



# NICWA

National Indian Child Welfare Association

## **COMMENTS REGARDING THE AUTOMATED FOSTER CARE AND ADOPTION ASSISTANCE REPORTING SYSTEM NOTICE OF PUBLIC RULEMAKING PUBLISHED FEBRUARY 9, 2015, IN THE FEDERAL REGISTER**

**APRIL 10, 2015**

The National Indian Child Welfare Association (NICWA) is pleased to provide comments on the Notice of Public Rulemaking (NPRM) regarding proposed changes to the Adoption and Foster Care Automated Reporting System (AFCARS). This NPRM was published in the *Federal Register* on February 9, 2015, pages 7,132–7,221. Our comments will focus on the need to include new data elements related to children who are in out-of-home placements under state custody and subject to the requirements of the Indian Child Welfare Act (ICWA).

Currently, there are few data collection efforts at the state and federal level that provide meaningful data on American Indian and Alaska Native (AI/AN) children under the custody of state child welfare authorities and how ICWA is applied in their cases. This population is overrepresented within state foster care systems nationally—in some states by as much as 10 times their population rate. The federal protections that ICWA provides these children and their families have the potential to reduce disproportionality and achieve permanency for these children. However, without the federal government collecting more detailed case-level data, it is impossible to know how many AI/AN children are receiving ICWA protections. Collecting this data will also help the Administration for Children and Families (ACF) provided targeted assistance to states where there are implementation concerns.

While in the past ACF has been reluctant to pursue substantive data collection through AFCARS on the unique status of ICWA-eligible children and the application of ICWA's key provisions, we are pleased with the April 2, 2015, issuance on ACF's intent to publish a Supplemental Notice of Public Rulemaking (SNPRM) on these topics. Below we discuss the authority of the Children's Bureau to collect ICWA-related data within AFCARS and suggest ICWA-related data elements that could be incorporated.

### **Authority to Collect ICWA-Related AFCARS Data**

Section 479 of the Social Security Act establishes the requirement for an AFCARS system. The mandate of the statute is fairly general and broad. The specific mandate is to collect information about (1) the demographics of adoptive and foster children, and biological, foster and adoptive parents; (2) the status of the foster care population, including length and type of placement, availability for adoption, and the permanency goal for the child; (3) characteristics of foster and adoptive children; and (4) the nature of the assistance provided by federal, state, and local governments to these children.

ACF has implemented these statutory provisions by requiring collection of a broad range of data not specifically enumerated in the statute, including, for example, information about child disabilities and causes for the child's removal. In the NPRM, ACF has proposed collecting additional data on issues also not delineated in the authorizing statute such as involvement in delinquency proceedings; education progress, stability, and involvement with special education; behavioral health issues; placement of siblings; and placement with fictive kin, among other things. It has also asked for comments on strategies

to collect data relating to lesbian, gay, bisexual, and transgender youth and undocumented immigrant youth. Thus, the statutory mandate has been read expansively by ACF to include data that can help to fully quantify the demographics, status, and characteristics of the foster care and adoption populations and better understand the assistance provided to them.

ACF's previous justification for not collecting ICWA data was that ICWA is outside ACF's purview, and therefore, ACF does not have the authority to collect data elements pertaining to ICWA requirements. This previous position was flawed in two fundamental respects. First, even if we were to agree that ICWA is outside ACF's purview (which we do not, as explained in the next paragraph), this might explain why collecting such data is not *required*. However, it does not explain why ACF is prohibited from collecting such data as it is relevant to the demographics, status, and characteristics of the AI/AN foster care and adoption populations and the assistance provided to them.

Secondly, ACF has been incorrect in stating that ICWA is outside its purview. Section 422(b)(9) of the Social Security Act requires that Title IV-B state plans "contain a description, developed after consultation with tribal organizations...in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act." ACF has specific authority and oversight over the Title IV-B programs. This requirement was enacted into law in 1994 and collecting more substantive data on ICWA related to this requirement would align with the stated purpose of this NPRM to "(1) incorporate statutory requirements since 1993" and "(3) enhance the type and quality of information Title IV-E agencies report to ACF by modifying and expanding data elements...."

