NICWA's Written Comments on Providing Technical Assistance Related to the Indian Child Welfare Act

Published in the Federal Register /Vol. 90, No. 138 /Tuesday, July 22, 2025

Docket No. ACF-2025-0038

The National Indian Child Welfare Association (NICWA) is a national American Indian/Alaska Native (Native) nonprofit organization based in Portland, Oregon. NICWA is a leader in the development of public policy that supports Tribal self-determination in child welfare and social services for over 40 years. We have extensive knowledge and expertise in federal child welfare programming, including Department of Health and Human Services programs under Title IV-B and Title IV-E of the Social Security Act. NICWA works at the Tribal, local, state, and national levels to strengthen the interrelated and interdependent networks and systems that support Native children and families, including efforts to strengthen the Indian Child Welfare Act's (ICWA) protections and ensure consistent implementation and compliance. Our comments will focus on responding to the proposed questions published in the Federal Register and additional impacts and considerations for Native children and families.

I. *Technical Assistance (TA) Related to ICWA*. As stated above, Public Law 118-258 requires the Department of Health and Human Services (HHS) to develop a plan to provide TA to support the effective implementation of ICWA.[1]

a. What barriers has your state/Tribe experienced in effectively implementing ICWA, including these specific topics:

Overview of Key Barriers to Effective ICWA Implementation

Our comments on the following questions will focus on our experience and perspective as a national Native organization working at the Tribal, local, state, and national levels to strengthen the interrelated and interdependent networks and systems that support Native children and families. We've identified several high-level themes related to barriers to effective ICWA implementation, including gaps in understanding the law and its procedures, differing levels of state engagement in building and sustaining partnerships with Tribal Nations, and limited access to effective, adaptable models that could promote more consistent implementation across jurisdictions. Gaps in supportive policies—such as state ICWA laws, state-Tribal agreements, and resources for Tribal codes development—continue to pose barriers to implementation, underscoring the need for ongoing focus in this area. While not exhaustive, the breakdown below highlights

[1] You can find a summary of the law developed by the Administration for Children and Families in ACF-ACYF-CB-IM-25-04.

key challenges and considerations that have emerged through our engagement with states and Tribes in supporting their efforts to effectively implement ICWA.

- **Timely identification of Indian children and extended family members.**

From our experience collaborating with Tribal Nations and states in their efforts to implement ICWA, we are familiar with several challenges that impact effective ICWA implementation, including timely identification of Indian children and extended family members. One major challenge is the inconsistency and delay in inquiring about a child's Native ancestry, including engagement of non-custodial parents. When identification occurs later in a case it can disrupt proceedings, delay the implementation of ICWA's protections, and negatively affect all parties involved. This challenge is compounded by a lack of clear guidance for state agencies on when and how to ask about Tribal affiliation, and confusion about what it means for a child to be "eligible for enrollment" in a Tribe. There is also a notable gap in understanding the distinction between inquiry and formal legal notice requirements under ICWA. Some courts also face uncertainty about the appropriate timing for determining whether there is "reason to know" a child is an Indian child (Native child), which can result in delays or missed opportunities to apply ICWA early in the proceedings.

Timely identification of Native children is critical for establishing early contact with extended family members. Early engagement with Tribes supports this process by ensuring collaboration in identifying extended family who may provide support to the family or serve as a placement option for the child. Tribes may also have placement preferences that differ from those outlined in ICWA and can serve as important partners in placement decisions and in providing support to the child's family. Additionally, there's need for continued education and training around other federal laws that specify requirements for placement of children, including the provision under Title IV-E of the Social Security Act that requires states to exercise due diligence to identify and provide notice to all adult grandparents and other adult relatives of the child within 30 days of a removal and assist them in becoming a placement or support for the child (42 USC § 671(a)(29)). This recognizes relatives as an essential part of the child's support system—whether as potential placement options or as a resource to help stabilize and support the child and family—making their timely identification all the more important.

Ultimately, the strength of the relationship between states and Tribes plays a vital role in the timely identification of Indian children and their extended family members. States that have invested in building strong, respectful partnerships with both in-state and out-of-state Tribes recognize Tribes as essential partners in supporting Native children and families in state child custody proceedings. These collaborative relationships foster improved communication and coordination, promote more culturally responsive practices, and contribute to better outcomes for Native children and families.

- **Timely notice of state child custody proceedings involving an Indian child to the Tribe(s).**

A key barrier in effective implementation of ICWA is ensuring timely and complete notice to Tribal Nations when a state child custody proceeding involves an Indian child. Barriers to sending out timely notice often stem from difficulties in identifying the child's Tribal affiliation, which may be further compounded when there is limited information about non-custodial parents or family history is incomplete. Without accurate information, notices may be sent to the wrong Tribe—or not sent at all—undermining the Tribe's ability to assert its rights under ICWA.

Even when the appropriate Tribe is identified, notices are sometimes sent without the necessary details, such as the nature of the proceeding, the Tribe's rights, and the process for intervention. This lack of complete information can impede a Tribe's ability to participate meaningfully in the case. Another factor is

whether the notice is sent to the correct person or agency within the Tribe. While the Bureau of Indian Affairs (BIA) maintains an online list of service agents for Tribal notice, there are still significant numbers of notices that are sent to the wrong person or agency within the Tribe creating further delays in the ability of the Tribe to respond and the conducting of timely court proceedings. Additionally, inconsistent procedures across courts and agencies regarding notice timelines and responsibilities can also result in confusion and noncompliance.

Another complicating factor is the uncertainty surrounding the role and capacity of the BIA, particularly the extent of support the BIA regional offices can provide in helping identify Tribes based on the details that families are able to share about their Tribal affiliation. Beyond these procedural challenges, there's also a deeper issue: the tendency to treat notice as a one-time legal formality rather than part of a broader process of Tribal engagement. Effective ICWA implementation requires sustained communication with the child's Tribe, involving them early in planning and decision-making to improve outcomes for Native children and families and strengthen Tribal-state partnerships.

