

## **Tribal Consultation on Title IV-E Information Systems Regulations**

**February 15 and 16, 2012**

### **Summary Report**

The title IV-E regulations include requirements for child welfare data collection and reporting, and provide Federal Financial Participation (FFP) if a State or Tribe implements a comprehensive Statewide or Tribal automated child welfare information system (SACWIS or TACWIS). If a State or Tribal title IV-E agency chooses to implement a SACWIS/TACWIS, it must collect, manage, and store the information necessary to administer the foster care and adoption assistance programs. When the Federal SACWIS rules at 45 CFR 1355.50 - 1355.57 were implemented, Tribes did not have the opportunity to administer their own title IV-E Foster Care and Adoption Assistance programs. As a result, the SACWIS regulations were reflective of the large comprehensive systems used by States, and therefore, these types of systems may not match the needs of Tribes.

Through our discussions with Tribal child welfare staffs, the Children's Bureau (CB) learned that Tribes generally do not believe that the SACWIS/TACWIS model is relevant to their program and business needs. As a result, Federal staff from CB engaged in a formal consultation process with Tribal leaders and their representatives.

The Children's Bureau notified Tribal Leaders of the Tribal consultation with a notice in the Federal Register, dated January 5, 2012. The Tribal Consultation notice was mailed to Tribal Leaders in federally-recognized Tribes, and distributed through multiple electronic Tribal mailing lists maintained by the Children's Bureau and the National Resource Center for Tribes.

The goal of the consultation was to hear the preferences and concerns regarding the current SACWIS/TACWIS regulations from the Tribal leaders and their representatives and determine if there were opportunities to provide flexibility. This summary report reflects comments and questions raised by Tribal leaders and representatives, the responses from CB staff, and describes the intended follow-up by the Division of State Systems (DSS).

#### **Process:**

The Tribal Consultation was held via teleconferences on February 15 and 16, 2012. Each of the Consultation sessions was preceded by an education session where CB staff provided an overview of current Federal policy and regulations regarding SACWIS/TACWIS systems.

At the conclusion of the education portion of the teleconferences, the Tribal Consultation began.

## February 15 Conference Call

Six phone lines were in use by Tribes or Tribal organizations and some of those lines included multiple individuals.

The teleconference began with a welcome from Joseph Bock, Acting Associate Commission of the Children's Bureau, and Terry Watt, director, Division of State Systems. The education session described the existing SACWIS regulation, and its history. The session also covered a brief discussion about Fostering Connections, the legislation that provided Tribes with the opportunity to run their own title IV-E programs; the cost of State SACWIS systems; the availability of funding for systems that did not meet the SACWIS/TACWIS rules; and the existing flexibility afforded to States and Tribes interested in this type of system. At the conclusion of the education session, Peter Howe, a Federal Analyst within Division of State Systems began the consultation by asking the first of three questions, which had been previously published in the January 5, 2012 Federal Register announcement and included in a letter mailed to Tribal leaders of the Federally-recognized Tribes.

### **First question: "What are the obstacles for your Tribe in building a child welfare information system in general and a SACWIS-type system specifically?"**

Denneen Smith, Little Traverse Bay of Odawa Indians, remarked that "the primary obstacle is funding." She noted that while her Tribe and others might not need a system of the same magnitude as needed by a State, the cost they would incur would be substantial.

She added that building a system capable of reporting Federal AFCARS data would be a significant challenge. "We are CW directors and managers, certainly not computer whizzes, and in order to try to navigate a database, think about all the implications and figure out all that you need to get in there is overwhelming."

She noted that her Tribe met with data consultants and developed a small *Microsoft Access*-based system, but the system requires regular updates. She said that if there was an off-the-shelf application that they could use, even a "bare-bones program," it would be a help. She said that she believes child welfare program staff could convince Tribal leadership to invest in or purchase such a ready to use system, rather than having to develop a new system product.

Judith Heath of the Keweenaw Bay Indian Community (KIBC) asked if there had been any changes in the Federal rules governing the use of commercial off-the-shelf (COTS) products sold and maintained by a single vendor, so that such a product would be eligible for title IV-E funding, and recommended that the current rules be changed.

