



NICWA

National Indian Child Welfare Association

Child and Family Policy Update

May 2024

An electronic copy of this update can be found on the National Indian Child Welfare Association's (NICWA) website at <https://www.nicwa.org/policy-update/>.

Hot Topics

Public Comments on Proposed Regulations to Collect ICWA Data Overwhelmingly Supportive

On February 23, 2024, the Administration for Children and Families (ACF) released a [Notice of Proposed Rulemaking](#) (NPRM) to establish data elements that measure the status of American Indian and Alaska Native children (AI/AN) in state child welfare systems. The data measures, most of which track Indian Child Welfare Act (ICWA) requirements, are key to understanding the status of AI/AN children in state child welfare systems and how to most effectively target resources to improve outcomes for AI/AN children and families. The data elements would be established within the Adoption and Foster Care Analysis and Reporting System (AFCARS). The public comment period closed on April 23, 2024, but an analysis of the 81 comments submitted online revealed broad support for the proposed data elements.

- All 30 tribal nations and tribal organizations that submitted comments supported the establishment of the ICWA data elements.
- Seven of ten states that submitted comments supported the establishment of the ICWA data elements.
- States that raised concerns about the establishment of the ICWA data elements primarily expressed concerns about the timeline for implementation (two years) or administrative burden.
- Ten regional or national child welfare organizations supported the establishment of the ICWA data elements.
- Several individual letters of support for the ICWA data elements were submitted by researchers, students, legal advocates, and other child welfare professionals.
- Overall, there were only five comments submitted that could be read as not supporting the establishment of the ICWA data elements.

The next steps in the rulemaking process are the analysis of public comments by ACF which will include developing changes to the data elements that are deemed necessary, developing responses to the public comments, and development and publication of the final rule. This process will likely take several months so a final rule is not expected until the Fall.

House Ways and Means Committee Holds Hearing in Indian Country on Indian Child Welfare Issues

The House Ways and Means Committee (Committee) held a hearing at the Salt River Pima Maricopa Indian Community (SRPMIC) on May 10, 2024, with a focus on Indian child welfare issues. SRPMIC Councilwoman Mikah Carlos, who is also a NICWA Board Member, provided testimony on her family's personal experience with foster care and adoption and the importance of culture in the healing process. Councilwoman Carlos also described how important ICWA is to protect Native children and families in state child welfare systems and asked the Committee to support legislation that would require additional data collection and technical assistance for states and tribes to improve ICWA's implementation. In her testimony, she described how states depend upon strong tribal partners to implement ICWA and that

funding for tribal child welfare programs needs to increase significantly for tribes to serve their children and families on and off tribal lands. She also encouraged the Committee to support legislation to allow families that adopt through a tribal court to be eligible for the federal adoption tax credit and legislation that would allow tribes to access the Federal Tax Refund program to improve tribal collections of child support payments for tribal children.

The Committee was holding the hearing as they consider what changes to make to the Title IV-B Child Welfare Services and Promoting Safe and Stable Families programs. Title IV-B is due to be reauthorized and the Committee has been engaged in discussion with different child welfare organizations, states, and tribes regarding policy priorities for the programs. Currently, tribal nations are eligible to receive funding under both Title IV-B programs, but the allocations are very small, and the application and administrative reporting requirements are outsized for smaller tribes.

You can view Councilwoman Carlos's testimony [here](#) and a copy of NICWA's testimony from a Senate-House Roundtable on child welfare last December [here](#).

Legislation

House Introduces Indian Boarding Schools Legislation (H.R. 7227)

On February 5, 2024 Representative Sharice Davids and Representative Tom Cole introduced a House companion bill ([H.R. 7227](#)) to the Senate introduced Truth and Healing Commission on Indian Boarding School Policies Act ([S. 1723](#)). S. 1723 was introduced on May 18, 2023 by Senator Elizabeth Warren and has 29 co-sponsors. This is a reintroduction of legislation that was introduced in the House and Senate in the 117th Congress. NICWA submitted [written testimony](#) for a May 2022 hearing on the legislation that focused on the intersection of the Indian boarding schools and the experience of Native children and families in state and private child welfare systems. NICWA is supporting the legislation and the [National Native American Boarding School Healing Coalition](#), who is leading advocacy efforts on this legislation.

The Senate Committee on Indian Affairs held a markup of the legislation on June 7, 2023, where the committee reported out the legislation favorably with amendments. The amendments approved in committee were generally clarifying amendments without making substantive changes to the key purposes of the legislation. Now, the legislation is being scheduled for full consideration by the Senate.

