



DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

Dear Tribal Leader:

Thank you for attending the Administration for Children and Families' (ACF) fifth Tribal Consultation session held June 16, 2014. This was the fourth session held since signing the ACF Tribal Consultation Policy in August 2011. As defined in the Tribal Consultation Policy, tribes provided testimony at the Tribal Consultation session, both personally and in writing. The responses to your testimony are enclosed with this letter. An electronic version of the enclosed document will be posted on ACF's tribal website at the following address: <http://www.acf.hhs.gov/initiatives-priorities/tribal>. I encourage you to visit this website frequently as we continually post information about tribal activities there.

As many of you know, ACF created its first Tribal Advisory Committee (TAC), composed of tribal members representing the ACF regional offices and four at-large members representing all tribes and Urban Indians. This year, the TAC met both in person and by teleconference call or webinar. The TAC completed the Charter and the Rules of Order and developed a list of priorities to work on this coming year. If you wish to find out more about the priority topics under consideration or share your opinion on what priorities you would like the TAC to consider, please feel free to contact your regional TAC member or any one of the At-Large members. A listing of TAC members can be found at the above web address.

If you have any questions about our responses to your testimony, please feel free to contact Lillian Sparks Robinson, Commissioner, Administration for Native Americans. She can be reached by email at anacommissioner@acf.hhs.gov or by telephone at 202-401-9950.

I look forward to further strengthening our relationships through future Tribal Consultations and interactions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark H. Greenberg", is written over a circular stamp or seal.

Mark H. Greenberg
Acting Assistant Secretary
for Children and Families

Enclosure

Administration on Children, Youth and Families/Children's Bureau

CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Comment/Issue/Recommendation: Recommend federal oversight to ensure all states are complying with the Indian Child Welfare Act (ICWA); incorporate ICWA into the Child and Family Services Reviews (CFSR) process.

Response: The Department of Health and Human Services (HHS) does not have authority to enforce compliance with ICWA. However, states are required to describe the measures they are taking to comply with ICWA and the ways in which they have consulted with tribes as part of their 5-year Child and Family Services Plan and Annual Progress and Services Reports. Likewise, tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to ICWA consultation and compliance.

The Children's Bureau is completing its review of the new 5-year Child and Family Services Plans submitted by all states and tribes by June 30, 2014. We will prepare a report summarizing the information states submitted relating to ICWA compliance, highlighting any best practices, and identifying areas for improvement. This report will help to guide our future work with states in this arena, consistent with our legal authority and available resources.

Comment/Issue/Recommendation: Provide extensive outreach to tribes to recruit and train as federal CFSR reviewers in all states.

Response: The Children's Bureau can look to recruit Native Americans to serve as CFSR reviewers and work with states to collaborate with tribes on recruiting reviewers. We will also continue to provide technical assistance to state agencies and courts regarding ICWA compliance.

Comment/Issue/Recommendation: Concerns related to states privatizing foster care and accountability. Monitor both state and private foster care compliance with ICWA particularly in regards to placement preferences, active efforts, and termination of parental rights. Recommend that HHS collaborate with the Department of the Interior, social services, ICWA programs, and states as states turn over foster care responsibilities to private agencies.

Recommend that HHS ensure that states train all agency personnel and system partners on applying ICWA to American Indians and Alaska Natives (AI/AN) children and families.

Response: The state title IV-E agency is responsible for meeting federal requirements regardless of whether children are being served by private contractors or state or local government employees. We agree that it is important for states to ensure that private agencies carrying out child welfare functions are fully aware of and complying with all federal requirements, including ICWA. In our monitoring, we hold states accountable for complying with title IV-B and title IV-E state plan requirements and for achieving positive outcomes for

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children and families, regardless of whether they are being served by public or private agencies under contract to the public agencies.

Comment/Issue/Recommendation: Modify title IV-E match “so that it is more realistic and fair so that tribes may have full access to federal funding sources that are available to states, and have access to federal technical assistance.”

Response: Federal law specifies the matching rates for the title IV-E and title IV-B programs, so a change in law would be needed to address this concern.

With respect to technical assistance, we note that any tribe that receives funding under either of the title IV-B programs or the title IV-E program may request individualized technical assistance from the Children’s Bureau’s technical assistance providers. Tribes that receive no funding under either title IV-B or title IV-E may still access some publicly available technical assistance, such as webinars or resource materials posted on the website of the Children’s Bureau, the Child Welfare Information Gateway, or our technical assistance providers.

Comment/Issue/Recommendation: Remove cap on indirect costs and replace with an allowance for administrative costs that fits high cost situation in southeast Alaska.

Response: We are not entirely clear about this recommendation. The Administration for Children and Families (ACF) would be pleased to work with the Central Council Tlingit-Haida to more fully explore this issue.

Comment/Issue/Recommendation: Provide tribes with access to federal resources to develop and maintain data management systems to meet the tribes’ needs to collect data, report outcomes, and to tell own story through data.

Response: Tribes that receive funding under title IV-B or title IV-E may access technical assistance from the Children’s Bureau relating to data and technology. Tribes that receive a title IV-E plan development grant may use grant funding to begin to address data collection requirements and, when approved to operate the title IV-E program, may access federal matching funds under title IV-E to support development and operation of data and case management systems. ACF would be pleased to explore the issue more fully and provide additional information to Central Council Tlingit-Haida if that would be helpful.

CHICKALOON VILLAGE

Comment/Issue/Recommendation: Modify title IV-E access to combine the waiver and application process to provide tribes with quicker and simpler means to meet the needs of families in a timely, flexible manner. This recommendation supports children in relative care without the funds necessary to care for them (i.e., relative caregivers who are unlicensed or tribally licensed do not receive any additional funds to assist in the care of these children and they do NOT qualify for the Temporary Assistance for Needy Families (TANF) program unless they are within a fifth degree of kinship.)

