PECHANGA INDIAN RESERVATION
Temecula Band of Luiseño Mission Indians

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June 13, 2018

Via electronic correspondence at: *CBComments@acf.hhs.gov*

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

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

Dear Sir or Madam,

The Pechanga Band of Luiseño Indians submits these comments on the Advanced Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) for Title IV-B and Title IV-E as they relate to the Indian Child Welfare Act of 1978 (ICWA). Data points specific to ICWA were incorporated into AFCARS as detailed in the Final Rule published on December 14, 2016.

General Comments:

The data collection requirements of the Final Rule are consistent with ACF's statutory mission.

Section 479 of the Social Security Act mandates Health and Human Services collect national, uniform, and reliable information on children in state care. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

The administration provided all interested parties with ample notice and opportunities to comment on the final rule.

Tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS. The initial rules were changed due to comments by these entities and others after reviewing the Administration of Children and Families' February 9, 2015, proposed rule. On April 2, 2015, the Agency issued a Supplemental Notice of Proposed Rulemaking (SNPRM) changing certain data elements. Yet another SNPRM was issued on April 7, 2016. Specifically, the Agency sought comments on the inclusion of the ICWA data points in both the April 2015 Intent to Publish a SNPRM, as well as the April 2016 SNPRM. Ultimately, the Final Rule was published on December 14, 2016 (Final Rule), and included the ICWA data elements.

The Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action. Given the multiple opportunities to comment throughout this time period, any additional collection activity is unnecessary. In addition, tribes, tribal organizations, and advocates received notice of all of these opportunities, and with ample time to comment on this vital and important rule change. In fact, this Tribe provided comments in response to the SNPRM (please see attached letter dated May 9, 2016), as well as the June 30, 2017, Proposed Information Collection Activity (please see attached letter dated August 29, 2017).

States also had ample opportunity to participate. As the Final Rule explains in detail, ACF engaged in robust consultation with states and responded to their concerns, for example, by streamlining many data elements. (81 Fed. Reg. 90524, 90565-66.) States had at least six different opportunities to raise their concerns, which the ACF considered and addressed fully. (81 Fed. Reg. at 90566.)

States are already in the process of implementing these changes.

Since these regulations have been effective for approximately seven months, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes, is already well under way with its implementation efforts. Any delay of the implementation of the ICWA-related data points would be contrary to the best interest of tribal children and families, a waste of finite state child welfare resources, and creates confusion over whether to continue implementation.

These regulations are important to us, our families, and state child welfare systems.

The regulations themselves – in response to the comments from stakeholders across the country – describe the importance of these changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

> Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA.

> Moreover, some states, tribes, national organizations and federal agencies have stated that ICWA is the ''gold standard'' of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.
>
> Generally, tribes, organizations representing tribal interests, national child welfare advocacy organizations, and private citizens fully support the overall goal and purpose of including ICWA-related data in AFCARS, and the data elements as proposed in the 2016 SNPRM. These commenters believe that collecting ICWA-related data in AFCARS will:
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> 1. provide data on core ICWA requirements such as ''active efforts'' and placement preferences, as well as assess how the child welfare system is working for Indian children as defined by ICWA, families and communities;
> 2. facilitate access to culturally-appropriate services to extended families and other tribal members who can serve as resources and high-quality placements for tribal children;
> 3. help address and reduce the disproportionality of AI/AN children in foster care; and
> 4. provide avenues for collaboration between states and tribes that are more meaningful and outcome driven, including improved policy development, technical assistance, training and resource allocation as a result of having reliable data available.
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> Overall, tribal commenters and national child welfare advocacy organizations believe that collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families will be kept together when possible, and will help prevent AI/AN children from entering the foster care system. Many of the tribal commenters that supported the 2016 SNPRM also recommended extensive training for title IV–E agencies and court personnel in order to ensure accurate and reliable data.

Other federal reports have demonstrated the need for quality national data to assess states' efforts in implementing ICWA. *See* Government Accountability Office, *Indian Child Welfare Act: Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States*, GAO-05-290 (Apr. 4, 2005) http://www.gao.gov/products/GAO-05-290.

Nothing has changed since ACF made clear in its final rule that data collection is necessary to protect Indian children and families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions and there have been no changes in circumstances that would alter the burdens or benefits of the final rule's data collection requirements.

Tribes have relied on the final rule.

