



Administration for Children and Families

45 CFR Part 1355

RIN 0970-AD19

Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children; Rescission

AGENCY: Children's Bureau (CB), Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This rule finalizes the removal of the requirements issued in the *Designated Placement Requirements Under Titles IV-E and IV-B for LGBTQI+ Children* final rule that was published on April 30, 2024 (hereafter referred to as the 2024 final rule). The 2024 final rule required title IV-E/IV-B agencies to ensure that a Designated Placement is available for all children who self-identify with an alternative sexual orientation or self-identify as something other than their sex in foster care who request or would benefit from such a placement. Those requirements were never implemented as a result of the decision from the U.S. District Court for the Eastern District of Texas that vacated the 2024 final rule in its entirety. To ensure clarity for the public and regulated entities, ACF is removing the provisions from the Code of Federal Regulations (CFR).

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Jennifer Haight, Children's Bureau, 202-329-6464, Administration for Children and Families, Department of Health and Human Services, cbcomments@acf.hhs.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

II. Background

III. 2026 Proposed Rule Comment Summary and Analysis

IV. Regulatory Impact Analysis

V. Tribal Consultation Statement

I. Statutory Authority

This final rule is published under the authority granted to the Secretary of HHS (the Secretary) by Section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302, which authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions entrusted to the Secretary under the Act.

II. Background

2024 Designated Placements Final Rule

The 2024 final rule (89 FR 34818) added § 1355.22 to 45 CFR part 1355, requiring State and Tribal agencies administering or supervising the administration of titles IV-E and IV-B of the Act (“agencies”) to ensure that a Designated Placement is available for all children who self-identify with an alternative sexual orientation or self-identify as something other than their sex in foster care who request or would benefit from such a placement. It established procedural steps for agencies to implement Designated Placements and added requirements for foster care providers of these placements. The 2024 final rule also amended § 1355.34(c)(2)(i) requiring agencies to monitor compliance with Designated Placement requirements through the Child and Family Services Reviews (CFSR).

Legal Challenge

State of Texas v. United States Department of Health & Human Services, 770 F. Supp. 3d 940 (E.D. Tex. 2025)

On September 24, 2024, the State of Texas Attorney General's Office (State of Texas) filed a lawsuit against HHS alleging the 2024 final rule:

- Exceeds HHS's statutory authority,
- Violates the Spending Clause, and
- Is arbitrary and capricious.

The plaintiff asked the court to vacate that final rule and requested an immediate stay of the final rule's effective date under 5 U.S.C. 705. On March 13, 2025, the court concluded that the State of Texas was likely to succeed on the merits of the case because the final rule “violates the [Administrative Procedure Act] APA in two independent ways.” 770 F. Supp. 3d at 948. First, HHS “lacked rulemaking authority to issue the Final Rule,” and second, the 2024 final rule “conflicts with the text of Title IV-E.” *Id.* The court stayed the final rule in its entirety nationwide, pending the conclusion of proceedings in that case, finding that the final rule imposed requirements on agencies not authorized by the statutory provisions governing the title IV-E and IV-B programs. *Id.* at 948-50. HHS notified agencies of the nationwide stay through emails and an Information Memorandum (IM) ACF-ACYF-CB-IM-25-03 issued April 15, 2025.

On June 13, 2025, the U.S. District Court for the Eastern District of Texas issued a final judgment, vacating the 2024 final rule in its entirety. *See Texas v. U.S. Dep't of Health & Hum. Servs.*, Case No. 6:24-cv-348-JDK (E.D. Tex.), Doc. 37 (filed June 13, 2025) (Order and Final Judgment). For the reasons stated in the initial stay of the 2024 final rule, the court concluded that the rule exceeded HHS's statutory authority and conflicted with the text of title IV-E. The court's decision vacated the final rule in its entirety, meaning that the rule is no longer in effect and has no legal force. Due to the court's final judgment, ACF has not enforced the provisions of the 2024 final rule and notified agencies of the court's decision on November 19, 2025 through ACF-ACYF-CB-IM-25-06.

III. 2026 Proposed Rule Comment Summary and Analysis

On March 6, 2026, ACF published a Notice of Proposed Rulemaking (NPRM, 91 FR 11017) that proposed to remove the requirements instituted by the 2024 final rule. The comment period for the NPRM was open for 30 days and closed on April 6, 2026. In response, we received a total of 1,147 comments consisting of:

- One letter representing 22 congressional members;
- Comments from 38 advocacy organizations, providers, religious entities, and university institutions; and
- 1,108 comments from individuals, approximately 542 of which consisted of two form letters, one in support and one in opposition.