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Response: We are not entirely clear about this recommendation. We note that ACF does not have legal authority to waive title IV-E plan requirements except in the context of a demonstration project carried out by a title IV-E agency under the authority of section 1130 of the Social Security Act. ACF would be pleased to work with the Chickaloon Village to more fully explore this issue.

Comment/Issue/Recommendation: Build tribal capacity by collecting data that is relevant, complete, accurate, and funded, and by delivering services directly in the communities for children and families. Most tribes are still on a paper system with zero capacity to interface with states' systems, and states have received millions of dollars to develop their data systems while tribes have not.

Response: Tribes that receive funding under title IV-B or title IV-E may access technical assistance from the Children's Bureau relating to data and technology. Tribes that receive a title IV-E plan development grant may use grant funding to begin to address data collection requirements and, when approved to operate the title IV-E program, may access federal matching funds under title IV-E to support development and operation of data and case management systems. ACF would be pleased to explore the issue more fully and provide additional information to the Chickaloon Village, if that would be helpful.

Comment/Issue/Recommendation: Add ICWA Compliance to CFSR measures and add tribal citizens to CFSR review teams.

Response: HHS does not have authority to enforce compliance with ICWA. However, states are required to describe the measures they are taking to comply with ICWA and the ways in which they have consulted with tribes as part of their 5-year Child and Family Services Plan and Annual Progress and Services Reports. Likewise, tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to ICWA consultation and compliance.

The Children's Bureau is completing its review of the new 5-year plans submitted by all states and tribes by June 30, 2014. We will prepare a report summarizing the information states submitted relating to ICWA compliance, highlighting any best practices, and identifying areas for improvement. This report will help to guide our future work with states in this arena, consistent with our legal authority and available resources.

We will also continue to provide technical assistance to state agencies and courts regarding ICWA compliance.

With respect to CFSR, the Children's Bureau can look to recruit Native Americans to serve as CFSR reviewers and work with states to collaborate with tribes on recruiting reviewers.

COOK INLET TRIBAL COUNCIL (CITC)

Comment/Issue/Recommendation: 1) After review and development in consultation with tribes, add questions to the CFSR review process similar to those used in Oregon/Washington; 2) Integrate cultural/tribal specific questions into existing federally defined outcomes used in the CFSR review process (at least one question in each category and give overall performance and development of the performance improvement plan; 3) Require tribal consultation and participation in all aspects of the CFSR review process (pre-planning for CFSR, review process, and development of Program Improvement Plan); Finally, 4) deficiencies identified in CFSR review process specific to outcomes for AI/AN children should be required to be addressed in the state's Program Improvement Plan.

Response: As policy and/or program changes are under consideration, the Children's Bureau follows departmental consultation requirements policy to ensure tribal input. We continue to have requirements for states to consult with tribes in all aspects of the reviews, including the development of program improvement plans.

Comment/Issue/Recommendation: HHS should develop criteria in consultation with tribes as to how the ICWA compliance description in the title IV-B plan is developed, monitored, and enforced, with the idea of developing a process that requires real collaboration. While ICWA does not specifically mention ACF, title IV-B does provide ACF with authority to work with tribes and states on their plans to establish ICWA compliance. Furthermore, ACF as part of their CFSR, collects data on a few key measure of ICWA compliance and the CFSR review itself is designed to measure progress towards federally defined outcomes related to federal program goals and child well-being measures. ACF administrators should also ensure that every title IV-B plan description regarding state consultation with tribes on ICWA compliance is carefully read and evaluated for accuracy, clear descriptions of the process and outcomes of consultation with tribes, and adherence to commonly understood standards of effective practice in establishing successful tribal/state relations.

Response: A central element of the title IV-B plan requirement is that the states' actions must be developed "after consultation with tribal organizations." Each year, states are required to describe the process used to consult with tribes in the previous year, providing specific information on the name of tribes and tribal representatives with whom the states have consulted. States and tribes are also required to share copies of their Child and Family Services Plans and Annual Progress and Services Reports. Tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to the ICWA consultation and compliance.

The Children's Bureau is completing its review of the new 5-year Child and Family Services Plans submitted by all states and tribes by June 30, 2014. We will prepare a report summarizing the information states submitted relating to ICWA compliance, highlighting any best practices and identifying areas for improvement. This report will help to guide our future work with states in this arena, consistent with our legal authority and available resources.

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Comment/Issue/Recommendation: ACF should work with tribes and states to improve program instructions and internal administrative procedures regarding collection of data that can inform ICWA implementation in the state and improve compliance. ACF should work with tribes to identify effective methods for conducting reviews of state ICWA data.

Response: The Program Instruction ACF issued in March 2014 outlining requirements for development of a state's 5-year Child and Family Services Plan (the plan used to request and coordinate child welfare funding provided under title IV-B and other sources of federal child welfare funding) emphasizes the importance of using data to assess needs and measure progress in all sections of the plan. In the section of the plan pertaining to ICWA compliance, the Program Instruction directs states to identify sources of data to assess the state's ongoing compliance with ICWA, including input obtained through tribal consultation, and describe the measures they are taking, or will take, to comply with ICWA regardless of whether there are any federally recognized tribes within the state's borders.

The Children's Bureau is completing its review of the new 5-year plans submitted by all states and tribes by June 30, 2014. We will prepare a report summarizing the information states submitted relating to ICWA compliance, highlighting any best practices and identifying areas for improvement. This report will help to guide our future work with states in this arena, consistent with our legal authority and available resources.

Comment/Issue/Recommendation: HHS should make it clear that it will reject any title IV-B plan where that section of the plan has been developed without the required tribal collaboration and that it will hold states accountable for complying with the ICWA description in their title IV-B plan when it reviews state systems.