ACF has implemented the Title IV-B ICWA state plan requirement through a Program Instruction document (ACYF-CB-PI-14-03 [2014]). In the Program Instruction pertaining to the 2010–2014 plans, ACF required states to include a description, developed in consultation with Indian tribes in the state, of the specific measures taken by the state to comply with ICWA in their Child and Family Service Plans. Among the components that states were supposed to address in consultation with tribes and in the Child and Family Services Plans were:

- Notification of AI/AN parents and tribes of state proceedings involving AI/AN children and their right to intervene
- Placement preferences of AI/AN children in foster care, pre-adoptive, and adoptive homes
- Active efforts to prevent the breakup of an AI/AN family when parties seek to place a child in foster care or for adoption
- Tribal right to intervene in state proceedings, or transfer proceedings to the jurisdiction of the child's tribe

In its most recent Program Instruction on this topic, ACF has required states to describe the consultation process with tribes in their final report on the 2010–2014 plan. This includes specific information on the name of tribes and tribal representatives with whom the state has consulted. The state is supposed to cite any available data and assess the level of ICWA compliance and the progress made to improve ICWA compliance as informed by consultation with tribes. In addition to examining the components listed above, the state is supposed to report on any laws or policies that have been changed and other activities to increase ICWA compliance. The state is also directed to exchange copies of its Child and Family Services Plans and Annual Progress and Services Plans with the tribes in their state.

In that same Program Instruction, the Children's Bureau has included a similar, albeit slightly expanded, version of these requirements for the 2015–2019 Child and Family Services Plan. The state must "specifically describe the process used to gather input from tribes for the development of the 2015–2019 Child and Family Services Plan" as well as "information on the outcomes or results of these consultations." It must also describe its "plan for ongoing coordination and collaboration with tribes in the implementation and assessment of the Child and Family Services Plan and monitoring and improvement of the state's compliance with ICWA, as well as any barriers to this coordination and the state's plans to

address these barriers.” It must identify sources of data available, including input obtained through tribal consultation, used to assess the state’s compliance with ICWA. Finally, it must, based on the discussion with tribes, describe the specific steps the state will take during the next five years to improve or maintain compliance with ICWA.

The authority of ACF to measure whether the Title IV-B ICWA requirement is met also allows for the collection of AFCARS elements relevant to ICWA eligibility and protections. Such data can assist states in “assessing [their] level of compliance,” as required in the Program Instruction. In fact, the Program Instruction requires states to “identify sources of data to assess the state’s ongoing compliance with ICWA” as part of meeting its Title IV-B requirement. ACF clearly has and is exercising the authority to require states to find and utilize data related to ICWA compliance in implementing mandatory Title IV-B plan requirements. Indeed, collecting such data in AFCARS will facilitate state compliance with the section 422(b)(9) requirement, as explained in the Program Instruction. Compliance with the Program Instruction will be difficult, if not impossible, unless more relevant data is collected.

We would note that the 2005 General Accountability Office report on implementation of ICWA indicated that one of the most important missing elements was the collection of data. Given this legal and policy background, we recommend that ACF add the following data elements to AFCARS. These recommendations provide for basic information about the applicability of ICWA for AI/AN children in state care and generally track specific areas laid out in the Program Instruction.

Specifically, we recommend adding the following data elements and modifications:

#### **Out-of-home care data file elements**

Section 1355.43(a)(3)—Under (3) *Local Agency*, the Title IV-E agency can indicate who has primary care responsibility for the child in care. We recommend adding “tribe or tribal organization” as a data element. There are situations where tribes and states may have other local providers that have primary responsibility for care authorized under an agreement.

Section 1355.43(b)(3)(i)—Under *Race—American Indian or Alaska Native*, we recommend breaking this subsection into two questions:

- Does the child have origins in any of the original peoples of North and South America?
- If so, is the child a member of or eligible for membership in a federally recognized Indian tribe?
  - If yes, enter in the name of the tribe.

We also recommend deleting the language “...and maintains tribal affiliation and community attachment.” This language requires a subjective assessment of who is or is not an AI/AN child that is not required to determine membership status or racial identification. We would note that this qualifier is not proposed for use with any other racial classifications.

This recommendation accomplishes a few purposes. First, it recognizes that a child can be racially AI/AN without being a citizen of a federally recognized tribe. Second, it will capture whether or not a child is eligible for the protections of ICWA (by asking about membership or eligibility for membership in a federally recognized tribe). Finally, it allows for the development of statistics based on tribal membership.

Section 1355.43(b)(10)—Under *Educational Stability*, the Title IV-E agency is asked to indicate if a child is enrolled or is pursuing enrollment in a new elementary or secondary school after a change in placement. There are several choices for documenting why this is occurring.

