

- Fiscal requirements (title IV-E)
- Grant programs—social programs
- Statewide information systems

(Catalog of Federal Domestic Assistance Program Number 93.658, Foster Care Maintenance; 93.659, Adoption Assistance; 93.645, Child Welfare Services—State Grants).

Dated: November 25, 2024.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

For the reasons set forth in the preamble, ACF proposes to amend 45 CFR part 1355 (<https://www.ecfr.gov/current/title-45/part-1355>) as follows:

## **PART 1355—GENERAL**

1. The authority citation for part 1355 continues to read as follows:

**Authority:** 42 U.S.C. 620 (<https://www.govinfo.gov/link/uscode/42/620>) *et seq.*, 42 U.S.C. 670 (<https://www.govinfo.gov/link/uscode/42/670>) *et seq.*; 42 U.S.C. 1302 (<https://www.govinfo.gov/link/uscode/42/1302>).

2. Amend § 1355.43 by revising paragraph (b) to read as follows:

### **§ 1355.43 Data reporting requirements.**

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(b) *Out-of-home care data file.* A title IV-E agency must report the information required in § 1355.44 pertaining to each child in the out-of-home care reporting population, in accordance with the following:

(1) The title IV-E agency must report the most recent information for the applicable data elements in § 1355.44(a), (b), and (c).

(2) The title IV-E agency must report the most recent information and all historical information for the applicable data elements in § 1355.44(d) through (i).

(3) For state title IV-E agencies only, regarding only the ICWA-related data elements in § 1355.44(b)(3) through (6) and (i): For a child who entered the out-of-home care reporting population as defined in § 1355.42(a) prior to October 1, 2028 and exits the out-of-home care reporting population on or after October 1, 2028, the state title IV-E agency must report information for the data described in § 1355.44(b)(4)(i) and (ii) and (6)(i) only.

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3. Effective Oct. 1, 2028, amend § 1355.44 by revising paragraphs (b)(3) through (6), and adding paragraph (i) to read as follows:

**§ 1355.44 Out-of-home care data file elements.**

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(b) \*\*\*

(3) *Researching reason to know a child is an "Indian Child" as defined in the Indian Child Welfare Act (ICWA).* For state title IV-E agencies only: Indicate whether the state title IV-E agency researched whether there is reason to know that the child is an Indian child as defined in ICWA. Complete each paragraph (b)(3)(i) through (vii) of this section.

(i) Indicate whether the state title IV-E agency inquired with the child's biological or adoptive mother. Indicate "yes," "no," or "the biological or adoptive mother is deceased."

(ii) Indicate whether the state title IV-E agency inquired with the child's biological or adoptive father. Indicate "yes," "no," or "the biological or adoptive father is deceased."

(iii) Indicate whether the state title IV-E agency inquired with the child's Indian custodian if the child has one. Indicate "yes," "no," or "child does not have an Indian custodian."

(iv) Indicate whether the state title IV-E agency inquired with the child's extended family. Indicate "yes" or "no."

(v) Indicate whether the state title IV-E agency inquired with the child. Indicate "yes" or "no."

(vi) Indicate whether the domicile or residence of the child, the child's parent, or the child's Indian custodian is on a reservation or in an Alaska Native village. Indicate "yes" or "no."

(vii) Indicate whether the state title IV-E agency inquired with the child's legal guardian if the child has one. Indicate "yes," "no," or "child does not have a legal guardian."

(4) *Child's Tribal membership and reason to know.* For state title IV-E agencies only:

(i) Indicate whether the child is a member of or eligible for membership in a federally recognized Indian Tribe. Indicate "yes," "no," or "unknown".

(ii) If the state title IV-E agency indicated "yes" in paragraph (b)(4)(i) of this section, indicate all federally recognized Indian Tribe(s) that may potentially be the Indian child's Tribe(s).

(iii) Indicate whether the state title IV-E agency knows or has reason to know, that the child is an Indian child as defined in ICWA. Indicate "yes" or "no." If the state title IV-E agency indicates "yes," then it must complete (□ printed page 96589) paragraph (b)(4)(iv) of this section. If the state title IV-E agency indicates "no," then it must leave paragraph (b)(4)(iv) of this section blank.