Response: A central element of the title IV-B plan requirement is that the states' actions must be developed "after consultation with tribal organizations." Each year states are required to describe the process used to consult with tribes in the past year, providing specific information on the name of tribes and tribal representatives with whom the state has consulted.

States and tribes are also required to share copies of their Child and Family Services Plans and Annual Progress and Services Reports. Tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to the ICWA consultation and compliance.

Before approving funding, the Children's Bureau reviews all plan submissions to ensure that they address all required elements outlined in our Program Instructions. In addition, based on our review of states' new 5-year plan submissions, we will be preparing a report that will help guide our future work with states in this arena.

Comment/Issue/Recommendation: With tribal input, ACF should hire a tribal policy advisor at the ACYF level. The advisor should have experience working in a tribal community, be

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knowledgeable about ICWA and tribal child welfare systems, and have experience working with a state or federal agency.

Second, tribally approved training should be required for all Children's Bureau employees, including history purpose and requirements of ICWA, information about tribal child welfare systems (how they operate and how they are funded), a summary of tribal sovereignty, and requirements for effective consultation and collaboration with tribes.

Response: Vacant positions are posted nationally. In addition, the Children's Bureau posts its vacancy announcements on its various listservs, including its tribal listserv.

ACF's Administration for Native Americans has been offering training for ACF staff on a range of issues relating to our work with tribes. Recently, the Bureau of Indian Affairs also provided training to ACF staff on its programs.

Comment/Issue/Recommendation: The Court Improvement Program (CIP) offers a unique opportunity to support state judicial officers in understanding and enforcing ICWA at the state court level, if specific measurements relating to ICWA are required by the Department. CITC urges the Department to modify the CIP to ensure robust compliance with ICWA at the state court level.

Response: Our Program Instruction implementing the CIP emphasized the requirement for ongoing and meaningful collaboration between state courts and both state child welfare agencies and Indian tribes. We agree that the state CIP, which provides grants to the highest court in each state to improve the handling of child welfare cases, provides an important opportunity to strengthen understanding of and compliance with ICWA. In fact, many state courts have developed and provided ICWA training to judges, attorneys, and others, using their CIP funding. A growing number of states are using CIP funds to conduct state court ICWA compliance and implement plans for continuous quality improvement of the handling of ICWA cases.

KENAITZE INDIAN TRIBE

Comment/Issue/Recommendation: Streamline unrealistic administrative tasks required for qualifying for and administration of funding resources to care for the AI/AN Families with Children and for Child-Welfare Services (title IV), particularly with regards to funding for foster care services in its service area. Object to funding roadblocks that place an emphasis on administrative tasks and matching funds before the needs of children and the healing of families.

Strongly recommend government-to-government negotiations, eliminating the state pass-through, to obtain TANF to operate foster care programs. The title IV-E requirements place unrealistic expectations and administrative tasks on tribes, placing an emphasis on dollars and matching funds that are prohibitive for tribes without gaming revenues, which greatly inhibits tribes abilities to build their capacity to continue to provide adequate care for children and their families.

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Alaska requires waivers of sovereign immunity for tribes to access the federal funds designated for tribal governments in Alaska. Alaska captures administrative costs that decrease the funding for direct services.

Response: State plan requirements and federal matching rates for programs authorized under title IV-B and title IV-E of the Social Security Act are specified in law. We understand that, especially for smaller tribes, the requirements can be quite extensive relative to the amount of funding a tribe receives. However, with very limited exceptions, ACF does not have legal authority to modify the requirements for tribes versus states. In the limited areas where we are able to offer greater flexibility to tribes in the operation of these programs, we have done so.

We are not entirely clear about the above comment regarding Alaska's requirement for waivers of sovereign immunity, but would be pleased to explore it more fully with the tribe.

MUSCOGEE (CREEK) NATION

Comment/Issue/Recommendation: Recommend adding ICWA compliance to CFSR to ensure enforcement of the law and accountability for ICWA. Have tribal members serve on CFSR review teams.

Response: HHS does not have authority to enforce compliance with ICWA. However, states are required to describe the measures they are taking to comply with ICWA and the ways in which they have consulted with tribes as part of their 5-year Child and Family Services Plan and Annual Progress and Services Reports. Likewise, tribes, as part of their annual submissions, are asked to provide an update regarding the consultation between the state and the tribe with respect to state compliance with ICWA, and to describe any concerns with respect to the ICWA consultation and compliance.

The Children's Bureau is completing its review of the new 5-year plans submitted by all states and tribes by June 30, 2014. We will prepare a report summarizing the information states submitted relating to ICWA compliance, highlighting any best practices and identifying areas for improvement. This report will help to guide our future work with states in this arena, consistent with our legal authority and available resources.

The Children's Bureau can look to recruit Native Americans to serve as CFSR reviewers and work with states to collaborate with tribes on recruiting reviewers.

Comment/Issue/Recommendation: Modify title IV-E access to combine waiver and application process to provide tribes with quicker and simpler means to meet needs of families in a timely, flexible manner.

Response: We are not entirely clear about this recommendation. We note that ACF does not have legal authority to waive title IV-E plan requirements except in the context of a demonstration project carried out by a title IV-E agency under the authority of section 1130 of

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the Social Security Act. ACF would be pleased to work with the Muscogee (Creek) Nation to more fully explore this issue.

Comment/Issue/Recommendation: Build tribal capacity to collect data that is complete, accurate, and funded.

Response: Tribes that receive funding under title IV-B or title IV-E may access technical assistance from the Children's Bureau relating to data and technology. Tribes that receive a title IV-E plan development grant may use grant funding to begin to address data collection requirements and, when approved to operate the title IV-E program, may access federal matching funds under title IV-E to support development and operation of data and case management systems. ACF would be pleased to explore the issue more fully and provide additional information to the Muscogee (Creek) Nation if that would be helpful.

Comment/Issue/Recommendation: Build tribal capacity to have the ability to deliver services directly in the communities for children and families.

