

## **AFCARS Supplemental Notice of Proposed Rulemaking (SNPRM) Supporting Statement**

### **A. Justification**

#### 1. Circumstances Making the Collection of Information Necessary

Section 479 of the Social Security Act (the Act) requires that ACF regulate a national data collection system that provides comprehensive demographic and case-specific information on all children who are in foster care and adopted with state or county child welfare agency involvement (42 U.S.C. § 679). The data collection system is the Adoption and Foster Care Automated Reporting System (AFCARS).

The specific mandate in the AFCARS statute is to collect information regarding the:

1. demographics of adoptive and foster children, and biological, foster and adoptive parents;
2. status of the foster care population, including length and type of placement, availability for adoption, and the permanency goal for the child;
3. characteristics of foster and adoptive children; and
4. nature of the assistance provided by federal, state, and local governments to these children.

The Indian Child Welfare Act (ICWA) was enacted by Congress in 1978 in response to alarming numbers of AI/AN children being removed from their families by public and private child welfare agencies, most often being placed in non-Indian homes far from their tribal communities. ICWA was enacted to protect AI/AN families and to give tribes a role in making child welfare decisions for AI/AN children. ICWA requires that: (1) tribes be notified and given an opportunity to intervene when the state places a child subject to ICWA in foster care or seeks to terminate parental rights on behalf of such a child, and (2) that children be placed, if possible, with relatives or tribal families.

Responsibility for ICWA implementation is dispersed among multiple federal and state agencies. ACF oversees and supports all public child welfare programs, including state efforts to ensure safety, permanence, and wellbeing for AI/AN children. In addition to foster care payments, ACF provides technical assistance and grants specifically designed to help state agencies and courts build their capacity to properly implement ICWA. ACF also requires states to report the measures taken to comply with ICWA and requires states to conduct tribal consultations. The Bureau of Indian Affairs, within the Department of the Interior, administers significant parts of ICWA and issues regulations and guidelines to implement the law. The Department of Justice enforces ICWA and actively identifies state-court cases where the U.S. can file briefs opposing the unnecessary and illegal removal of AI/AN children from their families and tribes.

Today, AI/AN children still face obstacles to receiving the full protections provided under the law. AI/AN children are disproportionately represented in state child welfare systems nationally at two times their population rate and among individual state foster care systems as much as 10 times their population rate. However, there is very limited data available to help understand this disproportionality.

#### 2. Purpose and Use of Information Collection

AFCARS is the only nationally mandated collection of data on children in foster care and those who

have been adopted with involvement by state and tribal child welfare agencies. The Department of Health and Human Services (the Department) uses the information submitted by child welfare agencies to address policy development at the federal level. The data will allow the Administration to:

- Assess the current state of adoption and foster care programs as they affect AI/AN families.
- Develop future national policies concerning its programs.
- Improve training and technical assistance to states seeking to comply with Title IV-E, and Title IV-B of the Social Security Act.
- Address the unique needs of AI/AN children in foster care and who are adopted and their families.
- Partner across federal agencies to support Indian families.

### 3. Use of Improved Information Technology and Burden Reduction

AFCARS data are required to be submitted electronically to the Department on a semi-annual basis (twice a year). FISMA approved software is used that allows for secure direct transmission of data files between the title IV-E agencies and the Federal Government.

### 4. Efforts to Identify Duplication and Use of Similar Information

ACF determined that a regulation is the best and most cost effective way to implement the statutory mandate for a data collection system regarding children in foster care and those that are adopted and support other statutory obligations to provide oversight of child welfare programs

ACF considered whether other existing data sets could yield similar information. ACF determined that AFCARS is the only comprehensive case-level data set on the incidence and experiences of children who are in foster care and/or adoption or guardianship with the involvement of the state or tribal title IV-E agency.

For states that have few Indian children in foster care, ACF considered alternatives to collecting ICWA-related data through AFCARS, such as providing an exemption from reporting, or an alternative submission process or that would be less burdensome. While ACF recognizes collecting the proposed ICWA-related data may be burdensome for states with few Indian children in foster care, the alternative approaches are not feasible due to:

- The statutory requirement that AFCARS data be comprehensive. Section 479(c)(3) requires that AFCARS provide “comprehensive national information.” Exempting some states from reporting the proposed ICWA-related data elements is not consistent with this statutory mandate, and would render it difficult to use this data for development of national policies for Indian children.
- The statutory requirement for assessing penalties on AFCARS data. Section 474(f) of the Act penalizes the title IV-E agency for non-compliance based on the total amount expended by the state for administration of foster care activities. The statute provides for mandatory penalties, therefore, we are not authorized to permit some states to be subject to a penalty and not others. In addition, allowing states an alternate submission process would complicate and/or prevent the assessment of penalties as proposed in the February 9, 2015 NPRM in proposed § 1355.46, including penalties for failure to submit data files free of cross-file errors, missing, invalid, or internally inconsistent data, or tardy transactions for each data element of applicable records.
- State agencies that elect to have a SACWIS provide some of the proposed ICWA-related data elements as part of the system requirements will already have systems designed to capture some

ICWA-related data.