**Second question: “What information do you consider critical to managing your child welfare program?”**

In discussing and paraphrasing this question, Mr. Howe inquired if there were cultural issues associated with current regulations that interfered with the ability of Tribes to manage their ability to track and place children with Tribal families, and keep them within the Tribal organization itself.

Denneen Smith, Little Traverse Bay Band of Odawa Indians, said that building a data management system isn't so much about cultural needs, because her Tribe makes sure these are addressed within their child welfare program. She noted that each Tribe has its own standards, requirements or opinions about culture and what needs to be implemented. She said that Tribes wouldn't want a system that incorporates any cultural difference as in comparison to what the States would want. “We would want the ability to monitor information, like the standard SACWIS component areas you have described” that address child welfare practice.

Suzanne Garcia, Washoe Tribe, asked if DSS wanted to know what kind of information is critical to Tribes in meeting program goals, preventing the removal of children from their families, keeping families together, and getting children in permanent placements as soon as possible. She said that the ability to track the availability and gaps in services was important to her Tribe. “We identify a need that the parents might have for which there are no service providers in this area.” She said that this service gap information would be helpful “informing our practice, and informing our negotiations and consultations with ACF on a broader level.”

Judith Heath, KBIC, endorsed Denneen Smith's statement regarding cultural aspects of a system, adding that “every Tribe is different, and we are looking for the basically a lot of the same things as any other program would be, many of the eight areas of functionality that were listed.”

**Third question: “Is there any special information that Tribes need or will need in order to operate child welfare programs funded with title IV-E dollars?”**

Judith Heath, KBIC, again described the limitations associated with current Federal regulations regarding the use of commercial off-the-shelf software products, and noted that her Tribe had purchased an off-the-shelf product used to support the operation of other Tribal programs. She recommended that the Children's Bureau relax current requirements, so that Tribes would have more options to purchase and use software products developed specifically for Tribes.

**CB Response to Tribal Consultation**

Mr. Howe and Mr. Watt thanked all of the participants and reminded them that written comments and testimony could be submitted for a period of 45 days, until April 6, 2012. Mr. Watt stated that DSS would use the information gained in the Tribal Consultation to guide future policies, and would help direct any efforts that DSS can make to expand flexibility in the area of Tribal system development.

### **February 16 Conference Call**

On February 16, 27 phone lines were in use by Tribes or Tribal organizations. Multiple individuals participated in the consultation on several phone lines.

The teleconference began with a welcome from Joseph Bock, Acting Associate Commission of the Children's Bureau, and Terry Watt, DSS director. The education session described the existing SACWIS regulation, and its history. The session also covered a brief discussion about Fostering Connections, the legislation that provided Tribes with the opportunity to run their own title IV-E programs; the cost of State SACWIS systems; the availability of funding for systems that did not meet the SACWIS/TACWIS rules; and the existing flexibility afforded to States and Tribes interested in this type of system. Peter Howe, a Federal analyst, and Terry Watt responded to multiple questions from Tribal representatives during the education session.

Kristen Hartzel, Southern Ute Indian Tribe, said that her Tribe would prefer its own automated system, rather than its current arrangement of reporting child welfare data through a manual submission to a county agency in Colorado. They would also like to be able to use the system for other purposes beyond what may be required in a TACWIS and asked if title IV-E could fund a test or implementation of other system features.

Mr. Watt explained that any costs that are eligible for IV-E funding as TACWIS are eligible for appropriate IV-E funding, but that a pilot test does not come with any dedicated title IV-E funding. If a Tribe is operating a IV-E program, and if the feature or component being tested under a pilot is eligible for IV-E funding, then IV-E dollars may be claimed.

Ms. Hartzell then asked if the Tribe requested a waiver to develop its own system, if that system would be considered a non-TACWIS.

Mr. Watt spoke about the waiver process and the ways in which States and Tribes receive Federal approval for their plans to implement systems. Mr. Watt described the Advance Planning Document (APD) process, under which States must now file required documents for approval of funding, and noted that Tribes would also be subject to these requirements at certain financial thresholds. He said that current APD rules include a provision prohibiting the use of Federal financial participation (FFP) for a system using commercial off-the-shelf software,

or COTS. He said that Tribes could submit a waiver request for permission to use a COTS system, but the system development funding available under that waiver is still Title IV-E funds—not a 100 percent grant, but a matched claim that a Tribe can submit for FFP.