Response: Tribes that receive funding under title IV-B or title IV-E may access technical assistance from the Children's Bureau's regional office staff and from its training and technical assistance network. ACF would be pleased to explore the issue more fully with the Muscogee (Creek) Nation if that would be helpful.

NATIONAL INDIAN CHILD WELFARE ASSOCIATION (NICWA)

Comment/Issue/Recommendation: Create a senior level advisor position within the Children's Bureau for an individual with extensive knowledge about tribal child welfare, ICWA implementation, and the unique struggles AI/AN families face in child welfare systems nationwide.

Response: Vacant positions are posted nationally. In addition, the Children's Bureau posts its vacancy announcements on its various listservs, including its tribal listserv.

Comment/Issue/Recommendation: Provide increased guidance, assistance, and oversight to states implementing those provisions of title IV-B of the Social Security Act that require tribal consultation.

Response: As part of its ongoing work with states and tribes, Children's Bureau staff, both at the Central Office and at each Regional Office, work to ensure that collaboration efforts are being made. Policy and program issuances promote the collaboration effort requirement. Examples include discussions with the entities and facilitating collaboration, as requested, particularly in the development and implementation of title IV-B and title IV-E plans. Any situations where there are concerns should be brought to the attention of the Children's Bureau.

In addition, the Children's Bureau is completing its review of the new 5-year Child and Family Services Plans submitted by all states and tribes by June 30, 2014. We will prepare a report

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summarizing the information states submitted relating to ICWA compliance, highlighting any best practices and identifying areas for improvement. This report will help to guide our future work with states in this arena, consistent with our legal authority and available resources.

Comment/Issue/Recommendation: Implement trainings, policies, and new hires that encourage consistent, respectful, and culturally competent relationships between tribes and Central Office and Regional Office.

Response: Children's Bureau recognizes and emphasizes the importance of respectful communication with all of our grantees and partners. To build relationships and encourage consistent communication, there is staff in our Regional Offices dedicated to working with tribes. Vacant positions are posted nationally. In addition, the Children's Bureau posts its vacancy announcements on its various listservs, including its tribal listserv.

Comment/Issue/Recommendation: Immediately establish a meaningful consultation process for tribal governments concerning the CFSR process, proposed data indicators, and proposed national standards.

Response: Children's Bureau and ACF takes seriously its responsibility to conduct consultation with Indian tribes regarding certain policy matters and did conduct such consultation prior to releasing revisions to the CFSR process.

ACF will continue to conduct outreach to tribal governments to ensure that they are familiar with the revised CFSR process, and state child welfare populations in the aggregate to ensure that states are complying with title IV-B and title IV-E laws, regulations, and underlying practice principles.

While an aspect of the review focuses on how states are applying practice principles to preserve families in light of the unique circumstances of Indian children, the reviews do not review states for ICWA compliance as that is outside of ACF's authority. ACF will, however, work with states within the context of their title IV-B plans to ensure that they are following their plans to fully engage Indian tribe with regard to Indian children in state custody or at risk of entering state custody.

Comment/Issue/Recommendation: Interpret provisions of the title IV-E of the Social Security Act as it pertains to tribal programs in consistent, culturally relevant ways that respect tribal sovereignty and the nation-to-nation relationship between tribes and the federal government.

Response: Consistent with federal law, ACF will continue to work with tribal governments to ensure that title IV-E is implemented in culturally relevant ways that respect tribal sovereignty.

Comment/Issue/Recommendation: Successful tribal child welfare requires a budget that avoids unnecessary restraint to tribal decision making. Funding must provide flexible opportunities that allow tribes to design their child welfare services to meet the need of AI/AN

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children and families. In addition, tribal communities have elevated risk for child abuse and neglect. Funding must account for this elevated need and the United States' corresponding trust responsibility for the protection and preservation of tribes most vital resource – AI/AN children.

Response: Changes in funding levels, formulas, or the allowable use of funds under individual grant programs would need to be addressed through legislative changes.

Comment/Issue/Recommendation: Expanding the Yakama child welfare system's capacity would allow the Yakama Nation to streamline services and better serve and protect Yakama children. Specifically, the development of a more robust Yakama foster family program and best practices for providing culturally appropriate welfare services would prevent the geographical and cultural dislocation currently experienced by Yakama children. The Yakama Nation seeks the resource and technical assistance necessary to improve its Yakama child welfare system and provide culturally appropriate care and services to *all* Yakama children suffering from abuse and neglect. The Yakama Nation is currently preparing a title IV-E Tribal Development Grant, and we would appreciate ACF's assistance obtaining such assistance to develop the Yakama Nation's infrastructure and capacity of our child welfare system.

Response: We are pleased to hear that the Yakama Nation plans to apply for a title IV-E plan development grant. These grants are awarded through a competitive grant process and successful applicants were notified in late September or early October.

In addition, we encourage the Yakama Nation to discuss any technical assistance needs with the Children's Bureau's regional office staff in Seattle.

**NATIONAL INDIAN CHILD WELFARE ASSOCIATION AND
THE ASSOCIATION ON AMERICAN INDIAN AFFAIRS**

Comments on the CFSR - Statewide Data Indicators and National Standards

Comment/Issue/Recommendation: Immediately establish a meaningful consultation process for tribal governments according to the dictates of the President's Executive Order on the CFSR process and proposed data indicator and national changes. This consultation should allow tribes time to learn more about the CFSR in general and opportunities to provide input on the proposed changes. The consultation should be more than a conference call or one national meeting, but instead it should provide all tribal governments with the opportunity to attend a meeting within their state or region, in addition to the availability of conference calls.

Consult with tribal governments and experts in Indian child welfare on how to use the CFSR safety measures to address issues of bias in child welfare decision-making processes and how differential response is impacting safety issues for AI/AN children.

