for the oldest children in care (who either had a TPR quickly or not at all).
- Of children who exit care before the 17 month point, 67% reunify with parent(s) and 9.5% exit to relative care, compared with 23% reunification and 2.3% exits to relative care among who remain in care beyond 17 months. Also, 6.7% of exits prior to 17 months and 49% of exits after 17 months are to adoptions.

The proposed qualitative data collection will complement the quantitative results highlighted above to provide context and initial indications of practices, policies and perspectives that may underlie performance on measures of timely TPR and merit further study.

## **2. Purpose and Use of the Information Collection**

Recognizing through our data analysis that there are significant differences among states in the extent to which TPRs are completed timely, this data collection will gather qualitative information from stakeholders to the TPR decision making process in several states to better understand the practices and beliefs about permanency that contribute to the extent to which states use exceptions to the TPR timelines. Our research questions include:

- Among the key stakeholders in the TPR process, what practices and attitudes underlie decisions about whether exceptions are made to the Adoption and Safe Families Act TPR timeline?
- To what extent do these various perspectives on permanency and TPR align or diverge, both within and among states?
- While recognizing that our sample will be small and not representative, do these perspectives seem to play into the variation we see in the timeliness of TPR, and do they suggest topics for further study that might explain the variations in performance?

## **3. Use of Improved Information Technology and Burden Reduction**

Qualitative interviews will be conducted by phone and/or through webinars. This should minimize the burden on individual respondents and allow us to schedule interviews at the convenience of respondents.

## **4. Efforts to Identify Duplication and Use of Similar Information**

We conducted a literature search to identify previous examinations of issues related to exceptions to the termination of parental rights requirements from ASFA. We located no studies of TPR exceptions more recent than the 2001 GAO described above. We also analyzed the information on TPR in each 3<sup>rd</sup> round (most recent) CFSR final report and available Program Improvement Plans. In addition, we consulted with ACF's adoption specialists and confirmed that they have not funded any research on this topic and are aware of no research we did not identify through our literature search. Finally, we conducted four key informant interviews with experts to inform the development of our discussion guides. Each key informant was also asked about gray literature or efforts underway that we may have missed.

## **5. Impact on Small Businesses or Other Small Entities**

No small businesses will be involved in this data collection.

**6. Consequences of Collecting the Information Less Frequently**

This request is for a one time data collection. Less frequently would mean collecting no data at all.

**7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5**

There are no special circumstances with this information collection package. This request fully complies with the regulation 5 CFR 1320.5 and will be voluntary.

**8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency**

This data collection is being conducted using the Generic Information Collection mechanism through ASPE – OMB No. 0990-0421, therefore no Federal Register notice is required.

**9. Explanation of Any Payment or Gift to Respondents**

Respondents to this data collection fall into two categories: professionals (child welfare administrators, caseworkers, judges and other stakeholders) who will be responding in their professional capacities (20 to 60), and child welfare system participants including former foster youth, birth parents, and foster parents (n=12 to 15). The professional respondents will not be compensated. For the non-professional respondents, we plan to provide a \$50 Visa Gift Card to thank them for their participation and recognize the value of their lived experience. These respondents are voluntarily sharing with us their important perspectives and the gift cards communicate to them that we value their time.

Evidence shows that remuneration bolsters survey response, including recruitment and attendance at small group interviews (e.g. Singer and Ye, 2012). Most of our nonprofessional respondents are likely to be working parents who are busy, and most are likely to be low income and thus face additional barriers to participating in the interview. To ensure that our incentive is not coercive, consent scripts indicate and interviewers will be trained to make it very clear that participants who choose to leave the group early or who prefer not to respond to certain questions will still receive the \$50 gift card. Mathematica staff will track the cards that are paid out by completing a log when they send the gift card to participants.

**10. Assurance of Confidentiality Provided to Respondents**

Data collected in this study will be kept private to the extent allowed by law. The Privacy Act does not apply to this data collection. State and local administrators and practitioners who answer questions will be answering in their official roles and will not be asked about, nor will they provide, sensitive individually identifiable information.

With respect to non-professional respondents, our contractor will collect only that identifying information needed to schedule interviews and, for non-professional respondents, to send gift cards in appreciation of their participation. The names of study participants will remain confidential and will not be used in the analysis or

writing the study findings, regardless of whether the names were mentioned in an interview and therefore became part of the transcripts. All study participants will be referred to by generic roles that identifying only their respondent type (child welfare administrator, former foster youth, and so on). In addition, no names will be used when documenting the interview notes for analysis.

This data collection is being reviewed by our contractor's external IRB, Health Media Lab. No data collection will begin until both OMB and IRB approval has been obtained.