(iv) Indicate the date that the state title IV-E agency first discovered the information indicating the child is or may be an Indian child as defined in ICWA.

(5) *Notification.* For state title IV-E agencies only:

(i) Indicate whether the Indian child's Tribe(s) was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a) (<https://www.govinfo.gov/link/uscode/25/1912>). Indicate "yes" or "no." If the

state title IV-E agency indicates “yes,” then it must complete paragraph (b)(5)(ii) of this section. If the state title IV-E agency indicates “no,” then it must leave paragraph (b)(5)(ii) of this section blank.

(ii) Indicate the Indian Tribe(s) that were sent notice as required in ICWA at 25 U.S.C. 1912(a) (<https://www.govinfo.gov/link/uscode/25/1912>).

(iii) Indicate whether the Indian child's parent or Indian custodian was sent legal notice prior to the first child custody proceeding in accordance with 25 U.S.C. 1912(a) (<https://www.govinfo.gov/link/uscode/25/1912>). Indicate “yes” or “no.”

(6) *Application of ICWA.* (i) Indicate whether a court determined that ICWA applies or that the court is applying ICWA because it knows or has reason to know a child is an Indian child as defined in ICWA in accordance with 25 CFR 23.107(b)(2) ([https://www.ecfr.gov/current/title-25/section-23.107#p-23.107\(b\)\(2\)](https://www.ecfr.gov/current/title-25/section-23.107#p-23.107(b)(2))). Indicate “yes, ICWA applies,” “no, ICWA does not apply,” or “no court determination.” If the state title IV-E agency indicates “yes, ICWA applies,” then it must complete paragraphs (b)(6)(ii) and (iii) and paragraph (i) of this section; otherwise leave blank.

(ii) Indicate the date that the court determined that ICWA applies or determined to apply ICWA in accordance with 25 CFR 23.107(b)(2) ([https://www.ecfr.gov/current/title-25/section-23.107#p-23.107\(b\)\(2\)](https://www.ecfr.gov/current/title-25/section-23.107#p-23.107(b)(2))).

(iii) Indicate the Indian Tribe that the court determined is the Indian child's Tribe for ICWA purposes.

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(i) *Data elements related to ICWA.* Reporting information in paragraph (i) is for state title IV-E agencies only. Report information in this paragraph (i) only if the state title IV-E agency indicated “yes, ICWA applies” in paragraph (b)(6)(i) of this section. Otherwise, the state title IV-E agency must leave paragraph (i) of this section blank.

(1) *Request to transfer to Tribal court.* (i) Indicate whether there was a request to transfer to Tribal court for each removal date reported in paragraph (d)(1) of this section. Indicate “yes” or “no.” If the state title IV-E agency indicates “yes,” the state title IV-E agency must complete paragraph (i)(1)(ii) of this section. If the state title IV-E agency indicates “no,” the state title IV-E agency must leave paragraph (i)(1)(ii) of this section blank.

(ii) Indicate whether there was a denial of the request to transfer to Tribal court. Indicate “yes” or “no.” If the state title IV-E agency indicated “yes,” then the state title IV-E agency must complete paragraph (i)(1)(iii) of this section. If the state title IV-E agency indicated “no,” the state title IV-E agency must leave paragraph (i)(1)(iii) of this section blank.

(iii) Indicate whether each reason for denial in paragraph (i)(1)(iii)(A) through (C) of this section “applies” or “does not apply.”

(A) Either of the parents objected to transferring the case to the Tribal court.

(B) The Tribal court declined the transfer to the Tribal court.

(C) The state court determined good cause exists for denying the transfer to the Tribal court.

(2) *Involuntary termination/modification of parental rights under ICWA.* If the state title IV-E agency indicated “involuntary” in paragraph (c)(5) of this section, the state title IV-E agency must complete paragraphs (i)(2)(i) through (iii) of this section. Otherwise, the state title IV-E agency must leave paragraphs (i)(2)(i) through (iii) of this section blank.

(i) Indicate whether the state court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(f) (<https://www.govinfo.gov/link/uscode/25/1912>). Indicate “yes” or “no.”

(ii) Indicate whether the court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses in accordance with 25 U.S.C. 1912(f) (<https://www.govinfo.gov/link/uscode/25/1912>). Indicate “yes” or “no.”