In the first 12 months after placement, measure efforts to reunify with the birth family as a permanency measure unless aggravated circumstances exist. Where aggravated circumstances do not exist, measure other forms of permanent placement in 6-month increments up to 24

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months. Include customary adoption and customary permanent placement in types of permanent placements that are measured.

We ask that you measure states' efforts to place AI/AN children in an ICWA placement preference home at the first placement. Don't count the movement of an AI/AN child to an ICWA placement preference home against state agencies efforts to create placement stability.

Convene tribal governments and experts in Indian child welfare to discuss the applicability of current national standards being used, how they can be refined, and what additions can be made to more accurately reflect and measure the experience of AI/AN children and families in state child welfare systems.

Response: The Children's Bureau in ACF takes seriously its responsibility to conduct consultation with Indian tribes regarding certain policy matters and did conduct such consultation prior to releasing revisions to the CFSR process.

ACF will continue to conduct outreach to tribal governments to ensure that they are familiar with the revised CFSR process and state child welfare populations in the aggregate to ensure that states are complying with title IV-B and title IV-E laws, regulations, and underlying practice principles.

While an aspect of the review focuses on how states are applying practice principles to preserve families in light of the unique circumstances of Indian children, the reviews do not review states for ICWA compliance as that is outside of ACF's authority. ACF will, however, work with states within the context of their title IV-B plans to ensure that they are following their plans to fully engage Indian tribe with regard to Indian children in state custody or at risk of entering state custody.

NAVAJO NATION

Comment/Issue/Recommendation: National Indian Task Force: Would like to have a National Indian title IV-E task force or advisory group formed to assess and evaluate the title IV-E programs.

Response: We will consider your request as we consider how best to work with tribes around title IV-E program implementation.

Comment/Issue/Recommendation: Indian Liaison: Recommend that an "Indian Liaison" be established in HHS – Washington, DC, to offer technical assistance and support to Indian tribes in meeting opportunities of the new law. While there is a National Resource Center in place, any questions to assist tribes in financial matters is denied. This is the majority of technical assistance that needs to be addressed. Thus the National Resource Center is not of assistance at this time.

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Response: The Children’s Bureau will keep your recommendation in mind as we continue to work with tribes on their title IV-E plans. There is staff in our regional offices dedicated to working with tribes. The Children’s Bureau’s training and technical assistance network is intended to assist states and tribes with the programmatic aspects of child welfare programs. Technical assistance and support regarding financial aspects of the title IV-E and title IV-B programs is provided by the Office of Grants Management staff in the regional offices.

Comment/Issue/Recommendation: Indirect Costs: Recommend that HHS allow “indirect costs” as an add-on to direct funding.

Response: We are not entirely clear about the context for this recommendation. ACF would be pleased to work with the Navajo Nation to more fully explore this issue.

Comment/Issue/Recommendation: Maintenance of Efforts: Recommends that HHS assist in attempts to tap into respective state general funds for our Nation’s “maintenance of effort” activities.

Response: ACF will work with the Navajo Nation in facilitating discussions with states in preparation for the tribe's implementation of a title IV-E program.

YAKAMA NATION

(Statements of Chair and Vice-Chair), Washington

Comment/Issue/Recommendation: Title IV-E amendments: Request that the title IV-E regulation be amended to provide adequate funding to tribes to develop and maintain a data system that is in compliance with title IV-E requirements.

Response: Tribes may use the title IV-E implementation plan grant to begin to address data collection. Once approved to operate a title IV-E program, tribes may access title IV-E funds to develop information systems consistent with federal regulations.

Administration on Children, Youth and Families/Family and Youth Services Bureau

INTER TRIBAL COUNCIL OF ARIZONA (ITCA)

Comment/Issue/Recommendation: We request flexibility to implement evidence-based teen pregnancy prevention programs in our communities to ensure that the programs are culturally relevant and are a good fit within the special circumstances within our communities. ITCA is fortunate that we are directly working with the developers of our program to ensure that our adapted version of “It’s Your Game” fits the needs of our communities. However, we’ve heard from other Tribal PREP grantees that this is not the case. We request additional discussion about how Tribal PREP grantees can work with the Administration to offer this flexibility.

Response: ACF has fully supported, and continues to support, tribal grantees in their desire to implement evidence-based teen pregnancy prevention programs that are culturally relevant and

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that are a good fit for their special circumstances. To this end, the Funding Opportunity Announcement (FOA) for Tribal PREP indicated that funding would support collaborative community planning efforts to further identify and refine needs in the area of teen pregnancy prevention and develop capacity and infrastructure to support such a program. The design, implementation, and sustaining of teen pregnancy prevention and adulthood preparation programs were to be based on effective models (or elements of effective models), practice-based evidence, or promising practices in the community. All grantees were encouraged, during the initial planning period and during program implementation, to identify and, if necessary, to adapt programs that would be an appropriate fit for their communities and several grantees did so successfully. Family and Youth Services Bureau (FYSB) staff has worked closely with Tribal PREP grantees throughout the planning and implementation phases to help ensure that cultural considerations were addressed.

FYSB has provided consistent opportunities for program support to Tribal PREP grantees, including interaction with federal project officers and training and technical assistance contractors. If any grantee feels they were not able to adapt a program appropriately, FYSB recommends a more detailed discussion occur with their Tribal PREP federal project officer. Additionally, FYSB will evaluate the possibility of holding a listening session with Tribal PREP grantees via a conference call to discuss this and other aspects of the grant. The information shared in a potential listening session may also be valuable in informing possible future Tribal PREP projects.