We recommend adding other choices to indicate that an AI/AN child is enrolling in another school after being placed in a “institution for children approved or operated by an Indian tribe,” or has transferred to a foster care placement after previously being in a “institution for children approved or operated by an Indian tribe.”

This helps to track the specific reason for a change in educational stability for AI/AN children and youth. On occasion, some tribes will refer or court order tribal children to Bureau of Indian Affairs (BIA) or tribally run boarding schools that provide both educational and social services. ICWA has a placement preference category that includes “institution for children approved or operated by an Indian tribe,” which could include BIA- or tribally run boarding schools. These tribally approved institutions are unique and not necessarily covered by the proposed data elements.

Section 1355.43(b)(13)—Under the *Prior adoption(s)* data element, we recommend adding language that includes tribal customary adoptions in both the summary of the general application of this data element and in the *Prior adoption(s) types* data elements.

While the proposed language is broad, without the specific identification of tribal customary adoption we fear this important information may not be considered. Because of the lack of awareness many states have regarding this unique type of adoption and recent changes in state statute (California) that allow states to recognize tribal customary adoptions performed by tribes for AI/AN children under state jurisdiction, this addition is necessary.

Section 1355.43(b)(16)(iv-v)—Under the *Child financial and medical assistance* data elements, the Title IV-E agency is asked to indicate if the child is receiving either adoption assistance or foster care maintenance payments solely from the state or tribe. Our question is: why would this data be collected? Presumably, if a child’s placement was solely supported by state or tribal funds, this would likely be because the child was not Title IV-E eligible, and our understanding is that AFCARS only has the authority to collect data on Title IV-E eligible children. to

We also note that medical assistance received from the Indian Health Service or other public assistance provided by Bureau of Indian Affairs programs are not listed. Since so many AI/AN children in both state and tribal care are eligible for and receive these types of federal assistance, we recommend adding the following questions:

- The child or the family the child is living with is receiving services supported by Bureau of Indian Affairs Social Services funding? (Y/N)
- The child or the family the child is living with is receiving services supported by the Indian Health Service? (Y/N)

This will ensure that data regarding these unique programs that support AI/AN children is available and tracked.

Section 1355.43(b)(18)—Under the *Victim of sex trafficking prior to entering foster care* data element, it is required that the Title IV-E agency indicate if a report to a law enforcement agency for entry into the National Crime Information Center database occurred. We understand that this is a statutory requirement, but there are currently federal law and policy barriers that prevent tribes from submitting any criminal or civil data to these databases. We understand that ACF is working with other federal agencies to explore solutions to this problem, but the solution will likely require Congressional action. To protect tribes from penalties for being out of compliance based on these circumstances, which are out of their control, we recommend that language be added, at least temporarily, to allow tribes to indicate they were not authorized or allowed to provide this data.

Section 1355.43(c)(3)(i-ii)—Under the *Termination of parental rights petition* and *Termination of parental rights* data elements, the Title IV-E agency is asked to provide the month, day, and year for each petition filed in court and each parent having their rights terminated. We would note that recently adopted Children’s Bureau policy allows tribes to use alternative methods for helping a child achieve a permanent placement, such as modification or suspension of parental rights. We recommend that each data element include language that aligns with the new policy.

We also recommend adding the following new questions that track ICWA requirements regarding termination of parental rights:

- Were the children of the parents or Indian custodians that were subject to a termination of parental rights petition hearing members or eligible for membership in a federally recognized tribe? (Y/N)
- If yes, did the child's tribe receive notice of the termination of parental rights petition? (Y/N)
- Did the child's tribe intervene in the state court proceeding where the petition for removal was heard? (Y/N)
- Did the state court make a determination that "active efforts," as described under ICWA, had been provided to the parents or Indian custodians at the state court termination of parental rights petition hearing? (Y/N)
- Did a qualified expert witness, as described under ICWA, provide testimony at the state court termination of parental rights petition hearing? (Y/N)
- Did the state court use the evidentiary standard of "beyond a reasonable doubt" to evaluate whether "the continued custody of the child by the parents is likely to result in serious emotional or physical damage to the child" in order to terminate parental rights? (Y/N)
- Did the child's tribe intervene in the state court proceeding where the petition for termination of parental rights was heard? (Y/N)
- Did the child's tribe seek to transfer the case from state to tribal jurisdiction (Yes—case was transferred, Yes—but case was not transferred, or No).
- If transfer of jurisdiction was sought, but case was not transferred, was it because:
  - Parent objected
  - Tribal court declined transfer
  - Court found "good cause to not transfer"
    - Please enter reason for good cause to not transfer:

