The Klamath Tribes
Tribal Council

June 12, 2018

Attn: Kathleen McHugh
United States Department of Health and Human Services
Administration for Children and Families
Policy Division
330 C Street SW
Washington, DC 20024

Submitted via electronic correspondence at: CBcomments@acf.hhs.gov

Re: RIN: 0970-AC72 **Adoption and Foster Care Analysis and Reporting System;** Advance Notice of Proposed Rulemaking (3/15/2018)

Dear Ms. McHugh:

The Klamath Tribes submits these comments regarding the Advance Notice of Proposed Rulemaking published in the *Federal Register* on March 15, 2018 (Volume 83, No. 51, page 11449). We oppose any streamlining, modification, or elimination of these critical AFCARS data elements for AI/AN children.

Klamath Tribal children are overrepresented within the child welfare system in the State of Oregon. The Klamath Tribes, in coordination with our State Child Welfare partners, are developing strategies for addressing this overrepresentation based on data gathered through AFCARS. Although we expect the State of Oregon to continue to collect this specific ICWA data currently mandated through AFCARS, the elimination (streamlining) of the AFCARS data will eliminate the comparison of Oregon to other States. Furthermore, this streamlining will threaten the ongoing data analysis currently being conducted via the AFCARS data. Although the State of Oregon is today committed to continuing to collect this data the elimination of this requirement may create the opportunity for future collection to be streamlined (eliminated).

Responses to the Questions for Comment provided in the ANPRM:

1. Identify the data elements, non-ICWA-related, that are overly burdensome for state and tribal title IV-E agencies and explain why. Please be specific in identifying the data elements and provide a rationale for why collecting and reporting this information is overly burdensome.
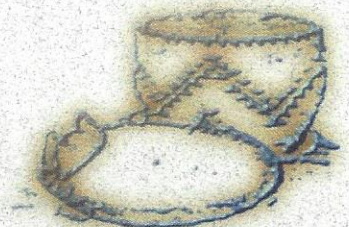
We believe that the new data elements provided in the 2016 Final Rule that address health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, adoption, guardianship, and housing are important for AI/AN children and youth as well. Burdens to collecting this data for tribes and states are relatively small considering the benefits to improving outcomes for AI/AN children and families, especially given many of the data elements are correlated to some of the most vulnerable populations in child welfare systems and identification of risks associated to their well-being.

2. Previously, we received comments regarding burden and the system changes needed to report the ICWA-related data elements of the 2016 SNPRM. We would like to receive more detailed comments on the specific limitations that states will encounter in reporting the ICWA-related data elements in the final rule. Please be specific in identifying the data elements and provide a rationale for why this information is overly burdensome.

The 2016 Final Rule requests title IV-E states provide the number of children in foster care who are considered Indian children as defined in ICWA. This is data that is currently not collected or reported in any national child welfare data system and is the key to understanding other important issues that are unique to AI/AN children and federal law requirements under ICWA. The current data in AFCARS only identifies AI/AN children through self-identification, which provides inaccurate and unreliable data. Relevant data measures in ICWA related to placement, engagement with the child's tribe, and efforts to avoid placement are not collected leaving federal agency, states, Congress, and tribes with little information to address pernicious issues impacting this population like foster care disproportionality. The 2016 Final Rule only requires states to collect the data elements in the 2016 Final Rule for AI/AN children that are ICWA eligible. Regardless of whether AFCARS data is collected all states are required by law to examine whether a child is ICWA eligible, so this effort is already required outside of AFCARS requirements. The 2016 Final Rule data specific to AI/AN children is not required to be collected for other non-Indian children so while there will be additional data collection for AI/AN children that are ICWA eligible, given the small number of AI/AN children in the vast majority of states this will not require a significant burden.

3. Previously, we received comments that particular data elements did not lend themselves to national statistics and were best assessed with qualitative methods such as case review. Please provide specific recommendations on which data elements in the regulation to retain that are important to understanding and assessing the foster care population at the national level. Also, provide a rationale for your suggestion that may include its relevance to monitor compliance with the title IV-B and IV-E programs or another strong justification for using the data at the national level.

