

**SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING (SNPRM)
FREQUENTLY ASKED QUESTIONS**

Comments on the SNPRM must be submitted by May 9, 2016.

What is AFCARS?

AFCARS is the only Federal national data set that collects case level information on all children in foster care and children adopted with the involvement of the title IV-E (child welfare) agency. The statute requires us to regulate this national data collection system to provide comprehensive case level information. Specifically, we must collect demographics on foster/adopted children and biological/foster/adoptive parents, the number of children entering/exiting foster care and awaiting adoption, and information on placements and permanency plan goals.

Who reports AFCARS and when do they report?

Title IV-E agencies report AFCARS data to the Children's Bureau two times per year, in May and November. The data submitted reflects the child's experience as of the end of the 6-month report period.

What is reported in AFCARS?

For children who are in foster care, title IV-E agencies report when and why the child entered foster care, demographics on the child and the individuals from whom the child was removed, characteristics on foster care placements, the child's most recent case plan goal, and the reason the child exits foster care (for instance, the child was reunified or adopted). For children who are adopted, title IV-E agencies report on the child's special needs, demographics on the adoptive family, and the adoption subsidy, if applicable.

What did ACF propose in the AFCARS NPRM published in February 2015 and how is the SNPRM different?

On February 9, 2015, ACF published a NPRM to amend the AFCARS regulations to modify the requirements for title IV-E agencies to collect and report data to ACF on children in out-of-home care and who were adopted or in a legal guardianship with a title IV-E subsidized adoption or guardianship agreement. The NPRM proposed to: 1) incorporate statutory requirements that have passed since 1993; 2) implement the statutory authority to assess penalties for noncompliant data submissions; and 3) enhance the type and quality of information title IV-E agencies report to the Children's Bureau (CB).

The SNPRM published on April 7, 2016 proposes that in addition to the data elements proposed in the February NPRM, state title IV-E agencies must also collect and report additional data elements related to the Indian Child Welfare Act of 1978 (ICWA) in the

AFCARS. ACF will consider the public comments on this SNPRM as well as comments already received on the February 9, 2015 NPRM and issue one final AFCARS rule.

What is the Indian Child Welfare Act?

ICWA was enacted in 1978 to address concerns over the consequences to Indian children, Indian families, and Indian tribes of child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes. Through ICWA, Congress declared the policy of the United States to be “to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian cultures, and by providing for assistance to Indian tribes in the operation of child and family service programs.” ICWA was enacted to protect American Indian/Alaska Native (AI/AN) families and to give Indian tribes a role in making child welfare decisions for Indian children. AI/AN children are subject to ICWA when they are unmarried persons under the age of 18 and are either (a) a member of an Indian tribe or (b) are eligible for membership in an Indian tribe and are the biological child of a member of an Indian tribe. ICWA expressly requires, among other things, that: (1) a tribe is notified when the state places an “Indian child” in foster care or seeks to terminate parental rights on behalf of such a child, (2) a tribe is given an opportunity to intervene in any state proceeding for foster care placement and termination of parental rights to a child subject to ICWA, and (3) that a preference be given to placing the Indian child with extended family or tribal families.

Why are we proposing that state title IV-E agencies collect ICWA-related data in AFCARS?

AFCARS was established in statute to collect uniform, reliable information from title IV-E agencies on children who are under the agency’s responsibility for placement and care. Although ICWA was passed more than 30 years ago, it is unclear how well state agencies and courts have implemented ICWA’s requirements into practice. This is further complicated by the fact that there is no comprehensive national data on the status of AI/AN children for whom ICWA applies at any stage in foster care. ACF’s SNPRM is motivated by the Administration’s vision of healthy, resilient, and thriving Indian children and families as well as the continued vitality and integrity of Indian tribes. More specifically, the proposals reflected in this SNPRM manifest Department-wide priorities to affirmatively protect the best interests of Indian children and to promote the stability and security of Indian tribes, families, and children.

What authority does ACF have to require state title IV-E agencies to collect and report information related to ICWA in AFCARS?

ACF’s authority to collect state-level ICWA-related data on American Indian and Alaska Native (AI/AN) children in child welfare systems is pursuant to section 479 of the Social

Security Act. Section 479 of the Act requires that title IV-E agencies maintain a data collection system which provides comprehensive national information related to foster and adopted children.

What information do we propose to collect in the SNPRM?