Section 1355.43(d)(1)—Under the *Date of child's removal* data element, the Title IV-E agency is asked to indicate the date of each removal. We recommend adding the following questions that track ICWA requirements surrounding removals of Indian children:

- Is the child a member of or eligible for membership in a federally recognized Indian tribe? (Y/N)
- If the child is a member of or eligible for membership in a federally recognized Indian tribe, did the child's tribe receive notice of the removal? (Y/N)
- Did the state court make a determination that "active efforts," as described under ICWA, had been provided to the parents or Indian custodians at the hearing? (Y/N)
- Did the state court use the evidentiary standard of "clear and convincing evidence" to evaluate whether "the continued custody of the child by the parents is likely to result in serious emotional or physical damage to the child" in order to terminate parental rights? (Y/N)
- Did a qualified expert witness, as described under ICWA, provide testimony at the state court hearing where the petition for removal was heard?
- Did the child's tribe intervene in the state court proceeding where the petition for removal was heard? (Y/N)
- Did the child's tribe seek to transfer the case from state to tribal jurisdiction (Yes—case was transferred, Yes—but case was not transferred, or No).
- If transfer of jurisdiction was sought, but case was not transferred, was it because:
  - Parent objected
  - Tribal court declined transfer
  - Court found "good cause to not transfer"
    - Please enter reason for good cause to not transfer:

Section 1355.43(d)(3)—Under the *Environment at removal* data element, the Title IV-E agency is asked to indicate the type of household where the child resided at the time of removal. We recommend adding an additional category, "Indian custodian," which is a person recognized under ICWA that may not be a relative, parent, or legal guardian.

"Indian custodian" is defined by ICWA as a person who has legal custody of an AI/AN child under tribal law or custom, or to whom physical custody has been transferred to temporarily by the parent of the child. Indian custodians receive notice of removals under ICWA and have rights to intervene in state court

proceedings. Including this element will provide more accurate data on the environment from which AI/AN children are removed.

Section 1355.43(d)(5)(xxvi)—Under the *Child and family circumstances at removal* data element, the Title IV-E agency is asked to indicate any and all circumstances that were present at removal. Under the voluntary relinquishment for adoption data element, we recommend adding the following question:

- If the child is a member of or eligible for membership in a federally recognized Indian tribe, was the consent of the parent or Indian custodian recorded before a judge more than 10 days after the birth of the child? (Y/N)

This will capture data on the voluntary relinquishment requirements of ICWA.

Section 1355.43(e)(3)(i)—Under the *Foster family home type* data element, the Title IV-E agency is asked to indicate what type of foster family home the child is placed in, such as one licensed by a state. We recommend separating this question into two parts:

- The child's living arrangement is licensed or approved by the state.
- The child's living arrangement is licensed or approved by a tribe.

This separation will help track compliance with ICWA's placement preferences and allow for the development of statistics on the use of tribally licensed or approved foster homes.

Section 1355.43(e)(3)(vi)—Under the *Foster family home type* data element, the Title IV-E agency is asked to indicate what type of foster family home the child is placed in, such as kin foster home. We recommend adding language that recognizes the legal requirements of ICWA with regard to how relatives are recognized under tribal law or custom (see below):

- “The home is one in which there is a kin relationship as defined by the Title IV-E agency or Indian tribe when a child is a member of or eligible for membership in a federally recognized tribe, such as one where there is a psychological, cultural, or emotional relationship between the child or the child's family and the foster parent(s).”

Section 1355.43(e)(4)—Under the *Other living arrangement type* data element, the Title IV-E agency is asked to identify other living arrangements outside of a foster family home where the child may be placed. We recommend including “institution for children approved or operated by an Indian tribe.”

This is one of ICWA's placement preferences and is a unique type of program. When tracking ICWA's placement preferences, it is important that this does not fall within one of the other categories.

Section 1355.43(e)(16)—Add the phrase “member of Indian child's tribe.” This reflects the fact that shared tribal membership can be the basis for a relationship between the foster parents and child that should be noted. The rationale is similar in some respects to the rationale for adding the “kin” category.

Section 1355.43(e)(18)(i) and (e)(21)(i)—Under the *Child's relationship to the foster parents* data element, the Title IV-E agency is asked to provide information that describes the type of relationship between the caregiver and child. We recommend breaking this subsection into two questions:

- Does the foster parent have origins in any of the original peoples of North and South America?
- If so, is the foster parent a member of a federally recognized Indian tribe?
  - If yes, enter in the name of the tribe.