- **Transfer of jurisdiction under ICWA.**

An important factor impacting effective implementation is the transfer of jurisdiction from state courts to Tribal courts. While ICWA permits transfers at any time and for any reason, there is often confusion among state agencies, courts, and Tribal Nations about the appropriate timing and procedures for these transfers. Additional education and training should focus on both intervention and transfer procedures, including the concept of presumptive Tribal jurisdiction, which is sometimes overlooked or misunderstood.

Another challenge lies in the criteria courts use when deciding whether to approve a transfer. Clearer guidance is necessary to ensure that decisions comply with regulations and avoid prohibited considerations outlined in 25 CFR § 23.118(c). Additionally, states and Tribes could utilize more information and practical models on how to navigate the transfer process smoothly. Collaboration between states and Tribes before a transfer of jurisdiction is crucial to preventing disruptions in services and benefits for Native children and families, such as sharing benefits eligibility paperwork and coordinating services, ensuring a seamless transition to Tribal court.

- **Active efforts to prevent the breakup of the Indian family and meeting evidentiary standards, including testimony of a qualified expert witness for placements into foster care and terminations of parental rights.**

We recognize several challenges impact effective ICWA implementation, including high caseloads for child welfare workers, a lack of mandated ICWA training in some states, limited attention to detailed documentation, and inadequate use of culturally appropriate tools for risk assessment and family engagement. In some states, frontline workers are mandated to complete ICWA training, and there are limited opportunities for supervisors and program managers to receive training that is tailored to their roles and responsibilities. While some states do offer both introductory and advanced ICWA training, like California and Nebraska, more states need to provide ICWA training for all staff involved in supporting case planning and services coordination. Given ICWA's higher standards for removal of an Indian child and placement in foster care, training needs to identify more than legal requirements and provide examples of proven practice strategies that improve the capacity of state child welfare staff to apply ICWA's active efforts and evidentiary standards. This would include working with the child's Tribe to identify the Tribe's expectations regarding active efforts, how to address cases where needed services and supports are not yet available, understanding how to identify and access cultural services, formal and informal, and

application of active efforts in cases where the court is not yet involved or services are provided on a voluntary basis.

One of the most critical elements of active efforts implementation is engagement of the child's Tribe in casework decisions. However, the lack of attention to Tribal capacity building, such as funding to support staffing, child welfare prevention programming, and court infrastructure, makes intervention difficult and places burden on Tribes that are already stretching limited resources. While the primary focus of this solicitation for public comments is technical assistance, if HHS were to focus more attention on increasing Tribal base funding for child welfare services and disseminate more information on how states are supporting Tribal child welfare services using their federal and state funds, that could provide some of the most impactful resources for improving ICWA compliance.

Another area impacting ICWA implementation is the lack of comprehensive and targeted data collection. Without robust data and evaluation mechanisms, such as those provided under the 2024 Adoption Foster Care Analysis and Reporting System (AFCARS) Final Rule (RIN 0970-AC98), it is difficult to assess whether active efforts are being implemented. The absence of this information limits agencies' ability to ensure accountability, measure outcomes, and identify gaps in services—key components necessary for driving informed policy and practice reforms. The 2024 AFCARS Final Rule, alongside ICWA data collection provisions in the Supporting America's Children and Families Act (42 U.S.C. § 628d), presents an important opportunity to address these longstanding issues. These efforts establish a framework for improved compliance, transparency, and identification of priority implementation issues, which are essential to strengthen implementation of active efforts and ICWA's higher evidentiary standards to promote positive outcomes for Native children and families.

Focused attention is also needed to ensure consistent application and understanding of ICWA's higher evidentiary standards—particularly in recognizing how they differ from those in non-ICWA cases and in understanding what is required to meet them effectively, including the appropriate use of qualified expert witnesses (QEW). Ensuring these standards are applied early and consistently requires all parties to understand their roles and how it ties into case worker determinations during investigations and subsequent court decisions. As part of meeting ICWA's evidentiary standards, QEW testimony plays a crucial role by providing culturally informed perspectives, yet concerns have been raised about Tribes not being involved in selecting these experts, misunderstanding about the independent role of the QEW, and the reliance on pre-selected QEWs that provide testimony in multiple cases across the county or state. In addition, QEW participation can be a barrier when state courts or child welfare agencies don't provide adequate financial support. Additionally, questions persist about what qualifies an individual to serve as a QEW and how their role differs from other expert witnesses. Promising practices have begun to take shape through active collaboration with Tribes and urban Native organizations in the selection, approval, and training of QEWs—helping to ensure that testimony reflects community standards, honors cultural values, and fulfills ICWA's legal requirements. Strengthening these processes can help improve the quality and consistency of QEW testimony and support stronger, more culturally responsive outcomes for Native children and families.

- **Placements of children that meet the placement preferences of ICWA.**

There are several barriers that can hinder placement of Native children in alignment with ICWA's placement preferences, many of which stem from gaps in state-Tribal collaboration. One key challenge is the inconsistent engagement with Tribal Nations in identifying, evaluating, and supporting placement options. Partnering with Tribes to conduct home studies and assess caregiver capacity is essential to ensuring placements are safe and culturally appropriate. However, varying interpretations of how

extended family is defined, differing approaches to conducting home studies, and varied efforts to support relatives in becoming licensed caregivers impacts consistency in implementing ICWA's placement preference requirements. These issues are especially pronounced in emergency placements, where the urgency to place a child can result in preference being given to already licensed foster homes, rather than to extended family members who may be more appropriate but not yet approved or licensed as a kinship or foster home.

There is also a need to address common misconceptions or assumptions about Tribally licensed homes. ICWA ratifies the suitability of Tribal foster homes by stating that "For the purposes of qualifying for assistance under a federally assisted program, licensing or approval of foster or adoptive homes or institutions by an Indian Tribe shall be deemed equivalent to licensing or approval by a state" (25 USC § 1931(b)). Title IV-E of the Social Security Act also requires a Tribal home study be treated as equivalent to a state home study (42 USC § 671(a)(26)(B)). These provisions affirm the validity of Tribally licensed homes and their crucial role in facilitating placements that comply with ICWA's placement preference requirements, helping to keep Native children connected to their families, communities, and cultures.