#### 5. Impact on Small Businesses or Other Small Entities

This information collection for the SNPRM is required of state title IV-E agencies only and does not impact small businesses or other small entities. The Department requires reporting only on those children for whom the state title IV-E agency has responsibility for placement and care.

#### 6. Consequences of Collecting the Information Less Frequently

Information must be collected on an on-going basis in order to provide for future evaluation and other information for children in foster care. As the only nationally mandated child welfare information collection system, AFCARS is the primary source of information. In order to reduce the burden on state title IV-agencies, and still gather data on a timely basis, a semi-annual reporting period has been required in the regulation.

#### 7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

There are no special circumstances required in the collection of this information in a manner other than that required by OMB.

#### 8. Comments in Response to the Federal Register Notice and Efforts to Consult Outside the Agency

This SNPRM serves as the mechanism by which the Department is soliciting comments on proposed changes to AFCARS for ICWA-related data elements. The Department issued a NPRM published on February 9, 2015 that proposed changes to AFCARS (80 FR 7132). We decided to issue a supplemental NPRM rather than proceed with a final rule so that we can consider the public comments on this SNPRM (related to ICWA data elements) and the February 9, 2015 NPRM (related to all other data elements) and issue one final rule on AFCARS.

To inform our development of this SNPRM, we:

- consulted with federal agency experts from the Bureau of Indian Affairs at the Department of Interior (DOI), and the Environment and Natural Resources Division at the Department of Justice (DOJ),
- analyzed comments to the Feb. 2015 AFCARS NPRM that spoke to ICWA-related data elements,
- held one Tribal consultation session, and
- solicited input from members of the [National Association of Public Child Welfare Administrators](#) (NAPCWA).

In developing this supplemental proposed rule, we considered the input from these groups as well as comments to the Feb. 2015 AFCARS NPRM. NAPCWA members, during the conference call, stated that some currently collect some information in their information system regarding ICWA such as tribal membership, tribal notification, and tribal enrollment status. They noted that some of the information about ICWA, such as cultural preferences and active efforts, are in case files and not in their information system and therefore, may not be easily extracted for AFCARS. Regarding burden and costs,

NAPCWA participants indicated that their information systems must be changed and upgraded to report ICWA-related data to AFCARS and that funding is necessary for system costs to do this. Even though title IV-E agencies are engaged in work to comply with ICWA, and may have ICWA information in their files, it will be costly to train workers for accurately and consistency in a new data collection, add data elements, and extract the information for AFCARS. Ultimately, NAPCWA members indicated that the ICWA related data elements they would suggest for AFCARS reporting on children in foster care are: tribal membership/enrollment status, name of tribe(s), and notifications to tribe(s).

9. Explanation of Any Payment or Gift to Respondents

No payments, other than Federal financial participation (FFP), will be made to states for the maintenance and development of an information system.

10. Assurance of Confidentiality Provided to Respondents

All ICWA-related data on children who are in foster care will be collected with the assurance of confidentiality. The data must be kept confidential as the purpose of its collection is to conduct policy analyses and not to track individual children at the national level. The identity of individual children and families will be known to the reporting state title IV-E agency only. ACF has approved two methods for the creation of an AFCARS record number, encryption or sequential numbering. ACF has assisted title IV-E agencies in developing an algorithm to encrypt. All title IV-E agencies encrypt the record number.

11. Justification for Sensitive Questions

There are no questions of a sensitive nature.

12. Estimates of Annualized Burden Hours and Costs

ANNUAL BURDEN ESTIMATES

<b>Collection - Recordkeeping</b>	<b>Number of respondents</b>	<b>Number of responses per respondent</b>	<b>Average burden hours per response</b>	<b>Total burden hours</b>
Annual	52	2	1,845.90	191,973
One-Time	52	1	25.12	1,306
<b>Total</b>				<b>193,279</b>

<b>Collection - Reporting</b>	<b>Number of respondents</b>	<b>Number of responses per respondent</b>	<b>Average burden hours per response</b>	<b>Total burden hours</b>
Annual	52	2	3	312
One-Time	52	1	6.35	330
<b>Total</b>				<b>642</b>

In estimating the burden, we included both one-time burden estimates and annual burden estimates. The annual burden to the state title IV-E agency includes activities such as: searching data sources and gathering information, entering the information, extracting the information for AFCARS reporting, and transmitting the information to ACF. The one-time burden for this SNPRM, includes activities to: develop or modify procedures and systems to collect, validate, and verify the information, adjust existing ways to comply with AFCARS requirements, and train personnel on the new AFCARS requirements of this SNPRM.