Comment/Issue/Recommendation: In the first year of the Tribal PREP grant, a community needs assessment was required to facilitate planning and selection of an appropriate evidence-based program. It was our experience that the needs assessment process was more stringent than what was required in the FOA. In our grant proposal, we demonstrated existing data sources that our tribal communities could use to assist in planning and curriculum selection. However, the grant administrators required a more formal process to conduct the needs assessment, which prevented ITCA using existing data in our communities. This formal process required that new data be collected from our communities, which required tribal or Institutional Review Board approval, which delayed the preparation for implementation phase. This over emphasis of the community needs assessment phase is also demonstrated in the manner in which funds were allocated to Tribal PREP grantees. In year 1, ITCA was awarded in excess of \$700,000 to support the community needs assessment phase. However, in years 2 and 3, the implementation phase, the funding was cut by 50 percent, and even more due to sequestration. We recommend that the funds be reversed. More funding should be allocated to support the implementation phase rather than the community needs assessment phase.

Response: ACF understands the concern shared regarding the needs assessment process. Many grantees, including the ITCA, submitted data sources as part of their grant application. However, the inclusion of such information in the original proposal does not negate the requirements found in the “*Phase I: Needs Assessment, Planning, and Capacity-Building (Year 1)*” section of the FOA, including the requirement to conduct a needs assessment in the planning phase of the grant. While this needs assessment process did require some additional data collection, it did not

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specify that pre-existing data sources could not be used as one component of the overall needs assessment. ACF regrets any confusion that may have occurred with regard to the use of pre-existing sources of information within the needs assessment. If a future round of Tribal PREP funding is appropriated, ACF will: 1) clarify the use of pre-existing data sources as one source of information in the needs assessment guidance; 2) evaluate whether funding can be reversed to allow for less funding during the planning phase and greater funding during the implementation phase, or 3) explore the equal distribution of funding across the project period. Regarding the sequestration concern, ACF does not determine how sequestration reductions are made.

Comment/Issue/Recommendation: Concerning the performance measures of Tribal PREP, we certainly understand the need to be accountable for the federal dollars that ITCA receives. However, with the rural nature of our communities and the unique situation many of our young people face, we are concerned that the establishment of these performance measures, without proper tribal consultation, continued funding could be harmed. We recommend that the performance measures and its impact on continued funding be developed in mutual partnership with the Tribal PREP grantees.

Response: ACF appreciates the desire of Tribal PREP grantees to participate in the shared development of performance measures for the Tribal PREP program. We are sensitive to the unique needs of tribal grantees and the importance of cultural sensitivity. To that end, ACF shared draft versions of the performance measures with all tribal grantees via e-mail and held a discussion with Tribal PREP grantees to solicit feedback on the draft measures. The detailed discussion regarding performance measures was held during the Tribal PREP kick-off meeting. Additionally, the ACF Tribal PREP liaison was intricately involved in the development of performance measures to ensure cultural appropriateness. Due to strict Office of Management and Budget requirements, the performance measures for this round of Tribal PREP funding cannot be amended. However, to ensure that this issue is addressed through future funding opportunities, ACF looks forward to working with Tribal PREP leaders and councils to seek input on evaluation efforts for Tribal PREP grantees and tribal youth.

Comment/Issue/Recommendation: We appreciate that the Tribal PREP grant recognizes the indirect rates of tribes and tribal organizations and that there is no required match to implement this important program. We respectfully request that these provisions continue.

Response: ACF appreciates your acknowledgement of the success of this program and the lack of a match requirement. The decision to require a match for any funding stream is made by Congress; therefore, ACF must adhere to funding requirements as determined in legislation.

NAVAJO NATION

Comment/Issue/Recommendation: Family Violence Prevention and Services Act (FVPSA)/ Grants to Native Americans: The Navajo Nation requests for an additional 9 months after the grant period to complete liquidation of funds to meet grant requirements, due to the fact that the Notice of Grant Awards are received in October and only allows the Navajo Nation to expend funds for a 12-month period.

Response: Several factors have contributed to the delay in FVPSA's awards. Although ACF does not have authority to extend the grant period, FYSB will take the following steps to ensure awards are received in a timely manner: 1) Release the fiscal year (FY) 2015 formula funding announcement to tribes for shelter and supportive services no later than December 2014; 2) coordinate with ACF's Office of Grants Management to streamline the internal funding announcement approval process; 3) maintain firm deadlines for receipt of applications (historically, the FVPSA office has extended application deadlines to accommodate the programs that needed additional time to apply for funding); and 4) automate the application submission process by FY 2016. It may be helpful to note that regardless of when the awards are made, once received, the awards can be used for expenditures starting October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year.

Office of Child Care

CENTRAL COUNCIL TLINGIT AND HAIDA TRIBES OF ALASKA

Comment/Issue/Recommendation: Requesting the removal of 15 percent administrative cap for the Child Care and Development Fund (CCDF).

We recommend modification to the Child Care and Development Block Grant (CCDBG) Act.

Response: By law, states are required to meet a 5 percent administrative cost limit, but the CCDF regulations allow tribes greater flexibility by establishing a 15 percent administrative cost limit. The regulations define activities that are included under the administrative cap, but there are additional activities, including eligibility determination and child care placement and recruitment, that are outside the cost limit. Through these additional activities, the exemption from the 5 percent state administrative cost cap and the base amount under the Discretionary Fund, we believe Tribal Lead Agencies will have sufficient flexibility in determining their administrative and/or indirect costs to run effective CCDF programs.

DELAWARE TRIBE OF INDIANS/MUSCOGEE CREEK NATION/ NATIONAL INDIAN CHILD CARE ASSOCIATION

Comment/Issue/Recommendation: We are asking for the Reauthorization of the CCDBG Act of 1990, (CCDBG Final Rule 45CFR 98 and 99, published August 1992), also known as the Child Care and Development Fund.