In addition, there are other challenges that can affect the ability to secure appropriate placements for Native children in accordance with ICWA's placement preferences. Foster parents are sometimes unclear about their role, particularly the temporary nature of foster care and need to support reunification efforts. Foster parents may also not be aware of resources that can help support and nurture the Native child's connection to their Tribe, culture, and extended family. When education and support for foster parents is inadequate, it can impact the care that Native children receive, create tensions between the birth family, child, and foster parents, and create barriers to reunification or other alternative permanent placements. There are also concerns about inconsistent Tribal engagement in decisions regarding institutional or residential placements under ICWA's fourth foster care placement preference. This placement preference requires Tribal approval before a Native child can be placed in an institutional or residential placement; however, many Tribes report that state agencies and courts don't confer or seek approval from the child's Tribe before placement. Parent's placement preference is another area of implementation where there is uncertainty about how it should be weighed—especially when it conflicts with ICWA's placement preferences or those established by Tribal resolution. Supporting education and training on these issues should involve close collaboration with Tribes to develop practice guidance and learning opportunities that address how to appropriately consider parent placement preferences, secure Tribal approval for placement in institutional settings, and prepare foster parents with the knowledge and resources necessary to preserve familial and cultural ties and fulfill ICWA's intent to support the best interests of the child.

Other Considerations

While not covered in the sections above, the following are additional key considerations that are important to effective ICWA implementation:

- Legal representation and non-attorneys: A barrier to Tribal participation in state child custody proceedings is that a Tribe may not have attorneys licensed to practice law in the state where the proceedings occur. Many Tribal Nations also have limited funds to hire local counsel. The ICWA guidelines encourage all state courts to permit Tribal representatives to appear in ICWA cases, regardless of whether they are attorneys or licensed to practice in that state. To maximize Tribal access to legal representation under the foster care legal representation final rule (RIN 0970-AC89), additional guidance and examples of how states can work with Tribes to support legal representation in state child custody proceedings are needed.

- Full faith and credit: Understanding the full faith and credit requirement is important, including in cases where a child is a ward of a Tribal court. This requirement requires state courts to respect and enforce Tribal court orders, ensuring continuity and respect for Tribal jurisdiction and authority. More education and training are needed with state authorities, including state courts, law enforcement, and child welfare agencies, to ensure Tribal court orders receive proper enforcement.
- Sharing and examination of reports and documents: Barriers to the timely sharing and review of case reports and documentation between states and Tribes can also impact effective collaboration by limiting Tribal participation in critical decision-making. Ensuring state agencies and courts understand the need and requirement to share case records is important to developing a full understanding of the case and securing Tribal participation.
- Voluntary consent and placement: The use of voluntary agreements by agencies can offer opportunities for families to access support more easily, but can also pose risks, especially when families are not fully informed about the conditions tied to their consent or how ICWA applies in voluntary proceedings. When voluntary agreements are used inappropriately, it can mislead families about their ability to have their children returned to them and their rights under ICWA. Ensuring informed consent and meaningful engagement with parents and Tribes is essential to protecting parent's rights under ICWA, identifying preferred placements, and implementing active efforts in voluntary cases. Providing clarification about the appropriate role of voluntary placement agreements with Native children and models of how states and Tribes are addressing this work can help avoid inappropriate uses of voluntary placement and ensure parent's rights under ICWA are not violated in the process.
- Emergency removal and Tribal notice: More education about ICWA's requirements for emergency removals, particularly the timelines for emergency removal and providing timely notice to Tribes, is needed. While notice in emergency proceedings does not require the kind of legal notice required for foster care and termination of parental rights proceedings, it remains an essential part of early Tribal engagement. Sharing models of how states and Tribes work together in the investigation process and the implementation of active efforts to prevent the unnecessary breakup of Native families is needed.
- Higher standards: There is need for continued education and knowledge sharing on how states are collaborating with Tribes to implement higher standards, such as state ICWA laws, Tribal-state agreements, and state agency policies. These efforts not only strengthen ICWA compliance on the state and local level but also offer promising approaches that can be adapted across other state jurisdictions.
- Disclosure of enrollment information for adult adoptees: Challenges persist regarding the sharing of information about Tribal affiliation, including how states provide information to the BIA and how adult adoptees access their records. Greater clarity and education are needed to address privacy concerns, clarify the BIA's role in data collection and oversight, and ensure the information is handled in a way that respects Tribal sovereignty and individual rights.
- Data Collection and Continuous Quality Improvement: ICWA is one of the only major federal child welfare laws with no review system to measure implementation. This means there is no comprehensive data collected on requirements, no designated oversight process, and no reports on implementation published for the public or lawmakers. This means the limited information available comes from voluntary local or statewide efforts. These state-driven efforts vary from state to state and while they are valuable in their state, they don't allow for a complete understanding of ICWA implementation in the United States and lack the ability to inform policymakers on larger trends or concerns. In the interim, while development of a more comprehensive federal review

system is examined, efforts to provide information about state lead systems can be valuable and help stimulate new efforts in states where data is not collected or analyzed. One promising development is the implementation of the new AFCARS. The final rule published in 2024 will expand the collection of data regarding ICWA implementation and provide first ever data from states on their status in meeting key requirements under ICWA for Native children and families. The implementation of these new data elements will increase accountability and provide much more focused and accurate data than has previously been available. ACF can assist states and Tribes in getting the most from this data collection by providing technical assistance to strengthen Tribal-state partnerships and ensure there are meaningful opportunities for Tribes to work with their state partners in the planning to implement the new data elements.

b. Has your state/Tribe identified a method of receiving TA that worked well in the past? Can your state/Tribe identify a method of receiving TA that did not work?

Through our engagement with Tribal Nations and states, there are several methods of technical assistance that have been reported to work well, including peer-to-peer engagement, scenario-based instruction, and lived experience lead training. Each of these uses methods that address different adult learning styles. Community-based opportunities for Tribes and states to receive technical assistance together is another approach and aligns with a common phrase that we often hear from Tribes, "nothing for me, without me." Technical assistance should be culturally relevant for the families, service providers, and communities involved and focus on strengths-based and solution-based approaches to addressing different roles, supporting Tribal sovereignty, addressing policy and practice barriers, and promoting collaborative responses to children and family's needs. This approach leads with the principle of culture as a resource and walks alongside community—viewing Tribal Nations as partners that have a critical role in determining what technical assistance should entail and how it can be most effectively delivered.