(iii) Indicate whether, prior to terminating parental rights, the court concluded that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d) (<https://www.govinfo.gov/link/uscode/25/1912>). Indicate “yes” or “no.”

(3) *Voluntary termination/modification of parental rights under ICWA.* If the state title IV-E agency indicated “voluntary” in paragraph (c)(5) of this section, indicate whether the consent to termination of parental or Indian custodian rights was:

(i) Executed in writing. Indicate “yes” or “no.”

(ii) Recorded before a court of competent jurisdiction. Indicate “yes” or “no.”

(iii) Accompanied with a certification by the court that the terms and consequences of consent were explained on the record in detail and were fully understood by the parent or Indian custodian in accordance with 25 CFR 23.125(a) ([https://www.ecfr.gov/current/title-25/section-23.125#p-23.125\(a\)](https://www.ecfr.gov/current/title-25/section-23.125#p-23.125(a))) and (c) ([https://www.ecfr.gov/current/title-25/section-23.125#p-23.125\(c\)](https://www.ecfr.gov/current/title-25/section-23.125#p-23.125(c))). Indicate “yes” or “no.”

(4) *Removals under ICWA.* For each removal date reported in paragraph (d)(1) of this section:

(i) Indicate whether the court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was likely to result in serious emotional or physical damage to the Indian child in accordance with 25 U.S.C. 1912(e) (<https://www.govinfo.gov/link/uscode/25/1912>) and 25 CFR 23.121(a) ([https://www.ecfr.gov/current/title-25/section-23.121#p-23.121\(a\)](https://www.ecfr.gov/current/title-25/section-23.121#p-23.121(a))). Indicate “yes” or “no.”

(ii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (i)(4)(i) of this section included the testimony of a qualified expert witness in accordance with 25 U.S.C. 1912(e) (<https://www.govinfo.gov/link/uscode/25/1912>) and 25 CFR 23.121(a) ([https://www.ecfr.gov/current/title-25/section-23.121#p-23.121\(a\)](https://www.ecfr.gov/current/title-25/section-23.121#p-23.121(a))). Indicate “yes” or “no.”

(iii) Indicate whether the evidence presented for foster care placement as indicated in paragraph (i)(4)(i) of this section indicates that prior to each removal reported in paragraph (d)(1) of this section that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful in accordance with 25 U.S.C. 1912(d) (<https://www.govinfo.gov/link/uscode/25/1912>). Indicate “yes” or “no.”

(5) *Available ICWA foster care and pre-adoptive placement preferences.* Indicate which foster care or pre-adoptive placements, (which are reported in paragraph (e)(1) of this section and meet the placement preferences of ICWA in 25 U.S.C. 1915(b) (<https://www.govinfo.gov/link/uscode/25/1915>) and (c) (<https://www.govinfo.gov/link/uscode/25/1915>)) were willing to accept placement for the child. Indicate in each paragraph (i)(5)(i) through (v) of this section “yes,” “no,” or “not applicable.” If the Indian child's Tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c) (<https://www.govinfo.gov/link/uscode/25/1915>), the state title IV-E agency must complete paragraph (i)(5)(v) of this section and leave paragraph (i)(5)(i) through (iv) blank.

(i) A member of the Indian child's extended family.

(ii) A foster home licensed, approved, or specified by the Indian child's Tribe.

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(iv) An institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs. (□ printed page 96590)

(v) A placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's Tribe.

(6) *Foster care and pre-adoptive placement preferences under ICWA.* Indicate which foster care or pre-adoptive placements, reported in paragraph (e)(1) of this section, meet the placement preferences of ICWA in 25 U.S.C. 1915(b) (<https://www.govinfo.gov/link/uscode/25/1915>) and (c) (<https://www.govinfo.gov/link/uscode/25/1915>) by indicating with whom the Indian child is placed. Indicate “a member of the Indian child's extended family,” “a foster home licensed, approved, or specified by the Indian child's Tribe,” “an Indian foster home licensed or approved by an authorized non-Indian licensing authority,” “an institution for children approved by an Indian Tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs,” “a placement that complies with the order of preference for foster care or pre-adoptive placements established by an Indian child's Tribe” or “placement does not meet ICWA placement preferences.” If the state IV-E agency indicated “placement does not meet ICWA placement preferences,” then the state IV-E agency must complete paragraph (i)(7) of this section. Otherwise, the state title IV-E agency must leave paragraph (i)(7) of this section blank.