The SNPRM proposes that state title IV-E agencies collect and report information to:

- (1) Identify children to whom ICWA applies and determine whether a child is an “Indian child” as defined in ICWA.
- (2) Collect information on children for whom ICWA applies: For children to whom ICWA does apply, we propose to require title IV-E agencies to collect information related to:
 - Removal of a child from his/her home;
 - Child custody hearing notification to tribes and parents;
 - Active efforts to prevent removal and to reunify with the Indian;
 - Foster care and adoptive placements;
 - Termination of parental rights; and
 - Transfers from state court to tribal court.

How did ACF determine what ICWA-related data elements to propose for AFCARS?

To inform the development of the ICWA-related data elements proposed in this SNPRM, ACF: 1) reviewed public comments received in response to the February 2015 AFCARS NPRM; 2) consulted with stakeholders; 3) consulted with federal experts.

First, we received and reviewed approximately 45 comments that proposed/recommended including new data elements in AFCARS related to ICWA.

Second, the Children’s Bureau also held a tribal consultation via conference call on May 1, 2015, that was co-facilitated by the Children’s Bureau’s (CB) Associate Commissioner and the Chairperson of the ACF Tribal Advisory Committee, who also serves as the Vice Chair of the Jamestown S’Klallam Tribal Council. The CB conducted the session to obtain input from tribal leaders on proposed AFCARS data elements related to ICWA. In addition, the National Association for Public Child Welfare Agencies (NAPCWA), an affiliate of the American Public Human Services Association (APHSA) hosted a conference call with state members of NAPCWA (i.e., representatives of state child welfare agencies) and the Children’s Bureau on April 27, 2015 to obtain input from state members on what data state title IV-E agencies currently collect regarding ICWA and what they believed were the most important information title IV-E agencies should report in AFCARS related to ICWA.

Finally, as part of on-going intra- and inter-agency collaboration, ACF consulted with federal experts in the Bureau of Indian Affairs (BIA) at the Department of the Interior and the Department of Justice on: existing data and its utility in understanding the well-being of Indian children, youth, and families; the ICWA statutory requirements in 25 U.S.C. 1901 et seq., BIA’s Guidelines for State Courts and Agencies in Indian Child Custody Proceedings, and Notice of Proposed Rulemaking to implement ICWA

Regulations for State Courts and Agencies in Indian Child Custody Proceedings (80 FR 14880, issued March 20, 2015).

How will ACF use the ICWA-related data proposed in the SNPRM?

ACF will improve the AFCARS data collection system to provide more comprehensive demographic and case-specific information on all children, including children subject to ICWA, who are in foster care or exit foster care to adoption. Some of the purposes that ACF intends to use the data include to:

- Address the unique needs of Indian children in foster care or who exit to adoption, and their families;
- Assess the current state of adoption and foster care programs and relevant trends that affect AI/AN families;
- Improve training and technical assistance to help states comply with title IV-E, and title IV-B of the Social Security Act;
- Develop future national policies concerning its programs; and
- Inform and expand partnerships across federal agencies that invest in Indian families and that promote resilient, thriving tribal communities through several initiatives.

How much will this cost state title IV-E agencies to implement?

ACF estimated the average cost per state title IV-E agency to collect and report the data elements proposed in the SNPRM to be \$124,729 one-time and \$281,919 annually. Federal reimbursement under title IV-E will be available for a portion of the costs that title IV-E agencies will incur as a result of the revisions proposed in this SNPRM, depending on each agency's cost allocation plan, information system, and other factors. It is important to remember however that ACF has used average figures for state title IV-E agencies of very different sizes and of which, some states may have larger populations of tribal children served than other states. Additional information on the burden hour and cost estimate may be found in the SNPRM.

How do I submit comments to the SNPRM?

Comments must be submitted by May 9, 2016. We encourage the public to submit comments electronically to ensure they are received in a timely manner. Please be sure to include identifying information on any correspondence. The SNPRM may be found here: <https://www.federalregister.gov/articles/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>. You may submit comments, identified by docket number, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Written comments may be submitted to Kathleen McHugh, United States Department of Health and Human Services, Administration for Children and Families, Director, Policy Division, 330 C Street, S.W., Washington, D.C. 20024

Please be aware that mail sent in response to this SNPRM may take an additional 3 to 4 days to process due to security screening of mail.

- Hand Delivery/Courier: If you choose to use an express, overnight, or other special delivery method, please ensure that the carrier will deliver to the above address Monday through Friday during the hours of 9 am to 5 pm, excluding holidays.