In Oregon, ICWA TA is often provided through a network of Regional ICWA Case Specialists that provide support to state caseworkers using peer-to-peer coaching, group trainings, and learning communities. These different approaches engage Tribal caseworkers, Tribal leaders, Oregon Department of Human Services supervisors and management to help state caseworkers successfully navigate the various roles and responsibilities they have in ICWA cases.

Technical assistance methods are often ineffective when they rely on non-Native concepts and worldviews that do not align with Tribal values, experiences, or ways of knowing. Approaches that center Western frameworks—without considering Indigenous perspectives—can create disconnection and reduce the relevance or impact of the support being offered. Additionally, technical assistance formats that depend heavily on long lectures, with little opportunity for peer-to-peer interaction, questions, dialogue, or small group engagement, often fall short with Tribal and state audiences. These one-directional methods overlook the importance of relational learning, mutual exchange, and community-based dialogue that are valued in many Tribal communities.

c. What existing state-Tribe partnerships or processes are helpful in effectively implementing ICWA?

A range of state-Tribal partnerships and collaborative processes are helping to strengthen the effective implementation of ICWA. The following examples highlight how states and Tribal Nations are working together to uphold both the letter and the spirit of the law.

- State-Tribal intergovernmental agreements and Memoranda of Agreement (MOAs): 25 USC § 1919 authorizes states and Tribes to enter into mutual agreements with respect to Indian child welfare

matters. Some states have entered into MOAs with Tribes to set standards for cases involving Indian children. For example, Washington State has entered into MOAs with 24 of the 26 federally recognized Tribes in Washington State, detailing standards for notification, child welfare practice, equal access to services, and cooperative case planning in cases involving children who are or may be Indian as defined under ICWA. These agreements are essential for clearly defining the roles and responsibilities of state agencies and Tribes, helping to establish collaborative and sustainable partnerships that support effective ICWA implementation.

- State-Tribal compacting and contracting: In some states, state and Tribal governments have entered formal compacts or contracts that provide state and federal funding to Tribes to improve Tribal infrastructure and services they use in child welfare. These compacts or contracts help ensure Tribes are resourced for delivering prevention services and culturally appropriate supports, while also strengthening Tribal capacity to lead and sustain services tailored to their communities' needs.
- State-Tribal forums: Regularly convened forums offer a structured framework for state and Tribal leaders to engage in dialogue, address emerging policy and practice challenges, and collaboratively create solutions that strengthen ICWA implementation and compliance.
- ICWA courts: Dedicated ICWA courts, developed collaboratively with Tribes, help concentrate judicial expertise, strengthen partnerships between state systems and Tribes, and ultimately improve outcomes in ICWA cases by centering the spirit and letter of law.
- Tribal-state court improvement projects: These initiatives promote systemic reform by bringing together state and Tribal courts to improve practices, enhance cultural competence, and better align judicial processes with ICWA requirements.
- Statewide Tribal child welfare coalitions: Collaboration with coalitions, such as the Oklahoma Indian Child Welfare Association or California Tribal Families Coalition, offers states a regular channel for receiving input from Tribes in their state, helping to inform decision-making, and drive policy improvements.
- Urban Native organization engagement: Some states are contracting with Tribes and urban Native organizations to provide services, license placements, and train workers. This is an opportunity to target contracting to issues where improvement is most needed and have access to subject matter and community needs experts.
- Law school legal clinics and university partnerships: Academic institutions are partnering with Tribes and states to operate legal clinics that provide support in ICWA cases, increase legal expertise, and offer hands-on learning for future practitioners.
- State ombudsman offices: Several states have established ombudsman positions or offices dedicated to child welfare, with specific responsibilities for addressing ICWA-related concerns and resolving complaints. For example, the Office of Ombudsperson for American Indian Families in Minnesota is the only ombudsman office in the country that's dedicated to improving outcomes for American Indian families involved in the child protection system, including through engagement in cross-system collaboration on prevention programs and development of policies, rules, and laws that strengthen services and supports for families.
- Birth parents and relative caregivers need support and information to improve their involvement in child welfare cases. One of the key barriers that birth parents and relative caregivers experience is not having access to basic information on topics like accessing legal representation or basic services and supports. The Grandfamilies & Kinship Support Network has developed resources to help relative caregivers with these issues. You can find a copy of the resource for accessing legal representation here and one for accessing services here.

- Dedicated ICWA specialists and liaisons: Positions like Oregon's Active Efforts Specialists and other state-level ICWA liaisons strengthen collaboration by providing direct support to caseworkers, supervisors, and program leaders, and facilitating clearer, more consistent communication between state agencies and Tribes.
- Joint training: Collaborative training between states and Tribes can help foster a shared understanding of ICWA requirements, clarify roles, and strengthen partnerships, all while promoting culturally responsive practices across agencies. We have heard from states and Tribes that training is often most impactful when conducted within Tribal communities and includes relationship-building.
- Staffings and other collaborative efforts: States and Tribes are engaging in a variety of collaborative efforts to strengthen ICWA implementation and improve child welfare outcomes. These include regular communication through monthly and bimonthly calls with Tribes to discuss cases, share recommendations, and address emerging issues. Additional efforts include ICWA committees and networking groups, targeted county-Tribal collaborations, and annual child protection summits that include discussions about Tribal initiatives. Monthly Child Protection Team meetings between local Tribes and state agency staff also help maintain strong partnerships. In Washington, Local Indian Child Welfare Advisory Committees assist state caseworkers in case planning, placement decisions, and developing effective relationships with Tribal Nations and urban Native community organizations. There are also collaborative efforts designed to address specific requirements in ICWA. For example, Oregon's QEW process involves collaboration between the state and Tribes to recruit, train, and retain QEWs, ensuring that testimony provided is culturally appropriate and respects Tribal perspectives in ICWA cases.
- ICWA data collection and evaluation: Some states are actively collecting and analyzing ICWA compliance data to drive system improvements, using tools such as case reviews and narrative reporting. In one example, California operates an ICWA hotline to address concerns from Tribes regarding ICWA non-compliance by a county child welfare agency. Data gathered through the hotline is shared with Tribes on a quarterly basis, allowing them to track trends, monitor compliance, and identify recurring challenges in partnership with the state.
- Tribal capacity grants: These grants support Tribes in building their own capacity to engage in ICWA cases, and they often include collaborative efforts with state agencies and courts, such as providing training and consultation in legal proceedings.

d. How could HHS coordinate with the Department of Interior (DOI) to develop technical assistance plan? How could HHS, DOI, and other Federal agencies coordinate to provide effective TA for ICWA implementation?