Tribes have long sought data points regarding the implementation of ICWA. This has included advocacy on local, state, and federal levels. With the promulgation of the final rule in December of 2016, tribes largely ceased advocacy efforts to mandate data collection, instead refocusing tribal resources toward working collaboratively with their governmental partners to implement the data elements listed in the final rule. To this end, some tribes have worked to develop and update agreements to reflect the data elements in the final rule and the 2016 BIA ICWA Regulations, since a goal of both is to increase uniformity.

The ANPRM is arbitrary and capricious where it seeks only information on burdens.

This ANPRM arbitrarily focuses on collecting information about the burdens without considering the benefits. As required by law, the final rule conducted a careful analysis of the benefits and burdens, and appropriately amended the proposed rule to achieve a balanced final rule.

The agency "determined in the final rule that the benefits outweigh the burden associated with collecting and reporting the additional data." 81 Fed. Reg. at 90528. The agency explained how its weighing of the benefits and burdens led it to make certain changes to its proposal. For example: as stated in the final rule at 81 Fed Reg. 90528:

> In response to state and tribal comments suggesting congruence with the BIA's final rule, we revised data elements in this final rule as appropriate to reflect the BIA's regulations including removing requirements that state title IV–E agencies report certain information only from ICWA-specific court orders. These changes should allow the state title IV–E agency more flexibility, alleviate some of the burden and other concerns identified by states, help target technical assistance to increase state title IV–E agency communication and coordination with courts, and improve practice and national data on all children who are in foster care.

There have been no material changes in circumstances justifying the agency's new approach. The executive order is not a sufficient basis for the agency to act, as the executive order itself is arbitrary and unlawful where it provides an insufficient basis for reasonable decision-making relaying solely on an examination the burden of regulations without the required balancing of benefits. Additionally, the executive order fails to provide justification to deviate from the statutory requirement for regulations.

For the foregoing reasons, we request this proposed information collection activity be withdrawn by the agency.

Specific Comments:

The Department specifically requests comments on the following questions:

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.*

   No response.

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 we should be aware of 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 ANPRM requests IV-E states and tribes to provide the number of children in foster care who are considered Indian children as defined in ICWA. However, it is specifically due to the lack of a national data reporting requirement that any number provided in response to this question would be significantly inaccurate. This speaks to the critical importance of the ICWA-related data points – without a data reporting requirement, many states simply do not appropriately track Indian children in their child welfare system, let alone the individual ICWA-related data points.

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.*

   As discussed above, there has been ample opportunity for comment and this additional ANPRM is itself both unlawful as crafted and is a waste of finite resources. Tribes and states properly relied on the final rule in working toward implementation for nearly a year and a half. Any modification to the existing data points frustrate those efforts, would require states to begin again collaborating with their tribal partners and ultimately further delay implementation. This comes at the expense of the health, safety, and welfare of not only Indian children, their families and their tribes, but the child welfare system at large where a modification of the final rule would cost resources that are system-wide.

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 there will be variability with data elements frustrating a stated purpose of the 2016 BIA ICWA Regulations, to establish uniformity of application throughout the nation. The need to eliminate the data variability is precisely why it is important to have a national data collection standard. It will assist HHS/ACF efforts to support states in properly implementing ICWA by having targeted, data-driven identification areas where states need support the most.

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 are critical.

   Further, as discussed above, ICWA is the "gold standard" of child welfare and ensuring compliance with this federal law informs how the existing child welfare system may improve in whole.

For the foregoing reasons, we strongly support each of the ICWA-related data points and believe, as your agency did in publishing the Final Rule in 2016, the benefits of this data collection outweighs any burden.

In closing, the Indian Child Welfare Act is widely considered the "gold standard" of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection significantly impacts tribal children, families, and county agencies trying to comply. In the interest of protecting our children and families, we respectfully submit these comments.

Sincerely,

Steve Bodmer
General Counsel

Enclosures

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May 9, 2016

Ms. Kathleen McHugh, Director Policy Division
Administration for Children and Families
United States Department of Health and Human Services
330 C Street, SW
Washington, DC 220024

Re: Supplemental Notice of Public Rulemaking—Proposed AFCARS data elements related to the Indian Child Welfare Act of 1978 (*Federal Register*, Volume 81, No. 67, published April 7, 2016, pages 20283–20301)

Dear Ms. McHugh:

On behalf of the Pechanga Band of Luiseño Indians, we welcome the opportunity to provide comments on the Supplemental Notice of Public Rulemaking (SNPRM) regarding proposed Adoption and Foster Care Automated Reporting System (AFCARS) data elements related to the Indian Child Welfare Act of 1978 (ICWA). American Indian and Alaska Native (AI/AN) children have a unique legal status as citizens of tribal governments with federal laws, like ICWA, that provide important safeguards to help them maintain their tribal and family relationships.

