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Ms. Kathleen McHugh, Director
Policy Division, Children's Bureau
Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street, SW
Washington, DC 20201

Re: Comments Regarding Foster Care Legal Representation (RIN 0970-AC89) Published September 28, 2023, in the *Federal Register*

Please accept the comments from [include name of tribe or organization here] regarding the notice of proposed rulemaking published on September 28, 2023, in the *Federal Register* (RIN 0970-AC89).

[Provide a brief overview of the work your tribe or organization is doing to support American Indian and Alaska Native (AI/AN) children, their parents, and their relative caregivers in accessing legal services and why this is important to the well-being of Native children and families in your community.]

Proposed Regulation Changes

We appreciate the new opportunities that this NPRM provides to tribes and states seeking financial support for the costs of legal representation in child welfare proceedings.

- Access to timely independent legal representation for AI/AN children, their parents, and relative caregivers is essential to preventing unnecessary removal, helping children stay connected to their families and tribes, and promoting ICWA compliance, including 25 U.S.C. § 1912(b) which recognizes the rights of the Indian child and their parents or Indian custodians to court-appointed counsel.
- Allowing claims for administrative costs of legal representation provided by an attorney representing an Indian child's tribe (as defined by 25 U.S.C. 1903(5)) supports early engagement of the child's tribe in state child custody proceedings, early determination of jurisdiction, and timely provision of services to AI/AN children and families; all of which are vital to safe reunification.

We suggest the following changes be made to the proposed language:

- We recommend the NPRM add language that encourages the Title IV-E agency to define relative using the definition of the Indian child's tribe when an Indian child covered under the requirements of ICWA is involved.
- We recommend that the proposed rule change include "tribe" after "other public agency" to read as follows: "Legal representation in foster care proceedings provided by an attorney representing the Title IV-E agency or any other public agency or tribe..." (§ 1356.60(c)(4)(i)).
- We recommend that ACF include Indian custodian to § 1356.60(c)(4)(ii), which would read as follows: "Independent legal representation provided by an attorney representing a child in Title IV-E foster care, a child who is a candidate for Title IV-E foster care, the child's parent(s) or Indian custodian(s)..."
- ACF should include attorneys that work on behalf of tribal nations to the list of parties that can have their legal services reimbursed in § 1356.60(c)(4)(ii) to maximize access to legal services for Native children, parents, and relative caregivers. This could involve a number of court or administrative hearings, such as housing eviction, access to basic assistance like Supplemental Nutrition Assistance Program (SNAP) or Supplemental Security Income (SSI), tribal membership or assistance eligibility hearings, or securing a restraining order against individuals that pose a threat to the child or custodial parent. Tribal nations are also vigilant advocates for the protections

that ICWA provides these individual parties. Given that many tribal families would be considered indigent or unable to afford competent legal services and parents may not be appointed separate legal counsel, attorneys working on behalf of tribal nations may be the only available legal counsel for these parties to advocate on their behalf in other civil legal proceedings.

- The list of non-attorneys should be expanded to include tribal nation representatives. Non-attorneys, such as tribal child welfare workers, often have a vital role in educating the court about ICWA requirements and the most effective ways to address the needs of Native children and families. While having a trained and barred attorney is preferable, ICWA does not require a person to be an attorney and neither do some tribal or state courts. Every opportunity to expand legal services to AI/AN children, their parents, and relative caregivers is paramount to safeguarding the health and well-being of AI/AN families.
- We recommend adding language that would require states to consult with tribal governments regarding the development of systems for reimbursement of tribal legal counsel. Through state-tribal collaboration, we believe a system could be established to support tribal legal representation in state proceedings. Language requiring state consultation with tribal nations on child welfare matters is common among federal child welfare statutes and has promoted improved services and collaboration among state and tribal governments.

We appreciate the opportunity to provide comments on these proposed changes and look forward to ongoing collaborative efforts to support tribal sovereignty, ICWA implementation, and the safety and healing of our AI/AN children and families.

Sincerely,

[sign here]