

SAMPLE COMMENTS LETTER

(Date)

Ms. Aysha E. Schomburg, Associate Commissioner
Children's Bureau
Administration for Children and Families
United States Department of Health and Human Services
330 C Street, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking—Proposed Adoption and Foster Care Analysis and Reporting System data elements related to American Indian and Alaska Native children (RIN 0970-AC98; *Federal Register*, Volume 89, No. 37, published February 23, 2024, pages 13652–13667)

The (*insert name of tribe or organization*) welcomes the opportunity to provide comments on the Notice of Proposed Rulemaking (NPRM) regarding Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements related to Indian children placed by state child welfare agencies. American Indian and Alaska Native (AI/AN) children have a unique legal status as citizens of tribal governments with federal laws, like the Indian Child Welfare Act (ICWA), that provide important safeguards to help them maintain their tribal and family relationships and cultural connections. This unique legal status and the requirements of federal laws like ICWA are not addressed in current federal reporting requirements for state child welfare systems. This has contributed to states not having a full understanding of their progress in implementing ICWA and difficulty in developing effective and collaborative responses with tribes. Tribal nations also suffer under the current AFCARS data limitations, as they don't have access to informed and accurate data needed to educate policymakers about the challenges their tribal children and families are experiencing or justify the appropriate solutions. Together, these AFCARS policy limitations over the last 30 years have hindered tribal and state efforts to address reoccurring and chronic concerns about AI/AN children's well-being. With AI/AN children nationally facing disproportionate placement in state foster care at a rate over two times their population and other poor outcomes, the need for ongoing, reliable, and accessible data has never been greater.

The NPRM proposes the first federal data elements that can provide detailed information on ICWA implementation. It proposes a series of data elements tied to ICWA requirements that will allow tribes, states, and federal agencies the ability to develop a more detailed understanding of the trends in out-of-home placement and barriers to permanency for AI/AN children. This, combined with other AFCARS and federal child-related data measures, will provide a full picture of the status of AI/AN children and families and the reasons behind the lagging outcomes they experience. Improved policy development, technical assistance, training, and resource allocation will result from having regularly updated and reliable data available. Establishing the data elements proposed in the NPRM will provide AI/AN children the same opportunities to benefit from data that other children currently have and will inform responses that address the unique issues for this population in both child welfare policy and practice.

Data elements proposed in the NRPM include data that should be accessible in the case files of state Title IV-E agencies and should be considered part of any appropriately documented case file. This includes common case management information that details the activities of the Title IV-E agency related to case planning and services and related activities of the court in particular cases, such as court orders that inform the agency's mandate and work. Examples of existing AFCARS data elements that have similar reach and purpose include Reason for Discharge and Transfer to Another Agency, Living Arrangement and Provider information, Date of Child's Removal (court order establishing agency placement and care responsibility), Termination of Parental Rights and Adoption (includes court order information). State agencies are a regular party to state child welfare proceedings and, as such, regularly attend and participate in court hearings and are represented by department legal counsel. This includes filing reports, questioning witnesses, and presenting evidence related to judicial determinations. While there may be situations where the court does not provide all of the specific information that a state

agency may desire regarding a particular judicial determination, this is something that can be remedied through enhanced communication and training and should be pursued to ensure the state agency is appropriately serving the best interests of the child and family.

We would also note that Title IV-E of the Social Security Act provides authority for the Secretary of the Department of Health and Human Services (HHS) to regulate the collection and reporting of data regarding children who are in the care of a Title IV-E agency (42 U.S.C. § 679). This has previously been interpreted by HHS to include the collection and reporting of data related to the implementation of ICWA involving AI/AN children in state child welfare systems. For many years, tribal advocates, and in some cases states, have argued for this interpretation, which is appropriate given the relationships and oversight function that HHS has with states regarding federal child welfare law. We are pleased to see the current Administration adopt this common-sense clarification of current authority.

Regarding the burden to states to collect additional data on AI/AN children and families in their state child welfare systems, we would point out that for over 30 years since the establishment of the AFCARS data system, there has been little effort to close this gap in data collection until recently. The burden to tens of thousands of AI/AN children and their families in state child welfare systems has been to continue to be subjected to the harm of overrepresentation in state foster care systems and the inability to receive data-informed solutions to this and other threats to their well-being. Only eight states have 5% or more of the state foster care population identified as AI/AN and these are also states that have high rates of foster care disproportionality which we believe could benefit from additional data collection to help bring down those rates. One additional note is a state would only be required to fill out the proposed data elements if a child in their care is found to be ICWA eligible. Federal law requires that all states inquire as to whether there is a reason to believe ICWA should apply. If the answer is no, then the state is not required to fill out any other data elements contained in this NPRM.

We want to thank the Administration for Children and Families (ACF) for their efforts to correct significant data gaps in federal data collection concerning AI/AN children and families. We express our support for the establishment of the proposed data elements contained in the NPRM. It has been over 45 years since the enactment of ICWA and close to 30 years since the establishment of AFCARS, yet the collection of data that could inform real solutions to the persistent child welfare challenges AI/AN children face and inform collaboration between tribes and states, has yet to be established. The NPRM is a big step in providing a more transparent and accountable child welfare system for some of the most vulnerable in our communities.

Sincerely,

(insert name of tribe or organization)