Since its passage, the unique legal status and the requirements of federal laws like ICWA have not been addressed in current federal reporting requirements for state child welfare systems that serve AI/AN children and families. This has contributed to states feeling less comfortable in examining their implementation of ICWA, and difficulty in developing responses that can effectively address disproportionality and other areas for improvement. Tribes also suffer under the current data limitations, as they experience significant limitations in their ability to track the progress of their tribal members' children and families effectively across multiple states and collaborate successfully with partner states. As states and tribes together try to understand the best approaches to address these issues, access to reliable data is critical if effective solutions are going to be developed. With AI/AN children nationally facing disproportionate placement in state foster care at a rate over two times their population, the need for ongoing, reliable, and accessible data has never been greater.

The SNPRM proposes the first federal data elements that can provide detailed information on ICWA implementation. It proposes a series of data elements tied to ICWA requirements that will allow tribes, states, and federal agencies the ability to develop a more detailed understanding of the trends in out-of- home placement and barriers to permanency for AI/AN children. Improved policy development, technical assistance, training, and resource allocation can flow from having reliable data available. Establishing the data elements proposed in the SNPRM will provide AI/AN children the same opportunities to benefit from data that other children currently have, and will better inform responses that address the unique issues in both policy and practice.

Data elements proposed in the SNRPM include data that is easily obtained in the case files of Title IV-E managing agencies. This includes common case management data that details the activities of the Title IV-E agency and related activities of the court in particular cases. The full AFCARS NPRM, like the SNPRM, also proposes data from Title IV-E agencies and courts. Examples of similar AFCARS data elements include Transfer to Another Agency (1355.43(g)(4)), Living Arrangement and Provider information (1355.43(e)(1-16), Authority for Placement and Care court order (1355.43(d)(4)), Termination of Parental Rights date (1355.43(c)(3)(ii)), and Date of Judicial Finding of Abuse or Neglect date (1355.43(c)(4). The integration of ICWA-related data provides for the unique legal issues for AI/AN children, while following a very similar framework and sources of data that have been a part of AFCARS requirements for many years and proposed in the current full AFCARS NPRM.

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 (DHHS) 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 more recently been interpreted by DHHS to include the collection and reporting of data related to implementation of ICWA involving AI/AN children in state child welfare systems. For many years, tribal advocates, and in some cases states, have argued for this interpretation, and we are pleased to see the current Administration adopt this common sense clarification of current authority.

We want to thank DHHS for their efforts to correct significant data gaps in federal data collection concerning AI/AN children and families, and express our support for the establishment of the proposed data elements contained in the SNPRM. It has been over 36 years since the enactment of ICWA, and while conditions and outcomes for AI/AN children have improved since that time, there are still substantial issues that need attention in order to reduce AI/AN disproportionality and improve tribal, state, and federal responses. We look forward to working with DHHS in the future to strategize on how to use the new data proposed in this SNPRM. Our more specific comments on the SNPRM are attached to this letter.

Sincerely,

Michele Hannah

Michele Hannah
Associate General Counsel

SPECIFIC COMMENTS ON SNPRM

Identifying an "Indian Child" under ICWA – The data elements proposed under this category provide information about efforts and sources to identify an Indian child. While asking the birth or adoptive mother and father and/or Indian custodian are good sources, it would also be highly beneficial to include whether extended family members have been questioned as well, since many times they will have critical information that a particular birth parent may not. This also fits well with Title IV-E requirements to notice all adult relatives when a child in their family has been removed (42 U.S.C. 671(29)).

We would also suggest improving the language regarding whether a child is domiciled or resident on an Indian reservation to "on an Indian reservation or in a predominately Indian community." This tracks the language in the revised federal guidelines that is intended to address whether a state agency or court has a reason to believe a child is an Indian child for ICWA purposes, not to address jurisdictional issues. In addition, adding the recommended language is in alignment with recognizes that many tribal members live off tribal lands in nearby areas, especially in Public Law 280 states (i.e., California), where tribal lands can be much smaller in size.