In developing the burden estimate, we made several assumptions:

- First, ACF assumed that state title IV-E agencies may have access to most of the information for proposed data elements. ACF anticipated the information for these data elements are contained in the state title IV-E agency's paper or electronic case files. ACF estimated that some of the data elements would only be in paper case files or narrative fields, thus not readily able to be extracted for AFCARS reporting, and would require revisions to the electronic case file so that the information can be extracted for AFCARS reporting. Some of these data elements concern collecting information on court findings and other activities taking place during court processes.
- Second, in order to determine the number of cases for which state title IV-E agencies will have to report the ICWA-related data elements, ACF estimated the out-of-home care reporting population using the most recent FY 2014 AFCARS data available submitted by state title IV-E agencies: 415,129 children were in foster care on September 30, 2014 and 264,746 children entered foster care during FY 2014. The state title IV-E agency will be required to report approximately 3 data elements for all children who are in the out-of-home care reporting population and approximately 24 data elements on children to whom the ICWA-related data elements apply. To estimate the number of children to whom the ICWA-related data elements apply, ACF used as a proxy those children whose race was reported as "American Indian or Alaska Native" in the most recent FY 2014 AFCARS data available. While not every child of this reported race category will be covered under ICWA, it is likely that the state title IV-E agency will have to explore whether these children may be Indian children as defined in ICWA. Thus, 5,960 children who entered foster care during FY 2014 were reported as American Indian or Alaska Native.
- Third, ACF assumed that there will be one-time costs to implement the requirements of this SNPRM and annual costs to collect, input, and report the information. The annual costs involve searching data, gathering the information that meet the requirements of this SNPRM, entering the information, and extracting and submitting the information for AFCARS reporting. The onetime costs mostly involve modifying procedures and systems to collect, validate and verify information, adjusting existing ways to comply with AFCARS; and training personnel on the new AFCARS requirements of this SNPRM.
- Fourth, ACF assumed that the one-time burden is similar to how long it would take to make revisions to a SACWIS to be able to meet the requirements of the SNPRM. Currently, 36 states have an operational SACWIS. ACF understands that 24 states opted to collect at least a minimal amount of ICWA-related information per the SACWIS Assessment Review Guide, but also recognize that most state title IV-E agencies will require some revisions to meet the requirements of this SNPRM. As more states build SACWIS, ACF anticipates it will lead to more efficiency in reporting and less cost and burden to the state agencies.
- Finally, after reviewing the 2014 Bureau of Labor Statistics data to help determine the costs of the SNPRM, ACF assumed that there will be a mix of staff working to meet both the one-time

and annual requirements of this SNPRM with the job role of Management Analyst (13-1111) with a mean hourly wage estimate of \$43.68 and those with the job role of Social and Community Service Managers (11-9151) with a mean hourly wage estimate of \$32.56. Thus, ACF averaged the two wages to come to an average labor rate of \$38.12. In order to ensure we took into account overhead costs associated with these labor costs, ACF doubled this rate.

**Annual Recordkeeping and Reporting Burden Estimate:** We estimated the annual recordkeeping and reporting burden by multiplying the time spent on the recordkeeping and reporting activities described below by the number of children in foster care to arrive at the total recordkeeping hours. These estimates represent the work associated with the state title IV-E agency searching data sources and gathering information, entering the information, extracting the information for AFCARS reporting, and transmitting the information to ACF. These estimates are based on our assumptions, described above, on how much of the information proposed in this SNPRM state title IV-E agencies currently have in their electronic or paper case files or information system or have ready access to, while taking into account that some of the elements may require more effort to gather the information if it is not readily accessible.

- Gathering the information for and entering the ICWA-related data elements that apply to all children who enter foster care
- Gathering the information for and entering the ICWA-related data elements that apply to children in foster care who are covered by ICWA.
- Extracting and submitting the information to ACF for AFCARS reporting on average will take 6 annual burden hours per state title IV-E agency.

**One-Time Burden Estimate:** The one-time burden estimates represent the work associated with the activities described below. As stated above, ACF came to these estimates by using average estimates for revising a SACWIS, which is the best information available. It is also important to note that states will have the option of updating their systems in a streamlined manner since ACF plans to issue the final rules for new AFCARS regulations and for child welfare information systems.

- Modifying procedures and systems (including developing or acquiring technology) to collect, validate, verify, process, and report the information to ACF.
- Adjustments to the existing ways to comply with AFCARS, developing technology and systems to collect and process data.
- The administrative tasks associated with training personnel on the new AFCARS requirements of this SNPRM which include reviewing instructions, including training development and manuals.
- Training personnel on the new AFCARS requirements of this SNPRM.