The legislation establishes a commission to formally document and investigate Indian boarding school policies and practices in the United States. The commission members are appointed by Senate and House of Representatives leadership and the President. The legislation also establishes an advisory committee to provide advice and recommendations to the commission comprised of representatives that include, but are not limited to:

- National Indian organizations with expertise in child welfare, education, and boarding school issues
- Federal agencies, such as Bureau of Indian Education, Office of Indian Education in the Department of Education, and commissioner of the Administration for Native Americans
- Members of federally recognized tribes and Native Hawaiian organizations
- Mental health, healthcare, or Native healing practitioners that have experience working with descendants of board school students
- Family members of students that attended boarding schools, current teachers, and students that have attended a boarding school in the past or currently are attending one

The commission will be holding public hearings to gather evidence and will be making recommendations on how to address and heal the historical and intergenerational trauma caused by the Indian boarding school policies and practices. The commission will also collaborate and exchange information with the Department of Interior during its investigation.

Tribes and advocates for Native children and families are encouraged to contact your Congressional representatives and urge them to sign on as co-sponsors to the legislation and support its passage. You can find contact information for your congressional representatives [here](#).

Native American Child Protection Act Passes House and Senate Committees

The Native American Child Protection Act, [H.R. 663](#), was reintroduced by original co-sponsor Representative Ruben Gallego (D-AZ) on January 31, 2023, and Senator Lujan introduced a companion bill in the Senate, [S. 2273](#). The legislation reauthorizes the two grant programs and the national resource center for tribes, clarifies that cultural programs and services may be used in the grant programs, and increases the funding authority Congress has to appropriate funding for the tribal grants authorized in the legislation. This is some of the only dedicated tribal funding regarding access for child abuse prevention and child abuse victim treatment. The legislation was introduced in the last Congress and was approved by the House of Representatives and the Senate Committee on Indian Affairs.

The House Natural Resources Committee reported out H.R.663 on May 17, 2023, with amendments that removed the amount of funding authorized for the two grant programs, the resource center, and the years the funding was authorized. The revised bill was then passed by the full House. The language that remained in the bill reported out of committee contained amendments that clarified eligible activities that could be carried out under the grant program but stops short of reauthorizing the grant programs. The Senate Committee on Indian Affairs reported out a companion bill that is identical to the one reported out by the House.

The impact of deleting the funding authorization levels and years authorized continues over two decades of not having a current authorization for these critical grant programs. While Congress will sometimes appropriate funding for federal grant programs that are not authorized, it sends a message that these grant programs are not a priority and creates barriers to getting sufficient appropriations funding in the future.

NICWA is working with tribes and Indian organizations to contact their Senate members to support S. 2273. This legislation is one of NICWA's top policy priorities and we need your help to get the legislation authorized this year. You can find contact information for your congressional representatives [here](#).

Tribal Family Fairness Act Legislation in 118th Congress

Congresswoman Sidney Kamlager-Dove (D-CA) with co-sponsors Don Bacon (R-NE) and Sharice Davids (D-KS) introduced the Tribal Family Fairness Act ([H.R. 2762](#)) in the House of Representatives on April 20, 2023. The bill would provide additional funding for tribes under the Promoting Safe and Stable Families Program (Title IV-B, Subpart Two under the Social Security Act) that funds flexible family preservation and support services and contains a provision that funds tribal court improvement programs. The legislation also seeks to streamline the reporting and application requirements for tribes and increase funding for tribal court improvement grants for tribal family courts. Efforts are being made to include this bill in a larger Title IV-B reauthorization bill that is being developed for consideration by the House Ways and Means Committee and Senate Finance Committee. The legislation is an important step forward in helping tribes secure more flexible child welfare funding that can help children avoid removal from their homes and strengthen families so children can be returned home safely and support improvements to tribal juvenile court operations. Senate members are considering introducing a version of this legislation in the Senate too.

NICWA has been a supporter of this legislation and urges tribal advocates to contact their House of Representative members and urge them to sign on to the House legislation as a co-sponsor. You can find contact information for your congressional representatives [here](#).

Administrative

ACF Publishes Final Rule on Safe and Appropriate Placements for LGBTQI+ Youth

The Administration for Children and Families published a [final rule](#) on April 30, 2024, that contains new requirements for states and tribes that receive Title IV-B and Title IV-E funding to place LGBTQI+ youth in safe and appropriate placements. The final rule discusses the challenges these youth face in foster care systems and how critical it is that they have appropriate care and a home that understands and supports their identity as LGBTQI+ youth. This means homes that are free from harassment, mistreatment, and abuse. To meet this goal, the state or tribe would need to designate homes that can provide appropriate care for this population, provide specific training for care providers on how to support these youth, and provide a process for youth to report any conditions in the home that do not meet the requirements of the final rule. The final rule goes into effect on July 1, 2024.