Transfer to tribal court – These data elements capture the request from eligible parties to transfer jurisdiction from state to tribal court. The data is critical to understanding changes in the case that can impact future agency and court decisions. We would recommend that one additional data element be included that provides a date on when the transfer of jurisdiction petition was approved.

Active efforts to prevent removal and reunify with Indian family – The data elements under this category provide important information that impacts the ability to prevent removal in the first place and help reunify after removal. These are tied to the efforts by the state agency and court in these areas. While the data elements track many of the federal guidelines, there are some important missing elements that characterize active efforts and support our recommendations. First, we recommend adding language to the third bulleted data element "Invite representatives of the Indian child's tribe to participate in the proceedings." We recommend adding language so it will read, "~~Invite~~ **Engage** representatives of the Indian child's tribe to participate in the **legal** proceedings **and planning for and providing rehabilitative services to the child's family**."

ICWA and the accompanying federal guidelines direct state agencies to make active efforts that are appropriate to the Indian child and family's unique needs. Under A.2 of the revised federal guidelines the language specifies active efforts as "Taking into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and requesting the assistance of representatives designated by the Indian child's tribe with substantial knowledge of the prevailing social and cultural standards;." We recommend that the first bullet under this category be amended to include this language so it would read "Identify appropriate services to help the parent that take into account the Indian child's tribe's prevailing social and cultural conditions and way of life, and request the assistance of the representatives designated by the Indian child's tribe."

Removals – The data elements in this category follow the ICWA requirements for involuntary placements, but do not address ICWA requirements for voluntary placements. These include parental

consent provisions regarding voluntary foster care placement that are not addressed elsewhere in the SNPRM or the full AFCARS NPRM section which addresses voluntary placements. Since the voluntary consent requirements of ICWA are the same for foster care as they are for termination of parental rights (25 U.S.C. 1913(a), we recommend that the three SNPRM data elements addressing voluntary consent in the termination of parental rights category be added to the removal category with language adjusted to reflect consent to a voluntary foster care placement (see 1355.43(i)(22), 1355.43(i)(23), and 1355.43(i)(24)). We also recommend adding a data element that addresses the ICWA requirement regarding the return of the child to the birth parents if consent is withdrawn (25 U.S.C. 1913(b)).

Foster care and pre-adoptive placement preferences – These data elements specify information related to two of the three types of placements that are covered under the ICWA placement preferences for foster care and pre-adoptive placements (25 U.S.C. 1915(b)). ICWA defines foster care placement to include foster care, guardian or conservator, or institutional placement (25 U.S.C. 1903(1)(i)). While the full AFCARS NPRM provides data elements that address guardianships more generally, these data elements do not cover the placement preferences included under ICWA fully. For example, the AFCARS NPRM provides data elements that can identify relative and non-relative guardianship homes, but there are no data elements that can identify whether the guardian home was a tribally licensed or approved home or another Indian family guardian home licensed by the state. Our recommendation is to add clarifying language to the SNPRM in this section as follows:

"Indicate which foster care or pre-adoptive placements that meet the placement preferences of ICWA in 25 U.S.C. 1915(b) were available to accept placement. "Foster Care Placement" is defined under ICWA as a "...temporary placement in a foster home or institution or the home of a guardian or conservator..." (25 U.S.C. 1903(1)(i))."

Termination of parental rights – This category creates data elements that track ICWA requirements regarding involuntary and voluntary termination of parental rights. Three of the four ICWA requirements are addressed in the data elements (evidentiary standard – beyond a reasonable doubt, expert witness testimony, and continued custody resulting in serious damage). However, arguably one of the most important requirements to avoid termination of parental rights, the provision of active efforts, is not included. This is important because the first determination of active efforts in a removal can occur within the first few months of a case being opened, while the termination of parental rights hearing can occur several months or even a year or more from the first active efforts determination. We recommend adding a data element that asks if the court made a determination, in a court order that active efforts were made by the Title IV-E agency between removal/placement in foster care and before the termination of parental rights.