The Department of Health and Human Services (HHS) could lead an interagency effort to develop and implement technical assistance plans that support effective ICWA implementation. Over the last 10 years, HHS has been engaged in interdepartmental work on ICWA, including ICWA regulations and guidance development and more recently on a variety of policy efforts that address the intersection between ICWA and other federal child welfare laws. Examples of additional coordination could include formalizing the relationship with a Memorandum of Understanding (MOU) or amending current agreements to more specifically address ongoing technical assistance needs for states and Tribes. An MOU or operating agreement should include structured opportunities for Tribes to meet with federal staff in planning and coordinating the technical assistance. This approach should include integration of existing efforts—such as the Department of Justice's (DOJ) work to support state court implementation of ICWA and address intersecting issues like human trafficking and Missing and Murdered Indigenous Peoples—into a broader systems approach that strengthens ICWA implementation across federal agencies. To support a

coordinated approach, each of the departments should establish units or engagement teams that focus specifically on ICWA implementation. The departments should also interface with existing Tribal advisory committees, like the Administration for Children and Families Tribal Advisory Committee, to help guide implementation and elevate Tribal priorities. Further, utilizing existing departmental advisory groups, workgroups, and interagency tools to align federal resources, reduce fragmentation, prevent stagnation in interagency efforts, and support cross-agency collaboration that is responsive to the needs of Tribes and Native children and families. This structure could position HHS to foster sustained, cross-agency collaboration that respects Tribal sovereignty and strengthens ICWA compliance and implementation.

e. What data is needed to know whether TA is effective?

The 2024 AFCARS Final Rule (RIN 0970-AC98) provides an opportunity for enhanced ICWA data collection. These data elements are critical to helping ACF, states, and Tribal Nations better understand how ICWA is being implemented across the country and effectively target resources to improve implementation where needed. The AFCARS Final Rule can establish much needed baseline data on ICWA implementation that can inform where to target technical assistance, what types of technical assistance are most effective, and how does technical assistance impact case-level and systems level change. Over time, this data could inform efforts to address current policy and practice challenges that are barriers to strengthening ICWA implementation.

Additionally, tracking how often Tribes, counties, and states request technical assistance could help show engagement levels, identify patterns and challenges, guide resource allocation, and support stronger Tribal-state collaboration. Another way to assess the effectiveness of technical assistance might entail surveying recipients to gather feedback on both process and its value.

f. Are there specific supports ACF could provide to help state courts and child welfare agencies address barriers to effectively implement ICWA?

Effective ICWA implementation relies on timely and accurate information about legal requirements and strong state-Tribal partnerships. Key support includes increased mandatory funding to strengthen Tribal capacity, comprehensive data collection and consistent information sharing to enhance accountability and guide system improvements, and regional convenings that bring together Tribes, state agencies, courts, Native organizations and coalitions, and other partners to address local challenges collaboratively. Additionally, promoting and supporting promising practices—such as those developed through ICWA courts, state-Tribal agreements, workgroups, and statewide or regional collaborative bodies—can help advance a more consistent, uniform, and culturally appropriate application of the law.

g. What additional supports would Tribes find helpful to build their capacity to respond to ICWA notices, attend court hearings, and certify foster families under ICWA?

Identifying specific Tribal supports is challenging because the experiences and needs vary from state to state and sometimes even within states, which supports the need for outreach and planning that is state and regionally based. However, one of the most frequently raised concerns is the lack of sufficient and sustainable funding to build Tribal capacity in support of effective ICWA implementation. Tribes often face resource gaps that limit their ability to recruit, train, and retain qualified staff; secure legal representation for participation in state child custody proceedings; and develop comprehensive, community and culturally based Tribal child welfare systems. Strengthening Tribal infrastructure is essential to ensuring meaningful partnership and full participation in the child welfare process, which is essential for effective ICWA implementation and securing positive, sustainable outcomes for Native children and families.

II. Reducing Administrative Burden. As stated above, Public Law 118-258 requires that HHS reduce the administrative burden for administering the Title IV-B program, and it allows HHS to modify any Title IV-B reporting requirement for Tribes whose allotment under Title IV-B, subpart 1 is less than $50,000 for a FY.

Almost two-thirds of federally recognized Tribal Nations have fewer than 2,000 members and their Tribal child welfare programs typically range between 1–5 staff. Tribal child welfare funding is almost entirely discretionary, meaning funding levels can fluctuate from year to year depending upon appropriated funding levels and whether state pass-through funding remains available. Tribal child welfare staff are often managing cases starting with investigation through permanency and are helping with home visits, foster home recruitment and licensing, transportation for parents and children, and attending court hearings and agency reviews. They may also be providing support to state case managers in ICWA, participating in Tribal-state forums and collaborative projects, and helping arrange training for state child welfare agencies. Tribal programs of this size don't have dedicated grant writers or contract managers and have limited assistance for grant application development and program reporting. Nonetheless, many federal child welfare programs require the same or similar application and reporting requirements for Tribes as they do for states. Title IV-B, subpart 1 funding levels for small Tribes with less than 2,000 members are under $10,000 per year and the effort to develop an application and comply with reporting requirements can easily cost $5,000 per year. Congress understood this and in response developed provisions under the Supporting America's Children and Families Act (P.L. 118-258) that provide streamlining of administrative requirements associated with operating Title IV-B programs (42 U.S.C. § 628(b)).

a. How does your state/Tribe use the information reported in the Child and Family Services Plans (CFSP), Annual Progress and Services Report (APSR), and CFS-101 for non-federal purposes, for example, in collaborative efforts with multi-disciplinary groups, reports to internal agency leadership or the state legislature/Tribal governing body?

