



NICWA's Written Comments on Title IV-B Implementation Tribal Consultation

January 9, 2026

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 (HHS) 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 recommendations 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 – focusing on the new Tribal provisions in the [Supporting America's Children and Families Act](#) (P.L. 118-258).

Title IV-B provides important, flexible funding for Tribal Nations to help children at risk stay at home safely and avoid removal into foster care. It also supports Tribal efforts to partner with states to ensure that ICWA protections are provided to Tribal citizens. Additionally, the increased Tribal funding, focus on collecting ICWA data and using this to create improved technical assistance to Tribes and states, and reduction of administrative burdens make important progress towards increasing Tribal capacity in child welfare and improving ICWA compliance. In addition to detailed recommendations outlined below, we want to emphasize the importance of utilizing feedback from Tribal consultations and written comments from Tribes and Tribal organizations to inform guidance that will support the effective implementation of all the Tribal provisions in P.L. 118-258.

Several of the Tribal provisions outlined in this Title IV-B legislation also align with the administration's recommendations and priorities in the new executive order on Fostering the Future for America's Children and Families (EO 14359) and the Administration for Children and Families (ACF) "A Home for Every Child" initiative, including emphasis on data collection that supports improved outcomes for child safety and well-being, eliminating duplicative, costly, and burdensome reporting requirements, preventing unnecessary removal of children into the foster care system by prioritizing prevention, and when necessary, making sure children who are removed from their homes have a licensed or approved kinship or foster home available to care for them,

and to support permanency for every child. You will see these priorities reflected in the sections and recommendations below discussing ICWA data collection, reducing administrative burden, and other provisions in the law that prioritize Tribal capacity building to ensure Tribes can deliver necessary prevention services to their children and families that promote family preservation.

To begin, we want to address two Tribal provisions that were not mentioned in the ACF framing questions but are applicable and valuable to Tribal Nations.

- Section 107, 42 U.S.C. 628(c), allows Tribes the option to use their federally negotiated indirect rate in the operation of their Title IV-B programs. Using the federally negotiated indirect rate allows Tribes to allocate administrative and operational costs across programs to ensure that necessary overhead is covered and direct program funds to focus on service delivery. To optimize implementation of this provision, ACF could collaborate with the Indian Health Service and the Bureau of Indian Affairs on the negotiation of Tribal indirect rates.
- Another provision, outlined in section 113, authorizes the Secretary of HHS to waive or modify an application requirement or matching requirement for Tribal grants addressing the needs of foster children who have parents that are incarcerated. Application and match requirements can burden Tribal Nations – hindering their ability to operate essential prevention programs for Native children and families, especially Tribes with limited capacity and resources. This provision can help address administrative burden and allow Tribes to focus their valuable time and resources on supporting and expanding Tribal services for their children and families.

These are our specific recommendations for implementation based on ACF's framing questions in the Dear Tribal Leader Letter.

Adoption and Foster Care Analysis and Reporting System (AFCARS)

The 2024 AFCARS Final Rule ([RIN 0970-AC98](#)) provides an opportunity for enhanced ICWA data collection – the first federal data elements that provide detailed information about ICWA implementation. 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 final rule will establish much needed baseline data on ICWA implementation to inform where to target technical assistance (TA), what types of TA are most effective, and how TA impacts case-level and systems level change. Congress, Tribes, and states need this data, and it will support compliance with the new Title IV-B requirements, including biennial reports to Congress on ICWA implementation and development of new data-driven TA. This data can also provide a more detailed picture of the trends in out-of-home placement, including where Native children are being placed and the availability of ICWA foster care and adoptive placement preferences, and barriers to permanency for Native children and families. Over time, this data could also inform efforts to address policy and practice challenges that create barriers to strengthening ICWA implementation. **Therefore, we recommend that ACF ensure implementation of the 2024 AFCARS regulations that require collection of ICWA-related data continues without disruption.**

Reducing Administrative Burden

There are two sections (106 and 107) of P.L. 118-258 that authorize the Secretary of HHS to modify Title IV-B reporting requirements for Tribes and states to reduce administrative burden – highlighting opportunity to eliminate duplication and streamline reporting requirements that support efficient and effective program operation.

Addressing administrative burden is critical as almost two-thirds of federally recognized Tribes have fewer than 2,000 members and their Tribal child welfare programs typically range between one to five 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 cases involving their children, 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 one 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 P.L. 118-258 that provide streamlining of administrative requirements associated with operating Title IV-B programs (42 U.S.C. § 628(b)).

Below are recommendations specific to streamlining application and reporting requirements that support Tribal Nations in operating effective and sustainable prevention programs.

- Reduce the information required for the Child and Family Services Plan (CFSP) application that does not apply to Tribes specifically or has limited value in assessing whether statutorily required plan requirements are met.
- Where statutory plan requirements exist, explore easier ways for Tribes to provide this information, such as checklists or assurances.
- Examine yearly reporting under the Annual Progress and Services Report (APSR) for ways to reduce administrative burden. For example, the fifth year final report requires a summary of all the previous year's information. Instead, only require the Tribe to provide data on the fifth year's progress and not a summary across all years.
- Reduce 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 reallocation 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.
- For other recommendations to streamline CFSP requirements, see NICWA's comments, starting on page 12, submitted in September 2025 for the Request for Information on "Providing Technical Assistance Related to the Indian Child Welfare Act" ([Docket No. ACF-2025-0038](#)).

To ensure ACF has a comprehensive understanding of how best to address administrative burdens for Tribal Nations, the Title IV-B consultations and this comment period is an essential opportunity to consult with Tribal Nations who have experience operating the Title IV-B program. This insight can help inform ACF's development of guidance that is Tribally driven – ensuring Tribes can continue to effectively operate their programs and support new Tribes in accessing prevention funding through Title IV-B.

Tribal Court Improvement Program

Tribal Court Improvement Program funding is doubled under the new law. One of the framing questions that ACF asks in the Dear Tribal Leader Letter asks whether Tribes think there should be adjustments to the award ceiling. From our position, we believe 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.

Tribal Engagement in ICWA Cases

Improving Tribal engagement in state court proceedings is key to improving outcomes for Native families in state child welfare systems and is one of the areas of focus under the new law. Key barriers for Tribes include not having funding to hire an attorney, varying state court rules and fees regarding participating of attorneys from outside the state and non-attorney Tribal representatives, and technology barriers for Tribes and Tribal parents.

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 households¹. 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.

Virtual Hearings. 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 operate 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

¹ 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.

Additionally, qualified expert witnesses (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 QEWS. Elders are more likely than others in Native communities to not have 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 also 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.

Title IV-E Prevention Services Clearinghouse

Tribal Nations 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.² 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

² 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).

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.

Additionally, grants must be flexible in 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 funding for the logistics of convening lived experience experts, including funds for food, travel, and childcare, and make the grant application language itself accessible.