

June 11, 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

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

Dear Ms. McHugh:

The Port Gamble S'Klallam Tribe submits these comments on the Advance Notice of Proposed Rulemaking regarding the Adoption and Foster Care Analysis Reporting System (AFCARS) for Title IV-E and Title IV-E as related to the Indian Child Welfare Act of 1978 (ICWA), and other data elements. We have run a Tribal Title IV-E child welfare program since 2012 and have commented on previous NPRMs and supplemental NPRMs regarding AFCARS data elements in the past.

It is worth mentioning again, as we did in our comments submitted before promulgation of the Final Rule in December 2016 and again in August 2017, specifically regarding ICWA-related data, that it is within ACF's statutory mission to collect national, uniform, and reliable information on children in state care. This includes the collection of necessary and comprehensive data on the status of American Indian/Alaska Native (AI/AN) children for whom ICWA applies and historical data on children in foster care. The Final Rule's data collection elements are necessary to ACF's statutory mission under Section 479 of the Act. There were numerous opportunities for States, Tribes, and other Tribal organizations to comment on the proposed rule in 2015, and the Final Rule in 2016 responded to comments on both the benefits and burdens of proposed regulatory action. It is unnecessary and inefficient to revisit this issue as it is an additional burden on limited resources, and States and Tribes have already taken steps to comply with the 2016 Final Rule.

Responses to the Questions for Comment:

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 do not believe data elements will be overly burdensome to collect. While it will take time to update our data system for collection of data points, the information sought for health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, guardianship, and housing is what we also want to have for efficient and proper management of our child welfare cases. This information is critically important for addressing the myriad of risks facing our most vulnerable populations.

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. Any number provided in response to this question will initially be inaccurate, because of a current lack of a national data reporting requirement. Lack of national data about State practices regarding the segment of the national population who continue to be disproportionately represented in child welfare cases should alarm ACF, not have ACF question why to collect it. Furthermore, the lack of national data makes it difficult if not impossible to determine where states may need additional assistance or resources for their child welfare programs, especially in cases where cultural practices can keep families together.

While we are fortunate to have a good working relationship with the State of Washington, we are also aware Indian children are not adequately tracked in their SACWIS system. Washington State has stated they will submit comments agreeing that collection of ICWA-related data elements is important, although they would not argue with an extension of time to update their data systems. If our state agrees collection of ICWA-related data elements is important for practice, we do not see how ACF considers collection of this information “overly burdensome.”

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.

There has been ample opportunity for comment and this additional ANPRM is a waste of finite resources. Tribes and states have 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, 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 waste limited system-wide resources.

Capturing data through case reviews or other qualitative methods will not provide reliable national data for Congress, states and tribes to use as a basis to support necessary changes in practice, policy, or resource allocation. This information would be limited to points in time and random cases, which do not provide a broad overview of system-wide issues and may not provide proper incentive for addressing grave concerns that continue to plague the child welfare system and the vulnerable populations subject to their intervention. The passage of the Family First Prevention Services Act in February 2018 (Division E of the Bipartisan Budget Act, H.R. 1892) also clearly expands the purpose of the Title IV-E program, which makes collection of the data elements in the 2016 Final Rule more important.

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. The issues for our nation's children and families regarding health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, adoption, guardianship, and housing will also remain unaddressed on a national scale without national data reporting requirements.

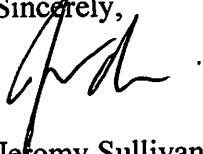
5. Previously we received comments questioning the utility, reliability, and purpose of certain data elements at the national level. Provide specific recommendations on which data elements in the regulation to remove because they would not yield reliable national information about children involved with 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.

Our tribal children and families rely on our child welfare system, in collaboration with other tribal, state and federal agency partners, to ensure risks to their safety and well-being are addressed in a way that supports them. Information regarding health assessments, educational achievement, siblings, mental health services, sex trafficking, sexual orientation, permanency planning, guardianship, and housing are all issues that need to be addressed for effective case management and are critical to address for successful outcomes. National data regarding these issues facing our most vulnerable populations will assist policy makers and service providers to improve and implement successful system-wide change. Lack of this data will continue to result in more of the same practices and minimal resources that continue to fail our children.

Furthermore, all 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. 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, as well as others and believe, as your agency did in publishing the Final Rule in 2016, the benefits of this data collection outweighs any burden.**

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeromy Sullivan', with a small dot at the end.

Jeromy Sullivan
Tribal Chair