Response: The Office of Child Care (OCC) continues to support the reauthorization of the CCDBG Act. In March 2014, the U.S. Senate passed S. 1086 (the Child Care and Development Block Grant Act of 2014), which would reauthorize the child care law for the first time in 15 years. The Senate bill would change the funding set-aside for tribes from "not less than 1 percent, and not more than 2 percent" to be "not less than 2 percent." Also in March, the U.S. House of Representatives Subcommittee on Early Childhood, Elementary, and Secondary Education held a hearing to discuss reauthorization.

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Comment/Issue/Recommendation: We are asking for an increase to the tribal CCDF allocation. Increased CCDBG funds should be a priority for HHS by requesting an overall increase from Congress. The CCDF should be amended to allow 5 percent of the aggregate amount appropriated to be reserved for tribal programs who receive CCDF

Response: CCDF supports self-sufficiency for low-income working families and promotes children’s learning and development. The Administration provides the maximum amount allowable under the law to Indian tribes (2 percent of CCDF funds). In addition, the Administration targets a significant portion of its technical assistance efforts to tribes to help them maximize resources and take full advantage of the significant flexibility provided by federal rules that govern child care funding. As described earlier, only Congress can change the tribal allocation, and in March 2014, the Senate took the first step and passed a bill that would change tribal CCDF set-aside to “not less than 2 percent.” However, the House has yet to take action regarding reauthorization.

Comment/Issue/Recommendation: We request that ACF provide continued support in expansion for research that is relevant to services for tribal children.

Response: Beginning in FY 2000, Congress authorized ACF to spend approximately \$10 million annually for the CCDF funds for research, demonstration, and evaluation. The ACF Office of Planning, Research and Evaluation (OPRE) oversees the projects related to Native Americans. Each project is guided by consultation with AI/AN experts and collaboration with the tribes and tribal organizations affected. In addition, OPRE supports the Tribal Early Childhood Research Center (TRC), which seeks to address gaps in research on child outcomes for young AI/AN children. The TRC’s plans and activities will be continually informed and refined with the feedback and contributions of the recently developed Child Care Steering Committee, composed of researchers, tribal community leaders, and federal staff who have been involved in conducting research and evaluation on maternal, infant, and early childhood programs in tribal communities.

Comment/Issue/Recommendation: We recommend that OCC provide quality training and technical assistance to the CCDF tribal grantees, and continue to provide training and technical assistance to tribal CCDF participants to better prepare them to administer CCDF in an efficient manner that will provide the maximum services to children and families.

Response: OCC provides a variety of support, including technical assistance and professional development services targeted to support CCDF administrators and their staff in identifying and implementing effective policies and practices that build integrated child care systems to help parents work and to promote the healthy development of young children.

Through OCC’s Child Care Technical Assistance Network and federal leadership, OCC provides training and technical assistance to states, territories, tribes, and local communities. This involves assessing CCDF grantees’ needs, identifying innovations in child care administration, and promoting the dissemination and replication of solutions to the challenges that grantees and

local child care programs face. OCC technical assistance helps states, territories, tribes, and local communities build integrated child care systems that enable parents to work and promote the health and development of children.

Federal regulations provide a set-aside of one-fourth of 1 percent (.25 percent) of the CCDF for the purpose of providing technical assistance to CCDF grantees. In FY 2014, nearly \$13 million was provided to meet the technical assistance needs of state, territorial, and tribal CCDF grantees.

MUSCOGEE CREEK NATION/NAVAJO NATION

Comment/Issue/Recommendation: The Navajo Nation is requesting separate funding for the renovation; the fund would be in the range \$500,000 – \$750,000 annually. Currently, if any construction is done, the monies must come out of the main budget.

We recommend modification to the CCDBG Act

Response: By law, tribes and tribal organizations may request to use amounts of their CCDF funding for major renovation of child care buildings as long as it does not result in a decrease in the level of direct child care services. The Administration provides the maximum amount allowable under the law to Indian tribes (2 percent of CCDF funds). In addition, the Administration targets a significant portion of its technical assistance efforts to tribes to help them maximize resources and take full advantage of the significant flexibility provided by federal rules that govern child care funding.

Office of Community Services

CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Comment/Issue/Recommendation: The Central Council recommends that the federal government remove the 5 percent Community Services Block Grant (CSBG) cap on indirect costs because it is inappropriate in the high-cost region of Alaska.

Response: The 5 percent limitation on administrative fund is outlined in statute. The Office of Community Services (OCS) recognizes that this limitation means that small tribal grants will have limited administrative (or indirect) funds; however, OCS recommends a review of the CSBG Information Memorandum No. 37: Definition and Allowability of Direct and Administrative Cost Block Appropriation and Allocations. This can be found on: <http://www.acf.hhs.gov/programs/ocs/resource/csbg-information-memoranda>.

Use of CSBG funds to augment and coordinate other programs is an allowable cost. Furthermore, although some of these functions have administrative qualities, related expenditures that can be specifically identified with a programmatic activity to coordinate and strengthen other programs and services should be categorized as direct program costs, because

they achieve an outcome intended by the Congress in the express language of the CSBG reauthorizing statute.

A review of any necessary major costs specifically tied to a service area may be allowable, as long as it is not a generalized cost. The tribe may consult with the Project Officers as necessary. OCS staff contact information by region can be found on:

<http://www.acf.hhs.gov/programs/ocs/resource/csbg-staff-assignments-by-region>.

INTER-TRIBAL COUNCIL OF ARIZONA (ITCA)

Rural Community Development

Comment/Issue/Recommendation: The Inter-Tribal Council of Arizona (ITCA) represents 21 federally recognized Indian tribes with lands located with the states of Arizona, New Mexico, and California. ITCA submits their testimony on behalf of its Member Tribes to express strong support for the continuation of the HHS Community Service Block Grant – Rural Community Development (CSBG-RF) grant program. The ITCA Member Tribes are concerned that the HHS CSBG-RF program no longer will be funded after September 30, 2015. ITCA member tribes and tribes throughout much of the country rely on the public health services of tribal organizations, such as the ITCA, that have been funded since 1983 in partnership with OCS through the Rural Community Development multi-year grant program. The ITCA Member Tribes strongly request continuation of and sufficient funding for the vital and highly successful services that a have been support by CSBG-RF program.