Ms. Hartzell asked if any Tribes currently have their own independent IV-E program.

Mr. Howe responded that 11 Tribes currently have grants to develop a plan to run their own title IV-E program. It is anticipated that many of these Tribes will have their plans approved by early October 2012, and will then be operating their own IV-programs.

Ms. Hartzell asked when the 2012 planning grants would be announced.

Eileen West of the Children's Bureau responded that announcements would be published by late February 2012. She suggested that interested parties watch the website [www.grants.gov](http://www.grants.gov) and said that CB would publicize the announcement via its electronic email lists. She also noted that after publication, CB staff could share the announcement on request.

Katrina Smith, Grand Traverse Band of Ottawa and Chippewa Indians, noted the size differences between States and Tribes, and asked if there would be any concessions to the economies of scale between States' SACWIS and Tribes' TACWIS systems.

Mr. Watt responded that the nature of these differences promoted this consultation. He explained the Division of State Systems has the same concerns. He noted that while the child support enforcement program afforded flexibility to Tribes, the Fostering Connections legislation said that except for a few specific areas, States and Tribes must be treated the same. The Children's Bureau sought guidance on this point from the Office of General Counsel and was informed that other than the differences cited in the implementing legislation, States and Tribes could not be treated differently. He invited the Tribal representatives to submit ideas about flexibility that DSS could consider.

Grace Smith, Aleutian Pribilof Island Association, asked for confirmation that Tribes would not be eligible for title IV-E FFP unless they operated a title IV-E program. Mr. Watt confirmed that it was necessary to operate a IV-E program to claim IV-E FFP. Ms. Smith noted that under current rules, it would be difficult for smaller Tribes to sustain a title IV-E program and obtain related systems funding.

Ryan Champagne, Mille Lacs Band of Ojibwe, asked if a Tribe with a IV-E agreement uses a State's system, could the Tribe be eligible for the 50 percent FFP. Mr. Howe noted that if the title IV-E funding is passed through the State, CB would not be able to provide IV-E funding directly to the Tribe.

Kristen Hartzell, Southern Ute Tribe, said that when her Tribe asked the State of Colorado about enhancing their SACWIS to accommodate Tribal reporting and tracking needs, they were given a cost estimate of a \$457,000 fee plus \$37,000 a year for maintenance; this cost is more than the Tribe can afford for an automated system.

Boyd Cummings, Sac and Fox Nation, asked if there is a provision or exception for Tribes to buy a COTS software product.

Mr. Watt said that a waiver process exists for that purpose, and is explained in detail in Program Instruction ACYF-CB-PI-11-08 issued on July 7, 2011. The PI is available on the CB web site. This PI describes the waiver process as it is stipulated in the APD regulations; it is also a statement that CB would be willing to consider a COTS product that might meet a IV-E agency's needs. He noted that "CB had Tribes in mind when we wrote the PI," knowing that there are products on the market that Tribes can use for TANF and enrollment that could be used for child welfare purposes.

Nelson Billy, Navajo Nation, asked for clarification whether the eight components described in the education session that must be included in a TACWIS must also be included in a non-TACWIS.

Mr. Howe explained that the real difference between a TACWIS and non-TACWIS is that a TACWIS application must include the mandatory components listed in eight functional areas: intake; eligibility; case management; resource management; court processing; financial management; administration and reporting; and interfaces. He said that a non-TACWIS system does not have requirements other than that Tribes must be able to keep track of children and submit Federal reports such as AFCARS.

Mr. Billy asked if a Tribe pursued a COTS software product, would they have to meet the mandatory eight TACWIS components. Mr. Howe replied that if a Tribe is building a TACWIS, then yes, they would be required to meet the minimum requirements, but if a Tribe chooses to pursue a non-TACWIS system, it would not have to meet the TACWIS functional requirements.