This accomplishes a few purposes. First, it continues to recognize a child's caregiver can be racially AI/AN. Second, by asking about membership in a federally recognized tribe, it will help determine if ICWA's placement preferences have been followed. Finally, it allows for the development of statistics of foster parent caregivers by tribe.

Section 1355.43(e)(23)—Under the *Sources of federal assistance in living arrangement* data element, the Title IV-E agency is asked to identify the different types of federal assistance being received. We note that in many circumstances, AI/AN children and the families they live with may be the beneficiaries of

federal assistance coming from the BIA or Indian Health Service. We recommend adding two new data elements that ask the following:

- Is the child or the family the child is living with receiving services supported by Bureau of Indian Affairs Social Services funding? (Y/N)
- Is the child or the family the child is living with receiving services supported by the Indian Health Service? (Y/N)

We note that in many circumstances, AI/AN children and the families they live with may be the beneficiaries of federal assistance coming from the BIA or Indian Health Service, information not currently captured by the data elements listed.

Section 1355.43(f)(1) and (3)(i)—Under *Permanency planning*, the Title IV-E agency is asked to identify the permanent plan established for the child in care and the concurrent permanency plan if the agency is using one. While ICWA does not specifically establish criteria for permanent plans, it does contain placement preferences for children who are placed out of home and active efforts to reunify children who have been removed. We recommend that new data elements be added to both the *Permanency planning* and *Concurrent permanency planning* data elements as follows:

- Is the child a member of or eligible for membership in a federally recognized Indian tribe? (Y/N)
- If yes, is the permanent plan developed by the state agency identify a placement that is in accordance with the placement preferences contained within ICWA? (Y/N)
- What is the permanent plan for the Indian child? (please enter)
  
- Is the child a member of or eligible for membership in a federally recognized Indian tribe? (Y/N)
- If yes, is the permanent plan developed by the state agency identify a placement that is in accordance with the placement preferences contained within ICWA? (Y/N)
- What is the concurrent permanent plan for the Indian child? (please enter)

The proposed data measures will not yield specific enough information to conclude whether an Indian child's permanent plan or concurrent plan is in alignment with the placement preferences required within ICWA. The recommended elements correct this problem.

Section 1355.43(f)(4)—Under the *Reason for permanency plan change*, the Title IV-E agency is asked to indicate if the permanency plan has changed since the last reporting period. We also note, as we did above, that ICWA requires state agencies to follow the placement preferences found in ICWA for Indian children under their care. We recommend adding the following questions to this data element category:

- Is the child a member of or eligible for membership in a federally recognized Indian tribe? (Y/N)
- If yes, has the state agency provided active efforts to the birth parents before making a change in the permanency plan? (Y/N)
- Has the state court determined that active efforts were provided by the state agency? (Y/N)
- Is the change in permanency plan by the state agency for the Indian child consistent with the placement preferences of ICWA? (Y/N)

ICWA requires that all state agencies provide active efforts to rehabilitate birth families or Indian custodians that have had their children removed. The provision of active efforts is a key requirement that must be met in order to consider plans that deviate from returning the child home. It is a higher standard than reasonable efforts and cannot be waived or modified.

One additional recommendation addresses tribal use of culturally based customary permanent placements. We recommend adding a new data element, "tribal customary permanent placement," that can capture a culturally based placement that a tribe may use that is unique to their culture and community.

The categories provided do not capture these unique cultural placements. They may not be with a relative and they are not appropriately described by the other placements listed.

Section 1355.43(f)(7)—Under the *Juvenile justice* data element, the Title IV-E agency is asked to indicate if the child is a status offender or adjudicated delinquent as found by a court at any time. ICWA's protections come into play when an ICWA-eligible child is removed from their home as a result of a status offense. Based on this, we recommend the following questions be added to the data element:

- Is the child a member of or eligible for membership in a federally recognized Indian tribe? (Y/N)
- Is this Indian child considered a status offender as adjudicated by a state court? (Y/N)
- Is the state agency applying the legal requirements of ICWA in this case? (Y/N)

This will track important ICWA data and remind states of this important ICWA requirement that is frequently overlooked.