As reported to NICWA by Tribal Nation representatives, there is little information in the CFSP, APSR, and CFS-101 forms that has significant value for other non-federal purposes. Aside from the goals and objectives identified in the CFSP, Tribal Nations report they rarely use any of the information in these federal forms for other purposes, such as tracking cases, managing budgets, or assisting in program management decisions. For example, the data that is entered in the CFS-101, which reports program expenditures in different service categories, doesn't always align with how Tribal child welfare programs track or report their program expenditures and activities to Tribal Council or other funders. While the CFS-101 service data has some value for internal planning purposes, Tribal Nations often collect other types of service data for regular use in their program operations than what is required under the CFS-101.

Use of the goals and objectives identified in the CFSP and progress made in the APSR can be useful for internal planning purposes but has limited value for other non-federal purposes. A Tribal child welfare program will likely include Title IV-B goals and objectives in internal planning documents to track grant progress and possibly inform larger program and services development but is typically not going to be used for reporting to Tribal Council, state partners, or other funders. Part of the reason for this, especially for smaller Tribes, is the size of the grant is small so the goals and objectives likely will focus on smaller efforts, like supporting staff training as opposed to system reform issues. The grant funds are still important but aren't likely to be the focus of reporting to the Tribal Council, which is interested in larger service trends and needs.

b. Regarding Title IV-B subpart 1 and 2 requirements: What suggestions does your state/Tribe have to streamline reporting on programmatic work and expenditures and that would ensure consistency with standards and guidelines for other Federal formula grant programs? Please identify the specific requirement and note information that is duplicative or where the cost to report on it outweighs any benefits provided through the funding.

In conversations with Tribal child welfare representatives, primarily Tribes that receive smaller Title IV-B grants under $20,000, it is not uncommon for Tribal child welfare agencies to consider not applying for Title IV-B funding based on the level of work to comply with application and reporting requirements. Estimates of the number of hours it takes to develop a CFSP application and APSR report range between 80-120 hours to develop the CFSP every five years and 40 hours annually to develop the APSR report. Given the average Tribal child welfare director's salary for a smaller Tribe, this would require about $8,000 in staff time to develop the CFSP and $4,000 for the annual reports (APSR).

Notwithstanding federal statutory requirements, a more reasonable reporting framework for Tribal child welfare programs could reduce the amount of overall reporting. The APSR requires annual reports on the goals and objectives in the Tribe's CFSP and related fiscal data. The final report in year five of the CFSP requires a recap of the progress toward goals and objectives over the five years of activity, much of which has already been reported in previous APSR submissions. Revising the final report to only require year five data would reduce administrative burden for Tribes and still capture goals and objectives progress and fiscal expenditures for the fiscal year. Requiring a recap of the five years of the CFSP in the final report does not provide substantial value in assessing the five years of activity or assist in development of the new CFSP in the next five-year period.

Another option may be reducing the amount of data required in the APSR and CFS-101 reports overall. Focusing on necessary fiscal expenditures, progress towards goals and objectives, and basic services data could provide more targeted data and reduce administrative burden. For example, the CFS-101 asks for expenditures, both in the current fiscal year and estimated for the next fiscal year. The data requested asks for expenditures by service category, even though this is not required of Tribes (CFS-101, part I and III). It also asks for other fiscal data that is funded through state-only grants, like monthly caseworker visits. While the form identifies when data is only required for states, creating Tribal specific forms that only include required information from Tribes would be helpful.

Additionally, CFS-101 asks for population served and geographic area data. For Tribal child welfare, this data is already provided in the CFSP and in each fiscal year it can be reasonably assumed that the Tribal grantee will provide services to the same Tribal population and in the same geographic area. This data is not critical and could be removed from the form.

Another part of the CFS-101 (Part I), questions 12 and 13 asks Tribes about reallotment of funds. While NICWA has not heard from any Tribes about the value of this data, we generally have heard that Tribal child welfare programs welcome additional allotments when available. We suggest ACF review these questions and assess whether it is necessary for orderly allotment of additional funds when available.

Other CFSP requirements for streamlining consideration:

- Tribal agency administering the programs (45 CFR 1357.15(f)(1) and (2))
    - Revise the requirement to provide an organizational chart and a description of how that office relates to Tribal and other offices operating or administering service programs within the Tribal service area. A better approach would be to have Tribes list these

programs but not have to provide a narrative description for each service program relationship.

- Consultation and Service Coordination (45 CFR 1357.15(l) and (m))
    - Eliminate the requirement to provide a description of the consultation process the Tribe uses to obtain the active involvement of the offices responsible for providing child and family services within the Tribe's area of jurisdiction. Small Tribes typically have just one child welfare office which all services originate so this data does not provide substantial value.
    - Eliminate description of how services under the plan will be coordinated over the five-year period with services or benefits under other federal or federally assisted child and family services or programs serving the same populations to achieve the goals and objectives in the plan. Since smaller Tribal grants don't have the capacity to engage in broader system reform with these funds and are more likely focused on support of discrete Tribal child welfare program needs, like training, this data is likely not particularly useful.
- Program Support (For Tribes applying for funds under Title IV-B, subparts 1 or 2)
    - Eliminate the requirements to discuss the Tribe's child welfare services staff development and training plans and planned activities for developing, implementing or improving research and evaluation activities, management information system or quality assurances system unless the Tribe has specifically indicated in their goals and objectives that they will be using Title IV-B funding for these purposes.
    - Simplify the requirement for a description of the arrangements for services to Tribal children and families between the Tribe and state to only require the Tribe to identify if the state provides services to Tribal children and families living on Tribal lands and under Tribal jurisdiction. Continue the three existing yes or no questions below the narrative requirements.
- Targeted Plans required by Title IV-B, subpart 1: Foster and Adoptive Parent Diligent Recruitment Plan
    - Discontinue the requirement that a Tribe must provide a description of their plan to recruit a diverse pool of placement homes. Tribal Nations only have jurisdiction over Native people on their lands, including Tribal members, so as a result there would be little opportunity or authority to recruit and license other families.
- Targeted Plans required by Title IV-B, subpart 1: Health Care Oversight Plan
    - Revise the requirement to provide a plan for health care oversight to provide a more streamlined process for addressing the statutory requirements. While many smaller Tribes do not operate a foster care program and instead rely on the state to provide services, there is still significant time involved in developing this plan. Consider using a checklist with multiple choice options to describe how the health care oversight is being provided to Native children in foster care.

c. Currently, information on the Child Abuse and Prevention Treatment Act (CAPTA) and the Chafee program are reported on the CFSP, APSR, and CFS-101 to ensure consistent reporting across these programs. Does your state/Tribe believe that continuing to combine these requirements into an integrated plan is the least burdensome way to administer and report on administering the Title IV-B, Chafee, and CAPTA programs? Would it be more efficient to require that agencies submit a stand-alone application/report separately for each program? Does your state/Tribe have input on changes that would

better ensure consistency across fiscal reporting for these programs? We also appreciate comments on what streamlined reporting may look like.