### **11. Justification for Sensitive Questions**

No information will be collected from professional respondents that is of personal or sensitive nature.

For the non-professional respondents, by its nature experiences with termination of parental rights and adoption are deeply personal and emotional. However, the perspectives of clients are particularly valuable since they are the most directly affected by termination of parental rights policies and practices. We will recruit our nonprofessional respondents from the rosters of youth and family consultants organized and maintained by the Administration for Children and Family's child welfare technical assistance center, The Center for the States. Therefore, these will be individuals used to sharing their stories and for whom the issues we discuss will be familiar. The youth and family on the rosters maintained by the Center for the States participate in order to lend their first person expertise to making improvements to child welfare practice and have been trained to share their stories and lend their voice to conference panels, discussions, and other efforts that seek the input of child welfare system participants. We believe this will minimize the intrusiveness experienced by these participants.

We do not intend to ask about the specifics of their family situations, but will focus on how they experienced the child welfare system's decision-making around termination of parental rights.

### **12. Estimates of Annualized Burden Hours and Costs**

The estimate for burden hours is 60 minutes per response from child welfare administrators and practitioners, judges and other stakeholders and 90 minutes per response from biological parents, foster or adoptive parents, and former foster youth. We plan to interview approximately 60 professional respondents across 4 sites. For the nonprofessional respondents we will conduct one small group interview for biological parents, another for foster and adoptive parents, and a third for former foster youth, each with 4-5 respondents, for a total of 12 to 15 nonprofessional respondents.

Table A-1 shows estimated burden and cost information.

**Table A-1: Table 3. Estimated annualized burden hours and costs to respondents**

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in minutes)	Total burden hours	Hourly Wage Rate <sup>2</sup>	Total Respondent Costs
State or local child welfare administrators	12	1	60	12	\$36.72	\$440.64
State or local child welfare practitioners	12	1	60	12	\$25.35	\$304.20
Judges	12	1	60	12	\$58.23	\$698.76
Legal representatives	12	1	60	12	\$69.34	\$832.08
Representatives from other stakeholder organizations	12	1	60	12	\$23.69	\$284.28
Biological parents	5	1	90	7.5	\$24.98	\$187.35
Foster or adoptive parents	5	1	90	7.5	\$24.98	\$187.35
Former foster youth	5	1	90	7.5	\$24.98	\$187.35
<b>Total</b>	75	1	-	82.5	-	\$3,122.01

**13. Estimates of Other Total Annual Cost Burden to Respondents or Record Keepers**

There will be no direct costs to the respondents other than their time to participate in each data collection.

**14. Annualized Cost to the Government**

The cost of the government task order attributable to the work is \$1,309.

**Table A-2: Estimated Annualized Cost to the Federal Government**

Staff (FTE)	Average Hours per Site	Average Hourly Rate	Average Cost
Senior Social Science Analyst, GS 15	4	81.84	\$327
<b>Estimated Total Cost of Information Collection (x4 sites)</b>			<b>\$1,309</b>

<sup>2</sup> Estimates for the average hourly wage for respondents are based on the Department of Labor (DOL) 2018 National Occupational Employment and Wage Estimates ([https://www.bls.gov/oes/current/oes\\_nat.htm](https://www.bls.gov/oes/current/oes_nat.htm)).

## **15. Explanation for Program Changes or Adjustments**

This is a new data collection.

## **16. Plans for Tabulation and Publication and Project Time Schedule**

After the site interviews and small discussion groups, the contractor will prepare site-specific summaries using standardized templates to document key findings across participants, which will be coded and analyzed with NVivo to help identify key themes.

The contractor will prepare a memo for ASPE presenting findings of the site interviews. ASPE plans to publish the related quantitative analyses in an issue brief. Some quotations and thematic summary material from the qualitative findings may be used to provide context for the quantitative findings and to suggest avenues that should be pursued in further, more rigorous research.

### Project Time Schedule

- November, 2019 to January 2020: Conducted four key informant interviews and developed discussion guides and recruitment plan
- February/March 2020: Seek OMB and IRB approval
- April/May 2020: Outreach, schedule and conduct phone interviews
- June/July/August 2020: Analyze interview/small discussion group findings and contractor will submit summary report to ASPE
- Remainder of 2020: ASPE staff will produce public facing products

## **17. Reason(s) Display of OMB Expiration Date is Inappropriate**

We are requesting no exemption.

## **18. Exceptions to Certification for Paperwork Reduction Act Submissions**

There are no exceptions to the certification. These activities comply with the requirements in 5 CFR 1320.9.

## **LIST OF ATTACHMENTS – Section A**

Note: Attachments are included as separate files as instructed.

- Attachment: Discussion guides, including consent scripts