



May 28, 2026

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

Transmitted via email to infocollection@acf.hhs.gov

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NICWA Executive Director
Sarah Kastelic
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Re: Proposed Information Collection Activity—Adoption and Foster Care Analysis and Reporting System (91 FR 15622) Published March 30, 2026, in the *Federal Register*.

Dear Information Collection Clearance Officer,

The National Indian Child Welfare Association welcomes the opportunity to provide comments on the proposed information collection activity on the Adoption and Foster Care Analysis and Reporting System (AFCARS) data elements published in the December 2024 final rule (89 FR 96569). American Indian and Alaska Native (Native) children have a unique legal status as citizens of Tribal governments with federal laws, like the Indian Child Welfare Act (ICWA), that provides important safeguards to help them maintain their Tribal and family relationships and cultural connections. This unique legal status and the requirements of federal laws like ICWA are not addressed in current federal reporting requirements for state child welfare systems. This has contributed to states not having a full understanding of their progress in implementing ICWA and difficulty in developing effective and collaborative responses with Tribal Nations that produce improved outcomes. Tribal Nations have suffered under previous AFCARS data limitations, as they don't have access to informed and accurate data needed to educate policymakers about the challenges their Tribal children and families are experiencing or justifying the appropriate solutions. Together, these AFCARS policy limitations over the last 30 years have hindered Tribal and state efforts to address reoccurring and chronic concerns about Native children's well-being. With Native children nationally facing disproportionate placement in state foster care at a rate over three times their population, and other poor outcomes, the need for ongoing, reliable, and accessible data has never been greater.

Necessity and Practical Utility of the Data

The ICWA data elements established under the AFCARS 2024 final rule are the first federal data elements that can provide detailed information on ICWA implementation. The data elements align with ICWA requirements and enable Tribes, states, and federal agencies to gain a more detailed understanding of service trends and outcomes—such as efforts to prevent removal, support reunification when appropriate, track out-of-home placements, and identify barriers to achieving permanency for Native children. Thirty years of AFCARS data

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without data elements that focus on the unique needs or political status of Native children or without consideration of the congressionally mandated requirements under ICWA to ensure their best interests are met, have contributed significantly to the inability to improve outcomes for Native children. This, combined with other AFCARS and federal child-related data measures, will provide a full picture of the status of Native children and families and the reasons behind the lagging outcomes they experience. Improved policy development, technical assistance, training, and resource allocation will result from having regularly updated and reliable data available.

ICWA data collection is essential because it directly supports the Administration for Children and Families *A Home for Every Child* initiative—especially prioritizing prevention, permanency, stability, and placement with relatives/kin whenever possible. The ICWA data elements show whether states are taking the steps required to keep Native children safely with their families, engaging Tribes early, helping families access services sooner, and prioritizing kinship placements—all core components of achieving timely and appropriate permanency. By making these protections visible, the data can help identify where systems need support to reduce unnecessary removals, strengthen families, and ensure that every child can grow up in a safe, stable home while maintaining vital connections to family and community.

Quality, Utility, and Clarity of the ICWA Data Elements

The ICWA data elements in the final rule are intentionally structured around the law’s core statutory protections—such as inquiry, notice, active efforts, and placement preferences. By anchoring each element to a specific statutory requirement, the rule promotes consistent, high-quality reporting across states. These data points have substantial value because they enable federal, state, and Tribal partners to see where ICWA protections are being carried out effectively and where additional training, technical assistance, or oversight may be needed.

Furthermore, ICWA data elements should be accessible in the case files of state Title IV-E agencies and should be considered part of any appropriately documented case file. This includes common case management information that details the activities of the Title IV-E agency related to case planning, services, and related activities of the court in particular cases, such as court orders that inform the agency’s mandate and work. Examples of AFCARS data elements that have similar reach and purpose, but are not tied to mandates for Native children, include Reason for Discharge and Transfer to Another Agency, Living Arrangement and Provider Information, Date of Child’s Removal (court order establishing agency placement and care responsibility), Termination of Parental Rights and Adoption (which includes court order information). State agencies are a regular party to state child welfare proceedings, and routinely attend and participate in court hearings, filing reports, questioning witnesses, and presenting evidence related to judicial determinations. This supports the quality, utility, and clarity of the AFCARS data in the final rule because states are drawing from information that should already be available and contributing to decision making that aligns

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with ICWA's statutory requirements. While there may be situations where the court does not provide all the specific information that a state agency may desire regarding a particular judicial determination, this is something that can be remedied through enhanced communication and training, and should be pursued to ensure the state agency is appropriately serving the best interests of the child and family.

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

Estimating Burden

Regarding the burden to states collecting additional data on Native children and families in their state child welfare systems, we would point out that for over 30 years since the establishment of the AFCARS data system there has been little effort to close this gap in data collection, until recently. The burden to tens of thousands of Native children and their families in state child welfare systems has been the continued harm of overrepresentation in state foster care systems, and the inability to receive data informed solutions to address this and other threats to their well-being. Only eight states have 5% or more of the state foster care population identified as Native, and these same states often experience some of the highest rates of foster care disproportionality. ICWA data collection could provide critical insight into the factors driving these disparities and support efforts to reduce state foster care disproportionality among Native children. Additionally, a state would only be required to fill out the proposed data elements if a child in their care is found to be ICWA eligible. Federal law requires that all states inquire as to whether there is a reason to believe ICWA should apply. If the answer is no, then the state is not required to fill out any other ICWA-related data elements contained in AFCARS. For states that have small Native populations, which is vast majority of states, their burden would primarily be in the development of the data elements and integration into their system, not the cost of operation.

While we cannot provide state-specific burden estimates for collecting the ICWA data elements, we understand that collecting this data is impacted by the ability of states to receive appropriate and timely technical assistance from the Children's Bureau. In our discussions with states, we are hearing that some states are struggling to get timely and appropriate technical assistance from the Children's Bureau to help them prepare to collect the new data, which has present and future impacts for estimates of burden and capacity to meet related legal requirements. We also consider the importance of federal support for state-Tribal partnerships in this data collection effort and have not seen any

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communication to Tribes about the new data elements and encouragement to work with their state. We also note that because the data elements have never been collected before, states are being asked to provide burden estimates and analysis of the functionality of this data without any practical implementation experience. Overall, we think it is important that the Children's Bureau consider these other factors in their analysis of the comments they receive.

We express our support for safeguarding the ICWA data elements established in AFCARS. Although it has been over 45 years since the enactment of ICWA and close to 30 years since the establishment of AFCARS, the data needed to understand and address the persistent challenges facing Native children in state child welfare systems—and to strengthen collaboration between Tribes and states—has yet to be established. Incorporation of ICWA data elements into AFCARS is a big step in providing a more transparent and accountable child welfare system for some of the most vulnerable in our communities.

Thank you for your attention to these comments. We look forward to working together to improve data systems that deliver better outcomes for Native children and families.

Sincerely,

David E. Simmons

Director of Government Affairs and Advocacy