In addition, we suggest adding in a data element that considers alternatives to termination of parental rights that may be available to the Title IV-E agency. In California for example, one alternative permanent plan is a Tribal Customary Adoption wherein the parental rights are not severed, but rather modified. The adoptive parent in this case is granted the same rights and responsibilities as they would under a contemporary adoption. This addition to state law was in direct recognition that the severance of the parental relationship is incongruous with some tribal customs and traditions. The Pechanga Band requests a Tribal Customary Adoption in state court child custody proceedings, unless there is a

compelling reason to consider a contemporary "western" adoption (termination of parental rights). While not all states may offer this option, failing to account for alternative permanent plans (outside of guardianships and long-term foster care) will not accurately capture data on more culturally appropriate outcomes for tribal children and families.

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August 29, 2017

Via electronic correspondence at: infocollection@acf.hhs.gov

Attn: ACF Reports Clearance Officer
Administration for Children and Families
Office of Planning, Research and Evaluation
330 C Street SW.
Washington DC 20201

Re: Adoption and Foster Care Analysis Reporting System for Title IV– B and Title IV–E (AFCARS) Proposed Information Collection Activity; Comment Request – Federal Register (June 30, 2017)

Dear Sir or Madam,

The Pechanga Band of Luiseño Indians submits these comments on the Proposed Information Collection Activity regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) for Title IV-B and Title IV-E as they relate to the Indian Child Welfare Act of 1978 (ICWA). Data points specific to ICWA were incorporated into AFCARS as detailed in the Final Rule published on December 14, 2016.

General Comments:

The data collection requirements of the Final Rule are consistent with ACF's statutory mission.

Section 479 of the Social Security Act mandates Health and Human Services collect national, uniform, and reliable information on children in state care. Section 474(f) of the Act requires HHS to impose penalties for non-compliant AFCARS data. Section 1102 of the Act instructs the Secretary to promulgate regulations necessary for the effective administration of the functions for which HHS is responsible under the Act.

The Final Rule, which ACF promulgated pursuant to these statutory requirements, will ensure the collection of necessary and comprehensive national data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care. Thus, the Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act.

The administration provided all interested parties with ample notice and opportunities to comment on the final rule.

Tribes, tribal organizations, and tribal advocates have long sought the inclusion of ICWA-related data points in the AFCARS. The initial rules were changed due to comments by these entities and others after reviewing the Administration of Children and Families' February 9, 2015, proposed rule. On April 2, 2015, the Agency issued a Supplemental Notice of Proposed Rulemaking (SNPRM) changing certain data elements. Yet another SNPRM was issued on April 7, 2016. Specifically, the Agency sought comments on the inclusion of the ICWA data points in both the April 2015 Intent to Publish a SNPRM, as well as the April 2016 SNPRM. Ultimately, the Final Rule was published on December 14, 2016 (Final Rule), and included the ICWA data elements.

The Final Rule thoroughly responded to comments on both the benefits and burdens of the proposed regulatory action. Given the multiple opportunities to comment throughout this time period, any additional collection activity is unnecessary. In addition, tribes, tribal organizations, and advocates received notice of all of these opportunities, and with ample time to comment on this vital and important rule change. In fact, this Tribe provided comments in response to the SNPRM (please see attached letter dated May 9, 2016).

States also had ample opportunity to participate. As the Final Rule explains in detail, ACF engaged in robust consultation with states and responded to their concerns, for example, by streamlining many data elements. (81 Fed. Reg. 90524, 90565-66.) States had at least six different opportunities to raise their concerns, which the ACF considered and addressed fully. (81 Fed. Reg. at 90566.)

In contrast, this Proposed Information Collection Activity was not distributed to tribes in a timely manner and tribes were pressed for time to provide comment.

Unlike the previous sequence of comments and review, the pending Proposed Information Collection Activity was not widely distributed – indeed this Tribe did not receive notice of it until August 20, 2017. Absent further explanation, it is unclear whether, or why the Agency needs a *third* set of comments on the previously vetted elements – but nevertheless tribes should have been notified and consulted about this request.

This collection activity in no way comports with the requirements of the ACF Tribal Consultation Policy, 76 Fed. Reg. 55678, 55685 which requires, "timely, respectful, meaningful, and effective two-way communication and consultation with tribes."

States are already in the process of implementing these changes.

Since these regulations have been effective for approximately seven months, all states should be in the process of implementing them. We are aware, for example, that California, a state with 109 federally-recognized tribes, is already well under way with its implementation efforts. Any delay of the implementation of the ICWA-related data points would be contrary to the best interest of tribal children and families, a waste of finite state child welfare resources, and creates confusion over whether to continue implementation.

These regulations are important to us, our families, and state child welfare systems.