We also received a number of comments that were out of scope or were duplicate submissions and therefore were not counted and will not be addressed. No comments were received from States, Indian Tribes, Tribal organizations or consortiums, or organizations that represent Tribal interests. The comments are available in the docket for this action at <https://www.regulations.gov/document/ACF-2026-0298-0001/comment>. We reviewed and analyzed all of the NPRM comments and considered them in finalizing this rule. Below is a summary of comments received.

Summary of Comments by Commenter Type

Congressional Members

The 22 Members of Congress who submitted a comment are opposed to the 2026 NPRM's proposed rescission of the 2024 final rule. The letter stated that this population of children is overrepresented in the foster care system and that ACF has an obligation to act in the best interests of the child and ensure that all foster children have both safe and appropriate placements and safe and proper care. It states that rescinding the 2024 final rule without a proposed alternative that would maintain access to such placements and care threatens the safety and well-being of many foster youth. The letter encourages ACF to engage in rulemaking to

ensure all children have meaningful access to foster care placements that are prepared to meet their needs.

Advocacy Organizations, Providers, Religious Entities, and University Institutions

Of the 38 letters received from advocacy organizations, providers, religious entities, and university institutions (hereafter referred to as organizations), 20 were supportive of the Department's proposal to rescind the 2024 final rule and 18 were opposed. Those organizations that supported the 2026 NPRM concurred with the reasoning stated in the 2026 NPRM; given that the 2024 final rule was vacated by the court, it is important to remove the associated requirements from the Code of Federal Regulations to eliminate uncertainty and provide clarity to regulated entities regarding applicable requirements. Many of these supportive commenters were concerned about government overreach, harm to children and families, religious liberty, discrimination, and the rights of foster parents. They strongly encouraged the Department to move forward with rescinding the 2024 final rule. The 18 letters from organizations that opposed the 2026 NPRM generally expressed concern about removing what they view as protections from this population of foster youth and encouraged the Department to consider adding protections in a future rulemaking.

Individual Commenters

We received approximately 1,108 comments from individuals, approximately 542 of which consisted of two form letters. Of those, about 508 form letters expressed support for the recission, and approximately 34 expressed opposition to the recission. Additionally, about 514 non-form letters from individuals expressed support, and about 52 non-form letters expressed opposition to the recission.

In general, the supportive commenters (both via form letter and non-form letter) agreed that it was important to remove the requirements from the 2024 final rule from the CFR to remove uncertainty and provide clarity. Many of these commenters were concerned that if 45 CFR 1355.22 is not removed, it could be used as a form of “non-official guidance” during a

future administration and therefore supported the rescission. Other reasons for supporting the rescission included that it is unconstitutional, it violates the rights of parents and children, it discriminates against religious providers and their strongly held beliefs, and it would reduce the pool of people who can be foster parents.

In general, those commenters who opposed the rescission believe that rescinding the 2024 final rule leaves children more vulnerable and that ACF should strengthen guidance for supportive caregiving environments, expand training for child welfare professionals, support evidence-informed interventions that promote placement stability, and improve data collection to better understand disparities.

Analysis of Comments

We reviewed and analyzed all of the 2026 NPRM comments and considered them in finalizing this rule. In total, there were 1,147 commenters. Of those, 1,042 commenters supported the 2026 NPRM's proposal to rescind the requirements and 105 commenters opposed. We received no new information from commenters opposing the NPRM that would persuade us to consider keeping the requirements in regulation. Our conclusion, based on the support from commenters and the decision from the court, is that we have sufficient justification and support for rescinding the 2024 final rule. Thus, we are removing 45 CFR 1355.22 and rescinding the amendments to § 1355.34(c)(2)(i) to remove cross references to § 1355.22. This will ensure clarity for the public and agencies. Finalizing the 2026 NPRM's proposal is also in line with the court's decision vacating the 2024 final rule, which rendered it ineffective and unenforceable. Removing the requirements from the Code of Federal Regulations ensures that the regulations are accurate.