ACF Announces Final Rule on Foster Care Legal Representation

On May 10, 2024, the Administration for Children and Families published a [final rule](#) allowing Title IV-E agencies to claim certain costs for legal representation in foster care or other civil legal proceedings. An [Information Memorandum](#) was also published for state, tribal, and territorial agencies administering or supervising the administration of Title IV-E of the Social Security Act. The final rule allows Title IV-E agencies to claim federal financial participation for administrative costs of legal representation provided by an attorney or non-attorney of an Indian child's tribe when that tribe participates or intervenes in any state child custody proceeding for foster care placement or termination of parental rights of a Title IV-E eligible Indian child. This is an important step to improving ICWA implementation as it recognizes tribal nation's sovereign right to intervene in state child custody proceedings involving their children. Intervention by the child's tribe can help minimize unnecessary separation of American Indian and Alaska Native (AI/AN) children from their families and communities and maximize placement of AI/AN children with extended and tribal families. The final rule goes into effect on July 9, 2024.

Budget

The House and Senate passed two final appropriations bills for FY 2024 in March. The first bill provided funding for programs under Justice, Veterans Affairs, Agriculture, Interior, and Transportation departments. The second bill, which includes the remaining federal departments such as Health and Human Services where most federal human service programs reside, was also approved by Congress. These two appropriation bills follow three previous continuing resolutions that kept the government funded while House and Senate leaders could finish work on FY 2024 appropriations. For the most part, FY 2024 funding for human service programs that tribes operate are continued at or near the same levels as previous years. The lateness in Congress finishing its appropriations work causes challenges for tribes as they have to wait months past the time when last year's funding ran out, September 30, 2023, to receive the new fiscal year's funding. In addition, when Congress is late in getting its appropriations work finished, it often results in little to no increase in funding for programs that tribes depend upon to meet the needs of their communities.

President Biden released his FY 2025 budget recommendations for Congress on March 11, 2024 with a number of increases in his recommendations for child and family service programs that tribal nations utilize. In addition, the President's budget also contains recommended legislative changes to improve access to and operation of federal programs. The President's budget request articulates his priorities in the budget process that Congress undertakes each year. Some of the President's key FY 2025 recommendations include:¹

¹ The President's budget request includes funding increases that would be shared by states and tribes in some programs. Specific data on how much of the proposed increase would accrue to tribal nations is not always specified.

Budget Recommendations

- Increase HHS Promoting Safe and Stable Families (Title IV-B, Subpart 2) mandatory funding \$180 million over FY 2024 levels and increase funding for the tribal court improvement program.²
- Increase BIA Tiwahe Initiative funding \$26.8 million over FY 2024 levels.³
- Increase BIA Indian Child Welfare Act funding \$7.9 million over FY 2024 levels.⁴
- Increase BIA Social Services by \$24.3 million over FY 2024 levels.⁵

Legislative Recommendations

- Increase the set-aside for tribal and migrant populations under the Child Abuse and Prevention Treatment Act, Community Based Child Abuse Prevention grants to \$5 million from the current 1% set-aside from the overall funding under this program (typically produces less than \$1 million per year to be shared by tribal and migrant population grantees).
- Provide a consolidated grant opportunity for tribes under the Title IV-B, Subparts 1 and 2, and the Chafee and discretionary Education and Training Voucher programs so tribes can use these program funds more flexibly to meet a variety of child welfare needs.⁶
- Allow tribes that participate in the Title IV-B, Subpart 1 Child Welfare Services program, but do not currently participate in the Title IV-E Foster Care and Adoption Assistance programs to submit a plan to operate the Title IV-E Prevention Services program.⁷

For more information relating to this update, please contact NICWA Government Affairs Director David Simmons at desimmons@nicwa.org.

² Tribes receive a 3% set-aside from the overall mandatory funding levels. The President's request, if approved by Congress, would raise the amount of funding allocated to tribes from \$9.75 million to \$15.15 million and increase the overall number of tribes eligible to apply for the funding under the statutory formula. The tribal court improvement program is currently funded at \$1 million per year and the President's budget includes a legislative change to raise the amount of funding for tribal court improvement programs (level of increase is not specified).

³ The Tiwahe Initiative uses an integrated model of service delivery for child and family programs under the BIA, which supports integration of existing programs to improve well-being and promote development of culturally-specific program and service systems. The FY 2025 funding increase is spread across several different programs that contribute program support to tribal Tiwahe grantees.

⁴ Includes funding for both tribal and off-reservation programs (specific amounts not specified for each).

⁵ The increase would also be used to expand implementation of the Indian Child Protection and Family Violence Prevention Act programs (P.L. 101-630) that funds child abuse and neglect and family violence prevention and treatment of victims (specific amount not specified).

⁶ The specifics regarding how consolidation of these programs would work, some which not all tribes are eligible to administer, are not available in the President's request.

⁷ Currently, tribal nations must operate all of the mandatory sections of the Title IV-E program to be eligible to operate the Prevention Services Program under Title IV-E. The Prevention Services program provides reimbursement for a portion of eligible prevention services costs to help children who are at risk of being placed in foster care or other out of home placement.