**Total Burden Cost:** ACF used a total cost and burden hour estimates to provide additional detail on projected average cost for each state title IV-E agency implementing the changes described in this SNPRM. Once the burden hours were determined, ACF developed an estimate of the associated cost for state title IV-E agencies to conduct these activities, as applicable. Based on our assumptions above, ACF used an average labor rate of \$38.12 and doubled this rate to account for overhead costs (\$76.24). Federal reimbursement under title IV-E will be available for a portion of the costs that title IV-E agencies will incur as a result of the revisions proposed in this rule, depending on each agency's cost allocation plan, information system, and other factors.

<b>Collection - Recordkeeping</b>	<b>Total burden hours</b>	<b>Average hourly labor rate</b>	<b>Total cost</b>	<b>Number of respondents</b>	<b>Net average cost per respondent</b>
Annual	191,973	\$76.24	\$14,636,021.52	52	\$281,461.95
One-Time	1,306	\$76.24	\$99,569.44	52	\$1,914.79

<b>Collection - Reporting</b>	<b>Total burden hours</b>	<b>Average hourly labor rate</b>	<b>Total cost</b>	<b>Number of respondents</b>	<b>Net average cost per respondent</b>
Annual	312	\$76.24	\$23,786.88	52	\$457
One-Time	330	\$76.24	\$25,159.20	52	\$483

In making the above estimates, we want to acknowledge: (1) we have used average figures for state title IV-E agencies of very different sizes and of which, some states may have larger populations of tribal children served than other states, (2) these are rough estimates of the burden because state title IV-E agencies have not been required previously to report ICWA-related information in AFCARS, and (3) as we have described, we have limited information to use in making these estimates.

13. Estimates of Other Total Annual Cost Burden to Respondents and Record Keepers

There are no AFCARS-only data collection systems. States utilize existing computer information systems to record and collect information pertaining to the case work associated with children in foster care. The cost of collecting and submitting data to AFCARS for States is subsumed under the agency's expenses for personnel. Some of the costs that state title IV-E agencies incur as a result of the revisions to AFCARS will be eligible for FFP. There will be initial costs associated with incorporating the proposed information into the electronic case file, if not already there, and a new program code to extract the data from states' information systems. These costs will be one-time. There will be annual costs with collecting, entering, and reporting the information.

14. Annualized Cost to the Federal Government

Federal reimbursement under title IV-E will be available for a portion of the costs that title IV-E agencies will incur as a result of the revisions proposed in this rule, depending on each agency's cost allocation plan, information system, and other factors. For this estimate, we used the 50% FFP rate.

<b>Collection -</b>	<b>Total</b>	<b>Average</b>	<b>Total cost</b>	<b>Number of</b>	<b>Estimate Federal costs</b>
---------------------	--------------	----------------	-------------------	------------------	-------------------------------

<b>Recordkeeping</b>	<b>burden hours</b>	<b>hourly labor rate</b>		<b>respondents</b>	<b>(50% FFP)</b>
Annual	191,973	\$76.24	\$14,636,021.52	52	\$7,318,010
One-Time	1,306	\$76.24	\$99,569.44	52	\$49,784
<b>Total</b>					<b>\$7,367,794</b>

<b>Collection - Reporting</b>	<b>Total burden hours</b>	<b>Average hourly labor rate</b>	<b>Total cost</b>	<b>Number of respondents</b>	<b>Estimate Federal costs (50% FFP)</b>
Annual	312	\$76.24	\$23,786.88	52	\$11,893
One-Time	330	\$76.24	\$25,159.20	52	\$12,579
<b>Total</b>					<b>\$24,472</b>

15. Explanation for Program Changes or Adjustments

This SNPRM changes the collection requirements by adding for the first time, ICWA-related data elements to AFCARS. The burden hours represent the burden associated with adding the new data elements proposed in the SNPRM and may be an overestimate since we are unable to know exactly what information state title IV-E agencies currently collect for their own purposes, but ACF proposes to collect for the first time under this SNPRM. The supplemental proposed regulation includes the addition of new information that may not be currently included in an agency’s electronic case file. While agencies may collect the information in some format for their own purposes, the supplemental proposed regulation will require the automated collection and reporting of this information to the Federal government for the first time.

16. Plans for Tabulation and Publication and Project Time Schedule

There is no timetable or end date for the project, as collection of data will be ongoing.

17. Reason(s) Display of OMB Expiration Date is Inappropriate

The Department is requesting that the OMB number and expiration date not be displayed as there is no forms that the state title IV-E agencies use to submit AFCARS data. All data are submitted electronically. The OMB number is displayed at 45 CFR 1355.40.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

There are no exceptions to the certification statement.

**B. Statistical Methods (used for collection of information employing statistical methods)**

The information collected in AFCARS does not require the use of statistical methods.