IV. Regulatory Impact Analysis

Regulatory Planning and Review of Executive Orders 12866, 13563, and 14192

Executive Orders 12866 and 13563 direct agencies to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory

approaches that maximize net benefits. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action under section 3(f) of Executive Order 12866. Executive Order 14192 requires that any new incremental costs associated with significant new regulations “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations.” This final rule is considered a deregulatory action as defined by Executive Order 14192.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The term “small entities,” as defined in the RFA, comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact on revenue on at least 5 percent of small entities. The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the RFA (Pub. L. 96-354), that this rulemaking will not result in a significant impact on a substantial number of small entities. This rule does not affect small entities because it is applicable only to state and tribal title IV-E/IV-B agencies and those entities are not considered to be small entities for purposes of the Regulatory Flexibility Act. Therefore, an initial regulatory flexibility analysis is not required for this rulemaking.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) was enacted to avoid imposing unfunded Federal mandates on state, local, and Tribal governments, or on the private sector. Section 202 of UMRA requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in

1995 dollars, updated annually for inflation. In 2025, that threshold is approximately \$193 million. This rulemaking does not contain mandates that will impose spending costs on state, local, or Tribal governments in the aggregate, or on the private sector, in excess of the threshold.

Executive Order 13132 on Federalism

Executive Order 13132 on Federalism requires that Federal agencies consult with state and local government officials in the development of regulatory policies with Federalism implications. In accordance with section 6 of Executive Order 13132, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Alternatives Considered

There are no alternatives to issuing this final rule because the 2024 final rule was vacated by the court and is not in effect.

Assessment of Federal Regulations and Policies on Families

The Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to determine whether a policy or regulation may negatively affect family well-being (sec. 654, Pub. L. 105-277, 112 Stat. 2681). If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. ACF concluded it is not necessary to prepare a family policymaking assessment because this rulemaking would not have any impact on the autonomy or integrity of the family as an institution.

Paperwork Reduction Act

This final rule does not affect any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501-3520.

Costs and Benefits

In the 2024 final rule, ACF estimated that the costs to the Federal government would be \$10,827,381 over a three fiscal year period (FYs 2027-2029) for agencies to meet the

requirements (89 FR 34855-34859). Projected agency costs used to calculate the total are outlined in the 2024 final rule and include increased provider recruitment costs and additional training of caseworkers and supervisors. ACF estimated that the combined total Federal and agency costs over three fiscal years would be \$45,743,070. For the purposes of quantifying the economic impacts of the removal of § 1355.22 and amendments to § 1355.34(c)(2)(i), we adopt these estimates as costs that would be incurred under an analytic baseline scenario of no further regulatory action. Compared to this baseline, the impact of this final rule is to avert these costs, resulting in cost savings of a similar magnitude. To quantify the cost savings of the final rule under Executive Order 14192, we adjust the estimates to 2024 dollars using the GDP deflator and calculate present value and annualized cost savings using a 7 percent discount rate, using 2024 as the base year for discounting. Our analysis indicates this deregulatory action if finalized would result in a present value of cost savings of about \$35.5 million or annualized cost savings of about \$2.5 million.

V. Tribal Consultation Statement

Executive Order 13175 *Consultation and Coordination with Indian Tribal Governments*, requires agencies to consult with Indian tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes and either impose substantial direct compliance costs on tribes or preempt state law. Similarly, ACF's Tribal Consultation Policy provides that consultation is triggered for a new rule adoption that significantly affects tribes, meaning the new rule adoption has substantial direct effects on one or more Indian tribes, on the amount or duration of ACF program funding, on the delivery of ACF programs or services to one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The 2024 final rule did not meet either standard for consultation, as indicated in the preamble at 89 FR 34818, and consequently this final rule does not either.

List of Subjects in 45 CFR part 1355

Adoption and foster care, Child welfare, Grant programs-social programs.

For the reasons set forth in the preamble, ACF amends 45 CFR part 1355 as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

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

§ 1355.22 [Removed and Reserved]

2. Remove and reserve § 1355.22.

3. Amend § 1355.34 by revising paragraph (c)(2)(i) to read as follows:

§ 1355.34 Criteria for determining substantial conformity.

* * * * *

(c) * * *

(2) * * *

(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 his/her 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; and for documentation of the steps taken to make and finalize an adoptive or other permanent placement when the child cannot return home (sections 422(b)(8)(A)(ii), 471(a)(16) and 475(5)(A) of the Act);

* * * * *

Robert F. Kennedy, Jr.,

Secretary,

Department of Health and Human Services.