While most smaller Tribes do not receive CAPTA or Chafee funds, separating the application and reporting requirements by individual program would likely cause additional administrative work. Identifying clearly which application and reporting requirements apply to each program will help Tribes separate out which requirements apply to them.

d. Currently, Tribes that submit a CFSP have the option to use a preprint template (see Attachment H to ACF-ACYF-CB-PI-24-03). States do not use a template. Does your state/Tribe believe that a template format for a streamlined CFSP/APSR would be helpful? If so, how?

Tribal representatives that NICWA has spoken to have expressed that they appreciate having a template to guide them in their application and reporting.

e. *Does your state/Tribe have suggestions for improvements to the CFS-101 that would be less burden on your agency and improve fiscal reporting consistent with standards and guidelines for other Federal formula grant programs?*

Several Tribal representatives that NICWA has spoken to have expressed that they wish HHS would use similar application and reporting requirements as the BIA does for self-governance and 638 contracted programs. These were created with Tribal input and better reflect the relationship Tribal Nations have with the federal government and the federal trust responsibility.

f. What Title IV-B reporting requirements for Tribes whose allotment under Title IV-B, subpart 1 is less than $50,000 for a FY can be modified to reduce administrative burden on these Tribal grantees?

See NICWA's comments above.

g. When streamlining and eliminating duplication of reporting requirements and making changes to ensure consistency for fiscal reporting, what concerns regarding Tribal sovereignty might you have?

Addressing Tribal concerns and recommendations in consultation with Tribal Nations is the surest way to support and protect Tribal sovereignty. Concerns will almost certainly arise if solutions are developed in a vacuum without Tribal input. While the opportunity to provide written comments is helpful, engaging in dialogue with Tribal Nations after written comments have been submitted to discuss key themes and recommendations and discuss specific solutions will greatly reduce the risk that streamlining infringes upon Tribal sovereignty.

III. *Court Improvement Program*. As stated above, Public Law 118–258 requires HHS to issue best practice guidance every five years for technological changes needed for remote court proceedings and to consult with Tribes on the development of appropriate guidelines for state court proceedings involving Indian children and state court proceedings that are subject to ICWA. Additionally, ACF is seeking input on the Tribal Court Improvement Program grant ceiling.

a. What are the technological barriers and resources/capacity barriers to participating in virtual court hearings?

In many Tribal communities, especially those in more rural locations, the lack of broadband internet can be a significant limitation for participating in virtual court hearings. In the Census Bureau's 2021 report on Computer and Internet Use in the United States, which focused on both computer ownership and access to broadband across the country, it was found that 71% of American Indian and Alaska Native households

on Tribal land have broadband access, compared to the national average of 90% of households[2]. In the Navajo Reservation and Off-Reservation Trust Land in Arizona, New Mexico, and Utah, only 33% of residents have broadband access. The rates of access vary widely depending upon state and Tribal area. Although virtual court hearings are often more accessible than in-person hearings, they may not be accessible if broadband internet is not available, something that is a reality for many Native people across the country.

Other potential barriers include the capacity of the Tribal child welfare program to support parents who are participating virtually and the availability of technology support within the Tribe to support Tribal case managers participating in virtual court hearings. Tribal child welfare programs are under-resourced and under-staffed in many communities across the country. Coordination of virtual hearings can present challenges that would not be present with in-person hearings, including coordinating with Tribal families that are involved to make sure they have access to the Internet and understand how to utilize the required technology. Additionally, Tribal child welfare programs may not have access to technology support or training, which can hamper the ability of Tribal case managers to participate in virtual state court hearings. If state courts provide help with technology, that can be helpful, but it is not available in every jurisdiction. Another potential barrier is adjusting to the different protocols and fee structures for participating in virtual hearings in different state jurisdictions. Tribal child welfare attorneys and case managers appear in state courts across the country and trying to learn and carry out the different court procedures and pay the different fees in virtual hearings can be challenging, especially with high workloads and limited Tribal resources. Encouraging state courts to standardize their protocols for ICWA cases could be very helpful, including options to waive fees for Tribal legal counsel or non-attorney representatives.

Another resource that can improve Tribal engagement are the establishment of ICWA courts in state court systems. There are currently about 17 state ICWA courts established with more in the planning stages. These courts specialize in addressing ICWA cases and ensuring ICWA's implementation. The available data indicates that ICWA courts can improve proper implementation of ICWA and improve outcomes for Native children and families. ACF, which administers the State and Tribal Court Improvement Programs, could provide additional incentives and study of these courts to assist state courts as they examine how to improve Tribal engagement and improve ICWA implementation.

b. What should ACF include in guidance for state courts to ensure appropriate engagement of Tribes in state court proceedings subject to ICWA that are conducted remotely? What practice issues are important to address in ICWA cases that are conducted remotely?