Mr. Watt said that it was important to note that States and Tribes have a significant amount of latitude in defining the TACWIS components. For example, while a TACWIS is required to have an intake component, there is latitude to define how extensive that intake component should be. He said that CB would work with Tribal program and technical staff as they were defining the scope of that function.

At the conclusion of the education session, Peter Howe, a Federal Analyst within DSS began the consultation by asking the first of three questions:

**Question 1: What are the obstacles for your Tribe in building a child welfare information system in general and a SACWIS-type system specifically?**

Nelson Billy, Navajo Nation, said that “the remoteness of the data” was an issue in building a system, with five service provider agencies scattered throughout the reservation. He said these agencies use different record keeping and reporting practices.

Constance Morideau, The Confederated Salish and Kootenai Tribes, expressed surprise at the average cost of building a SACWIS, and said that such systems would be costly for a Tribe.

Mr. Watt noted that the costs cited in the education session were based on State requirements, and that Tribes have latitude to define the scope of the information system they elect to build. He explained that while a TACWIS system may cost more than a non-TACWIS, Tribes retain control of the scope of the system and can therefore control the costs. It would be unlikely that a Tribe would build a \$50 million system.

**Question 2: What information do you consider critical to managing your child welfare program?**

Andrea Smith, Port Gamble S’Klallam Tribe, asked for clarification, if this information referred to AFCARS data, or to something else. Mr. Howe replied this question was aimed defining what information a Tribe might want that a State might not be collecting.

Wilford Yazzie, Navajo Nation, said that one of critical areas that his Tribe would like to know is which of the 110 chapter communities that the child is from. He also noted the importance of recording the Navajo clan relationship.

Grace Smith, Aleutian Pribilof Islands Association, said that her child welfare staff want to know what Tribe the individual is from, what their BIA blood quantum is, and in what regional and village corporation the children might be enrolled. She also said that an ancestry chart is a critical piece of their paperwork, but was unsure if this could be part of an automated system.

Glenna Vanzant, Seminole Nation of Oklahoma, said that her Tribe also records and tracks band information.

Kristen Hartzel, Southern Ute Tribe, said that her Tribe is relatively small, with a little over 1400 members. She noted when looking for a foster home, they look for kinship care possibilities and would want family relationships in an accessible record.

**Question 3: Is there any special information that Tribes need or will need in order to operate child welfare programs funded with title IV-E dollars?**

Boyd Cummings asked if the funding ratio is the same for the COTS software products installed under the waiver; Mr. Howe replied in the affirmative.

Steve Campbell, Sac and Fox Tribe of the Mississippi in Iowa, asked if Federal participants had any ballpark figures for what Tribes might pay for a COTS-type reporting system rather than the full TACWIS. Mr. Howe replied that within the group of current title IV-E grantees, several had developed smaller systems that would collect AFCARS information needed for Federal reporting, with cost estimates in the range of \$25-35,000. CB has not yet seen any waiver requests to use a COTS software product and does not have firm numbers.

Mr. Campbell asked if there were any consultants in Indian Country who offered child welfare systems similar to TANF and IV-D systems now in use, and if such systems would qualify under the IV-E planning grants.

Mr. Howe replied that there are several such software firms offering solutions. He added that when considering these systems, Tribes should make sure that the system meets their needs, and is capable of producing the data needed for title IV-E Federal reports.. He confirmed that this would be an allowable cost under the IV-E planning grants.

### **CB Response to Tribal Consultation**

Mr. Howe and Mr. Watt thanked all of the participants and reminded them that written comments and testimony could be submitted for a period of 45 days, until April 6, 2012. Mr. Watt stated that CB would use the information gained in the Tribal Consultation to guide future policy analysis, and would help direct the efforts of DSS to expand flexibility in the area of Tribal system development.

### **Written Comments:**

DSS received one written comment regarding the Tribal Consultation on title IV-E information systems regulations. Lena Keene, Kasigluk Traditional Elders Council, sent written comments noting that financial considerations were a primary barrier to building an information system, and that while the Tribe's highest priority was relative placement, funding limitations similarly affected the ability of the Tribe to operate a foster care program independent of the State of Alaska.