The regulations themselves – in response to the comments from stakeholders across the country – describe the importance of these changes. As stated in the December 2016 Final Rule, 81 Fed. Reg. 90524, 90527:

> Overall, tribes, organizations, states, and private citizens supported our mission to collect additional information related to Indian children as defined in ICWA. Moreover, some states, tribes, national organizations and federal agencies have stated that ICWA is the "gold standard" of child welfare practice and its implementation and associated data collection will likely help to inform efforts to improve outcomes for all children and families in state child welfare systems.
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> 4. provide avenues for collaboration between states and tribes that are more meaningful and outcome driven, including improved policy development, technical assistance, training and resource allocation as a result of having reliable data available.
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> Overall, tribal commenters and national child welfare advocacy organizations believe that collecting ICWA-related data in AFCARS is a step in the right direction to ensure that Indian families will be kept together when possible, and will help prevent AI/AN children from entering the foster care system. Many of the tribal commenters that supported the 2016 SNPRM also recommended extensive training for title IV–E agencies and court personnel in order to ensure accurate and reliable data.

Other federal reports have demonstrated the need for quality national data to assess states' efforts in implementing ICWA. *See* Government Accountability Office, *Indian Child Welfare Act: Existing Information on Implementation Issues Could be Used to Target Guidance and Assistance to States*, GAO-05-290 (Apr. 4, 2005) http://www.gao.gov/products/GAO-05-290.

Nothing has changed since ACF made clear in its final rule that data collection is necessary to protect Indian children and families and their tribes. There remains a pressing need for comprehensive national data on ICWA implementation. Congress has not amended the Act's data collection provisions and there have been no changes in circumstances that would alter the burdens or benefits of the final rule's data collection requirements.

For the foregoing reasons, we request this proposed information collection activity be withdrawn by the agency.

Specific Comments:

The Department specifically requests comments on the following (a) – (d) items:

(a) **Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.**

Comment: Further collection of information related to the AFCARS at this stage is not necessary and will only serve to create uncertainty and confusion, waste child welfare resources, and delay the reporting of data for which benefits and burdens have been heard and a decision made that the benefits outweigh the burdens.

It is unclear why additional information is being sought, as comments have been provided multiple times with regard to the critical importance of having ICWA-related data points which served and continue to serve the agency and its functions.

(b) **The accuracy of the agency's estimate of the burden of the proposed collection of information.**

Comment: Accuracy of the estimate of the burden of AFCARS data collection was addressed in comments to both the 2015 NPRM and 2016 SNPRM, some of which challenged the accuracy of the estimates. In response, the Final Rule addressed those comments by creating and explaining a new estimate for the burdens associated with changing data systems and collecting and reporting data. The new burden estimates are sufficient.

Additionally, to solicit information solely regarding the potential burden of the regulations without also soliciting information and comments on its potential benefits is arbitrary, capricious, an abuse of discretion, and not in accordance with the AFCARS authorizing statute.

(c) **The quality, utility, and clarity of the information to be collected.**

Comment: The Agency received comments for both the 2015 NPRM and the 2016 SNPRM regarding the specific data elements to ensure it would be quality data in keeping with the AFCARS authorizing statute. As already documented in prior comments and as highlighted by the Final Rule, the data to be collected will produce necessary information which will guide, clarify and improve outcomes for all children and families in state child welfare systems.

To reassess the data elements one more time does more harm than good where states have already begun, in some instances in consultation with tribes, to develop data systems in accordance with the 2106 Final Rule.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comment: Rather than change the 2016 Final Rule, we recommend the Agency conduct an evaluation of state case management systems to determine if there is technology sufficient to allow for a streamlined approach to data sharing between states and the Agency. Moreover, this is not the appropriate stage at which to be soliciting comments, since an in-depth investigation is required.

In closing, the Indian Child Welfare Act is widely considered the "gold standard" of child welfare, and a refinement of family reunification objectives mandated by nearly every state. Any hindrance or stoppage of ICWA data point collection significantly impacts tribal children, families, and county agencies trying to comply. In fact, the process driven delay impairs the child welfare system as a whole. There is no logical reason to change the regulations as currently in effect. Modifications at this stage of implementation will only create costly delays and confusion. **This proposed information collection activity is unnecessary and should be withdrawn.** In the interest of protecting our children and families, we respectfully submit these comments.

Sincerely,

Steve Bodmer
General Counsel

Enclosure