The best approach for state courts to ensure appropriate engagement from Tribes in virtual hearings is to make sure that the Tribal attorneys, case managers, and parents attending the hearing understand how to use the technology, have adequate support to effectively use it, and understand court procedures for participating in virtual hearings. Guidance from ACF can encourage state courts to include user-friendly information on how to use the technology being used in virtual court hearings, how to troubleshoot technology issues that may arise, and information on procedures that are specific to virtual court, including proceedings for addressing the judge and attorneys. ACF can also encourage states to work with Tribal staff and parents to make sure the technology is accessible to them, including providing trainings and resource guides, providing opportunities to practice the technology prior to court hearings, reaching out to parents to make sure they have a plan for when they are going to access the internet and virtual

[2] United States Census. (2024). *American Indian and Alaska Natives in Tribal Areas Have Among Lowest Rates of High-Speed Internet Access*. https://www.census.gov/library/stories/2024/06/broadband-access-tribal-areas.html.

conferencing software, and connecting with Tribal child welfare staff to make sure parents and qualified expert witnesses attending the hearing have access to a computer in a reliable, confidential space at the time of the hearing.

While virtual hearings can be more accessible for Tribal parents and staff, some of the barriers that occur with in-person hearings are present in virtual hearings too. This includes scheduling around work for parents, making sure parents have access to childcare so they can attend the virtual hearing without interruption, and when a participant must travel to access the internet, there can be barriers when public transportation is very limited or not available. ACF can provide resources that educate state partners on these barriers so state case managers, judges, and other state court personnel are aware of barriers and can work proactively to address them prior to court hearings.

c. Are there particular considerations for individuals in different roles (for example, qualified expert witnesses, Tribal attorneys) participating remotely in these cases?

QEWs should be considered when thinking about who might need assistance with technology during a virtual hearing. Many QEWs are Tribal elders and serve because of the unique experience and cultural knowledge required to be a QEW. Elders are more likely than others in Native communities to not have ready access to the internet and to need additional support when using technology. Case managers and attorneys working with QEWs should make sure they are equipped to use the technology so they can concentrate on their participation in hearings.

State courts should ensure Tribal attorneys have resources on how to effectively participate in virtual hearings, both so they are aware of the processes for virtual hearings, and so they can prepare Tribal caseworkers and other staff they represent. With Tribal attorneys and case managers participating in cases in different jurisdictions within and outside of a state, familiarity with state court procedures for virtual hearings is likely to be much less than for local attorneys and case managers.

d. Currently, Court Improvement grants for Tribes have a $150,000 award ceiling. With the increase in the total authorization available for funding Tribal Court Improvement Program grants, does your Tribe think there should be adjustments to the amount or approach to the award ceiling? If yes, what are your suggestions? How does the current ceiling, or your suggestions for a new ceiling, impact small, medium, and larger Tribal courts?

There are advantages to both funding allocation approaches, depending upon the size, case load, and infrastructure of the Tribal court. There are currently just under 190 Tribal courts that hear child welfare cases. NICWA has a concern about how long it would take every Tribal court to receive a grant at the current pace of awards, but we also understand that $150,000 is not sufficient for many larger Tribal courts to support the kind of work they need to do. For these reasons, we are not offering a recommendation and instead recommend that HHS pursue additional consultation with Tribal Nations to address this question.

IV. Increasing Studies of Programs and Services Eligible for Review by the Title IV–E Prevention Services Clearinghouse.

As stated above, Public Law 118–258 set aside funding for competitive grants intended to increase the pool of evidence-based programs and services in the Clearinghouse.

a. How can ACF structure these grants to build evidence for program and services that are adapted to the culture and context of the Tribal communities served and eligible for review by the Clearinghouse?

Tribes that operate Title IV-E and the Prevention Services program, either through an agreement with a state or directly through ACF, have the opportunity to utilize programs and services adapted to their culture without having to meet the evidence-based requirements that states must use.[3] Increasing opportunities for Tribal Nations to utilize this flexibility and successfully apply for and operate these grants requires creating methods for documenting Tribal cultural practices that are not overly burdensome and sensitive to Tribal concerns regarding documentation of cultural practices. ACF can be helpful by consulting with experts in Indian Country on how to develop forms or templates that are relatively easy to use and don't require revealing sensitive information about Tribal cultural practices that would be considered inappropriate. Also, using grant reviewers for Tribal grant applications that have relevant cultural knowledge and experience to assist in accurately assessing Tribal prevention services plans and appropriate methods for building evidence in a Tribal setting would be helpful.

Another effort that could build support for cultural adaptation of already approved Title IV-E Prevention Services Clearinghouse evidence-based programs and services would be revisiting the current guidance in the Clearinghouse Handbook of Standards and Procedures, Version 2.0 (see Section 4.1.9) and consider providing more flexibility and clarity about Tribal cultural adaptation of Clearinghouse approved programs and services. This would benefit not only Tribal grantees but also states that are interested in doing more to establish prevention programs and services that are appropriate for Native children and families.

ACF could support Tribes by providing pre-submission webinars so interested Tribes could better understand the purpose of the grants, who they may need to partner with, how to assess the resources needed and their capacity, and benefits for their Tribal community. Tribal under-utilization of federal funding, especially grants related to research, evaluation, and program development, often occurs because Tribal Nations do not receive adequate notice, background information, and time to develop their proposals.

b. What TA do states and Tribes need to be able to successfully engage individuals with lived expertise to develop and study new or adapted programs and services that are eligible for review by the Clearinghouse?

For states and Tribes to successfully engage individuals with lived experience, the grants must be flexible in terms of their design requirements and clearly encourage the use of people with lived experience. This should include providing incentives for including people with lived experience in the development and study of new or adapted programs. During the grant review process incentives provided could be ranked by level of engagement to further incentivize lived experience participation. Strategies to successfully engage lived experience people could include being able to use a portion of the grant funds to help recruit and support lived experience people, provide opportunities to learn about and actively engage with the programs being studied, and allow funding to be used for trainings on trauma-informed practices, in order to provide a space for lived experience experts to share their experiences in a safe manner. Additional elements of the awards that would make them more accessible for individuals with lived experiences are to provide for funding for the logistics of convening lived experience experts, including funds for food, travel, and childcare, and make the grant application language itself accessible.

For questions regarding these comments, please contact Mariah Meyerholz, NICWA Government Affairs and Community Development Specialist at mariah@nicwa.org.

[3] Tribal authority to use culturally adapted prevention programs and services can be found at 42 U.S.C. 679c(c)(1)(E). State requirements for eligible prevention programs and services can be found at 42 U.S.C. 671(d)(4)(C).