

ACF

Administration
for Children
and Families

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Administration on Children, Youth and Families

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INFORMATION MEMORANDUM

TO: State Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, and Federally Recognized Tribes, Tribal Organizations and Tribal Consortia

SUBJECT: Notice of Supplemental Proposed Rulemaking (SNPRM) for collecting and reporting additional data elements related to the Indian Child Welfare Act of 1978 (ICWA) in the AFCARS authorized under Title IV-E of the Social Security Act

LEGAL AND RELATED REFERENCES: Title IV-E of the Social Security Act; 45 CFR 1355, ACYF-CB-IM-15-01

PURPOSE: The purpose of this Information Memorandum (IM) is to inform State Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, and Federally Recognized Tribes, Tribal Organizations and Tribal Consortia of a supplemental proposed rule on AFCARS.

INFORMATION: Currently, title IV-E agencies collect and report to AFCARS case-level information on all children in foster care and those who have been adopted with title IV-E agency involvement (regulated under 45 CFR 1355.40 and the Appendices of 1355). Title IV-E agencies must submit the AFCARS data twice a year based on two six-month reporting periods.

We propose in the SNPRM published on April 7, 2016,¹ 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 <https://www.federalregister.gov/articles/2016/04/07/2016-07920/adoption-and-foster-care-analysis-and-reporting-system>

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.

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 the experience of children for whom ICWA applies, which are based on ICWA statutory requirements and the 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 information 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 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.

ACF intends to use the data to:

1. Address the unique needs of 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.

Overall, this SNPRM is motivated by the Administration’s vision of health, resilient, and thriving Indian children and families as well as the continued vitality and integrity of Indian tribes. This proposed rule manifests Department-wide priorities to affirmatively protect the best interest of Indian children and promote the stability and security of Indian tribes, families, and children.

COMMENTS: Please submit comments on the SNPRM to www.regulations.gov on or before 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.

/s/

Rafael López
Commissioner
Administration on Children, Youth and Families

Attachments:

[Supplemental Notice of Proposed Rulemaking](#) (81 FR 20283)

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