All of the data elements for AI/AN children in the 2016 Final Rule are appropriate for a national data system like AFCARS. The activities related to the data are required by federal law, such as ICWA, and should be documented in any child welfare case file. The vast majority of the data would come from state agency activities with a few data elements coming in the form of state court orders, which should also be included in any well documented case file. To assume that some data may not be retrievable if it comes from judicial determinations is essentially saying that case files do not need to contain court orders, which would be out of alignment with nationally recognized standards in child welfare case management. In addition, not having this information in a case file poses risk that court orders are not being properly implemented and places children in jeopardy of not receiving the benefits of court oversight in child welfare.

Capturing AI/AN data through case file reviews or other qualitative methods would not provide the data that Congress, states, and tribes need on an ongoing basis to make necessary changes in policy, practice, and resource allocation to address the serious problems that have been impacting AI/AN children for over two decades. Existing qualitative methods, like case file reviews under the Child and Family Services Reviews, have demonstrated the limitations of this data for informing Congress on how best to address critical concerns for AI/AN children. Case file reviews in many states include only a handful of cases involving AI/AN children and the data retrieved does not lend itself to adequately informing local efforts to address serious concerns related to outcomes for this population, much less issues of national concern. AFCARS is much better suited to collecting the type of data required for AI/AN children and efforts to shift data

collection to other less comprehensive data systems with less regular data collection and reporting will have a negligible effect on improving data for this population.

4. Previously we received comments noting concerns with variability in some of the data elements across states and within jurisdictions. Please provide specific suggestions to simplify data elements to facilitate the consistent collection and reporting of AFCARS data. Also, provide a rationale for each suggestion and how the simplification would still yield pertinent data.

In the absence of a national data reporting requirement, it is guaranteed the current variability in state data collection and reporting will continue as evidenced by only a few states collecting any data specific to AI/AN children, and the current AFCARS data questions that use self-identification as a determinant of whether a child is AI/AN, rather than the appropriate questions related to their citizenship in a tribal government. Even with appropriate questions related to whether an AI/AN child or their family are eligible for ICWA protections, linkages to other AFCARS data cannot be assumed to be sufficiently correlated for informing policymakers and child welfare agencies without the other data elements for AI/AN children in the 2016 Final Rule also being implemented. ACF as much as any stakeholder should have a strong interest in improving the availability of accurate and reliable data for this population, which they have dedicated significant amounts of their resources to in the form of technical assistance and training.

5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with the child welfare system or are not needed for monitoring the title IV-B and IV-E programs. Please be specific in identifying the data elements and provide a rationale for why this information would not be reliable or is not necessary.

Each of the ICWA-related data points are tied to existing federal law and regulation and are necessary to monitor and support title IV-B and IV-E programs. Each of the ICWA-related data points is critical. The Title IV-B plan requirement for states that requires that states consult with tribal governments on their plans to implement ICWA has so far relied primarily on anecdotal information that is not collected or tracked uniformly by ACF leading to uneven responses to concerns about poor outcomes for AI/AN children in different states. The data elements contained in the 2016 Final Rule are linked in terms of being able to provide a complete picture of how AI/AN children are doing, and by eliminating or streamlining some of these data elements ACF would be compromising the integrity of the data to confidently inform policymakers and other stakeholders as to the important data trends and explanations for these trends.

In addition, as was stated earlier in our general comments, ICWA has been viewed as the "gold standard" in child welfare practice by leading national child welfare organizations and now with the passage of the Family First Prevention Services Act we can see there is increased support and interest in capturing more information on how states and tribes can improve outcomes for children and families beyond just improving the placement experience. The 2016 Final Rule data elements specific to AI/AN children are aligned with these acknowledgements and will be significantly helpful to all stakeholders involved in improving services and outcomes for AI/AN children.

Conclusion
The experience of having little to no data collected for AI/AN children through AFCARS over the last two decades has resulted in not meaningful improvements in the safety and well-being for AI/AN children and could be argued as having contributed to the worsening conditions for this population. We know of no other federal child welfare law that does not have some form of basic data collection and certainly not one that is 40 years old as ICWA is. The AFCARS data elements for AI/AN children in the 2016 Final Rule have incredible potential to improve outcomes for this population, but only if the data elements are not heavily modified or eliminated. While there are burdens for states to collect this data, for the past 40 years it has primarily AI/AN children, their families, and tribal communities that have born the burden while little to no reliable data has been collected and the crisis of foster care disproportionality has worsened.

The time has come to move forward with this critically important data collection for AI/AN children and families and end the delays for not collecting the data that is necessary to support and promote healing for this population.

Sincerely,

Don Gentry, Chairman
The Klamath Tribes