

THE ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM SUPPLEMENTAL PROPOSED RULE: OVERVIEW

BACKGROUND

Adoption and Foster Care Analysis and Reporting System (AFCARS) collects case-level information from state and tribal title IV-E (child welfare) agencies on all children in foster care and those who have been adopted with title IV-E agency involvement. Title IV-E agencies are required to submit the AFCARS data twice a year based on two six-month reporting periods.

On April 7, 2016, the Administration for Children and Families (ACF) published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing to require that state title IV-E agencies collect and report additional data elements related to the Indian Child Welfare Act (ICWA) in AFCARS. 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. The proposed rule manifests Department-wide priorities to affirmatively protect the best interests of Indian children and promotes the stability and security of Indian tribes, families, and children.

ACF proposes to collect data elements in AFCARS related to identifying children to whom ICWA applies and collecting information about whom ICWA applies. ACF intends to use the data to:

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

We hope you find this overview helpful, but we intend this only to provide summary information on some of the SNPRM's key points. For complete context and understanding, we encourage everyone to read the entire SNPRM which was published in the Federal Register on April 7, 2016¹. You can submit comments about the NPRM to <http://www.regulations.gov/> during the public comment period, which is open until May 9, 2016. 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.

¹ <https://www.federalregister.gov/articles/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>

KEY PROVISIONS OF THE SUPPLEMENTAL PROPOSED RULE

The SNPRM proposes that state title IV-E agencies collect and report certain information for two primary reasons: (1) to identify the children to whom ICWA applies, and (2) to collect meaningful information about the experience of children for whom ICWA applies².

- (1) **IDENTIFY CHILDREN TO WHOM ICWA APPLIES:** We propose to require title IV-E agencies to collect information to determine whether a child is an “Indian child” as defined in ICWA. Without inquiry, many Indian children are not identified, thereby denying children, parents, and Indian tribes procedural and substantive protections under ICWA.
- (2) **COLLECT INFORMATION ON CHILDREN FOR WHOM ICWA APPLIES:** We propose to require title IV-E agencies to collect information on children for whom ICWA applies, which are based on ICWA statutory requirements and Bureau of Indian Affairs updated the Guidelines for State Courts and Agencies in Indian Child Custody Proceedings (80 FR 10146, issued February 25, 2015). This data will help ACF more effectively target oversight, training, and technical assistance resources. State title IV-E agencies will report information on:
 - Removal of a child from his/her home – To prevent the breakup of Indian families, ICWA requires child welfare agencies to take specific actions before removing children from their homes. Data on these actions will help to identify best practices.
 - Child custody hearing notification to tribes and parents – Notifying Indian tribes of their rights and requirements in every child custody proceeding is critical to meaningful access to and participation in adjudications. The data in this section will provide information about the completion and timing of these notifications.
 - Active efforts to prevent removal and to reunify with the Indian family – As outlined in statute, certain actions taken by a state child welfare agency are classified in statute as active efforts. Examples of active efforts include, but are not limited to, keeping siblings together, identifying services to help parents overcome barriers, and completing comprehensive family assessments. Collecting data on active efforts will help ACF understand the status of Indian children in foster care and the impact of these efforts on a child’s case.
 - Foster care and adoptive placements – The placement preferences in ICWA are designed to protect the best interests of Indian children as well as to promote the stability and security of Indian tribes and families. This data will aid in identifying targeted training and resource needs to assist states in improving Indian child outcomes.
 - Termination of parental rights – Information about how and if parental rights were terminated will highlight opportunities to improve service delivery to families.
 - Transfers from state court to tribal court – This data will help the federal government understand how often children in foster care are transferred to tribal court and, therefore, are more likely to remain connected to their and culture and community.

² Unless otherwise specified, the following terms have the same meaning as in ICWA, at 25 U.S.C. 1903: child custody proceeding, extended family member, Indian, Indian child, Indian child’s tribe, Indian custodian, Indian organization, Indian tribe, parent, reservation, and tribal court.