Section 1355.43(f)(12)—Under the *Transition plan* data element, the Title IV-E agency is asked to indicate what resources have been addressed in the transition plan. AI/AN children are often eligible for resources and services based upon their membership in a federally recognized tribe. These resources and services can be more substantial than state and federal resources and are culturally tailored to address the unique needs of AI/AN youth. We recommend that additional data elements be added to reflect these different services, resources, and contributions that tribal agencies make to support state transition plans for their youth.

- Is the child a member of or eligible for membership in a federally recognized Indian tribe? (Y/N)
- If yes, does the Indian child have their tribal citizenship card? (Y/N)
- Does the Indian child have information on their tribal and other specific resources and services for eligible AI/AN youth and adults? (Y/N)

Given that tribal agencies are often co-case managing with state agencies with regard to child welfare cases involving AI/AN youth, better understanding of how this relationship works and all the services available to support AI/AN youth and families is necessary.

Section 1355.43(h)(2)—Under the *Child's relationship to their parent and guardian* data element, the Title IV-E agency is asked to indicate the relationship. We recommend adding a new data element, "Member of the Indian child's tribe." As indicated earlier, this can be the basis for a relationship that is more substantial than a non-relative placement. In addition, it is one of the placement preferences in ICWA, and the addition of this data element will allow tracking of compliance with this section of ICWA.

Section 1355.43(h)(4)(i) and (h)(7)(i)—Under the *Race of first adoptive parent or guardian* and *Race of second adoptive parent or guardian* data elements, the Title IV-E agency is asked to identify the race of the caregiver. We recommend modifying this with the following questions:

- Does the adoptive parent have origins in any of the original peoples of North and South America?
- If yes, is the adoptive or guardian parent a member of a federally recognized Indian tribe?
  - If yes, enter the name of the tribe.
- Does the guardian parent have origins in any of the original peoples of North and South America?
- If yes, is the adoptive or guardian parent a member of a federally recognized Indian tribe?
- If yes, enter the name of the tribe

We also recommend deleting the language "...and maintains tribal affiliation and community attachment" as we did in our comments above for Section 1355.43(b)(3)(i). This language requires a subjective assessment of who is or is not an AI/AN child that is not required to determine membership status or racial identification. We would also note that this qualifier is not proposed for use with any other racial classifications.

This addition accomplishes a few purposes. First, it recognizes that a child's permanent placement can be racially AI/AN without having membership within a federally recognized tribe. Second, by asking about membership in a federally recognized tribe, it will help determine if ICWA's placement preferences have been followed. Finally, it allows for the development of statistics concerning placement by tribe.



## **Adoption and Guardian Assistance Data File Elements**

Section 1355.44(c)(3)(i)—Under the *Adoption and Guardian Assistance Data File Elements* section and *Child's race* data element, the Title IV-E agency is asked to identify the race of the child in care. We recommend modifying this with the following questions.

- Does the child have origins in any of the original peoples of North and South America?
- If yes, is the child a member of or eligible for membership in a federally recognized Indian tribe?
  - If yes, enter the name of the tribe.

We also recommend deleting the language "...and maintains tribal affiliation and community attachment" as we did in our comments above for Section 1355.43(b)(3)(i) and Sections 1355.43(h)(4)(i) and (h)(7)(i). This language requires a subjective assessment of who is or is not an AI/AN child that is not required to determine membership status or racial identification. We would also note that this qualifier is not proposed for use with any other racial classifications.

This accomplishes a few purposes. First, it recognizes a child can be racially AI/AN without maintaining a tribal affiliation or community attachment. Second, by asking about membership in a federally recognized tribe, it will indicate whether the child is protected under ICWA. Finally, it allows for the development of statistics by tribe.

### **Conclusion**

Tribes and AI/AN organizations have been advocating for the collection of meaningful ICWA data for decades. We commend ACF for their recent efforts to include this valuable data in the AFCARS system. AFCARS is the most comprehensive foster care and adoption database in the nation. The information and data it contains inform important efforts to improve child welfare practice, ensure permanence, and promote the proper implementation of numerous federal laws. The federal laws that protect AI/AN children and families, and guide states as they work with AI/AN children and families, deserve the same consideration as those that protect and serve other children in the United States. For these reasons, data related to AI/AN children and the protections of ICWA must be included in the AFCARS system.

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If you have any questions, please don't hesitate to contact NICWA Government Affairs and Advocacy Director David Simmons at [desimmons@nicwa.org](mailto:desimmons@nicwa.org). Thank you in advance for consideration of our comments and recommendations.