Response: The FY 2015 budget request does not include funding for the Rural Community Development (RCD) program. This budget request represents a difficult budget decision in a challenging budget environment. Also, a factor that was considered is that some of the services provided by the RCD program are similar to programs currently operating at the Environmental Protection Agency and the Department of Agriculture. This budget request reflects the Administration's efforts to target funds more effectively and efficiently

If Congress chooses to appropriate funding for the RCD in FY 2015, ACF would expect to conduct an open competition and select grantees for a project period of 5 years with annual non-competing continuation 1-year budget periods.

Office of Family Assistance

CENTRAL COUNCIL TLINGIT AND HAIDA INDIAN TRIBES OF ALASKA

Comment/Issue/Recommendation: Revise federal benefit programs to facilitate program integration similar to the Public Law (Pub. L.) 102-477 legislation.

Response: The Tribal TANF program was up for reauthorization and extended by Continuing Resolution through September 30, 2014. At this time, Congress has not taken up the reauthorization of the program. At the time that a formal process for reauthorization is initiated,

comments will be taken into consideration. All of the comments made in this testimony as it pertains to TANF would require a change in the current law that authorizes the TANF program.

COOK INLET TRIBAL COUNCIL

Comment/Issue/Recommendation: The tribe is in disagreement with HHS's legal interpretation and reconciliation of Pub. L. 102-477 regarding the applicability of individual program regulations and whether program requirements can supersede the reporting provisions of the Pub. L. 102-477 Demonstration Act.

The Cook Inlet Tribe urges ACF to cease its opposition to the legal interpretation and practices that support the Pub. L. 102-477 projects.

Response: As a general principle, when a program participates in a 477 project, it remains subject to the underlying statutory and regulatory requirements of the program unless those requirements are waived by the respective Secretary. Under long-established appropriations law principles, a program's funds must be spent for the purposes for which they are appropriated. The one exception to the principle that program funds must be spent for program purposes and in accordance with program rules, unless waived, is contained in Section 9 of Pub. L. 102-477, which authorizes spending project funds, up to certain caps, for job creation activities.

Comment/Issue/Recommendation: The tribe would like confirmation that the funding mechanism for transferring funds is permanently in place, for new programs as well, and that the re-budgeting and reprogramming authority of funds remains with the tribes.

The Cook Inlet Tribe urges ACF to cease its opposition to the legal interpretation and practices that support the Pub. L. 102-477 projects.

Response: While the Department of the Interior (DOI) is electing to use Pub. L. 93-638 as a funding mechanism for transferring funds to tribes, the HHS programs participating in a 477 project are not subject to any of the provisions of Pub. L. 93-638 and, accordingly, HHS programs in a 477 project cannot be redesigned, re-budgeted, or reallocated under Pub. L. 93-638 provisions. Under long established appropriations law principles, a program's funds must be spent for the purposes for which they are appropriated. The Pub. L. 93-638 funding mechanism is being used by DOI with the understanding that the Pub. L. 102-477 project is not a program, function, service, or activity transferred from DOI to the tribe pursuant to Pub. L. 93-638 and therefore, the terms of Pub. L. 93-638 do not apply.

PECHANGA BAND OF LUISENO MISSION INDIANS

Comment/Issue/Recommendation: The Pechanga Band of Luiseno Indians strongly urges ACF to consider approving their request to expand the Pechanga Tribal TANF program service area to serve members living off reservation.

The tribe requests that ACF correct the gap in the TANF law with regard to tribal governments.

Response: During a conference call with your tribal leaders and TANF program staff, we agreed to provide step-by-step guidance for actions that the Pechanga Band would need to take in order to change your service area. ACF provided the step-by-step guidance as requested. Our staff continues to be willing to assist you with any questions related to the process.

Office of Head Start

CENTRAL COUNCIL OF TLINGIT AND HAIDA TRIBES OF ALASKA

Comment/Issue/Recommendation: Head Start has an administrative cap of 15 percent. Their Central Council had to remove these programs from their Indirect Cost Rate Agreement. This resulted in a shortfall on administrative expenses and increased the next indirect cost rate negotiated from 32.65 percent to 49.68 percent. In addition, considering Alaska is a high-cost area, there should be special consideration rather than a one-size-fits-all approach on indirect costs.

Response: Allowable costs for developing and administering a Head Start program may not exceed 15 percent of the total approved costs of the program, unless the responsible HHS official grants a waiver approving a higher percentage for a specific period of time not to exceed 12 months. There are specific conditions under which a limited waiver may be available and more information is available through the Office of Head Start's Early Childhood Learning and Knowledge Center and your program specialist.

GLOSSARY

ACF	Administration for Children and Families
AI/AN	American Indians and Alaska Natives
CCDBG	Child Care and Development Block Grant
CCDF	Child Care and Development Fund
CCTAN	Child Care Technical Assistance Network
CFSR	Child and Family Services Reviews
CIP	Court Improvement Program
CSBG-RF	Community Services Block Grant – Rural Community Development
FYSB	Family and Youth Services Bureau
FVPSA	Family Violence Prevention and Services Act
HHS	Department of Health and Human Services
ICWA	Indian Child Welfare Act
IRB	Institutional Review Board
ITCA	Inter-Tribal Council of Arizona
OCC	Office of Child Care
OCS	Office of Community Services
OMB	Office of Management and Budget
OPRE	Office of Planning, Research and Evaluation
PREP	Personal Responsibility Education Program
RCD	Rural Community Development
T/TA	Training and technical assistance
TANF	Temporary Assistance for Needy Families
TRC	Tribal Early Childhood Research Center