(7) *Good cause under ICWA, foster care.* Indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences in accordance with 25 U.S.C. 1915(b) (<https://www.govinfo.gov/link/uscode/25/1915>) or to depart from the placement preferences of the Indian child's Tribe in accordance with 25 U.S.C. 1915(c) (<https://www.govinfo.gov/link/uscode/25/1915>). Indicate “yes” or “no.” If the state title IV-E agency indicated “yes,” then the state title IV-E agency must indicate the basis for good cause in paragraph (i)(8) of this section. If the state title IV-E agency indicated “no,” then the state title IV-E agency must leave paragraph (i)(8) of this section blank.

(8) *Basis for good cause, foster care.* If the state title IV-E agency indicated “yes” to paragraph (i)(7) of this section, indicate the state court's basis for determining good cause to depart from ICWA placement preferences by indicating “yes” or “no” in each paragraph (i)(8)(i) through (v) of this section:

(i) Request of one or both of the Indian child's parents.

(ii) Request of the Indian child.

(iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 (<https://www.govinfo.gov/link/uscode/25/1915>) but none has been located.

(iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live.

(v) The presence of a sibling attachment that can be maintained only through a particular placement.

(9) *Active efforts.* Indicate whether the state title IV-E agency made active efforts to prevent the breakup of the Indian family in accordance with 25 U.S.C 1912(d) (<https://www.govinfo.gov/link/uscode/25/1912>) and 25 CFR 23.2 (<https://www.ecfr.gov/current/title-25/section-23.2>). Indicate "yes" or "no."

(10) *Available ICWA adoptive placements.* If the state title IV-E agency indicated the child exited to adoption in paragraph (g)(3) of this section, indicate which adoptive placements that meet the placement preferences in ICWA at 25 U.S.C. 1915(a) (<https://www.govinfo.gov/link/uscode/25/1915>) and (c) (<https://www.govinfo.gov/link/uscode/25/1915>) were willing to accept placement. Indicate in each paragraph (i)(10)(i) through (iv) of this section "yes," "no," or "not applicable." If the Indian child's Tribe established a different order of preference by resolution in accordance with 25 U.S.C. 1915(c) (<https://www.govinfo.gov/link/uscode/25/1915>), the state title IV-E agency must complete paragraph (i)(10)(iv) of this section and leave paragraph (i)(10)(i) through (iii) of this section blank.

(i) A member of the Indian child's extended family.

(ii) Other members of the Indian child's Tribe.

(iii) Other Indian families.

(iv) A placement that complies with the order of preference placements established by an Indian child's Tribe.

(11) *Adoption placement preferences under ICWA.* If the state title IV-E agency indicated the child exited to adoption in paragraph (g)(3) of this section, indicate whether the adoptive placement meets the adoptive placement preferences of ICWA in 25 U.S.C. 1915(a) (<https://www.govinfo.gov/link/uscode/25/1915>) and (c) (<https://www.govinfo.gov/link/uscode/25/1915>) by indicating with whom the Indian child is placed. Indicate "a member of the Indian child's extended family," "other members of the Indian child's Tribe," "other Indian families," "a placement that complies with the order of preference for adoptive placements established by an Indian child's Tribe," or "placement does not meet ICWA placement preferences." If the state IV-E agency indicated "placement does not meet ICWA placement preferences," then the state IV-E agency must complete paragraph (i)(12) of this section; otherwise, leave paragraph (i)(12) of this section blank.

(12) *Good cause under ICWA, adoption.* If the state title IV-E agency indicated "placement does not meet ICWA placement preferences" in paragraph (i)(11) of this section, indicate whether the court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA adoptive placement preferences under 25 U.S.C. 1915(a) (<https://www.govinfo.gov/link/uscode/25/1915>) or to depart from the adoptive placement preferences of the Indian child's Tribe under 25 U.S.C. 1915(c) (<https://www.govinfo.gov/link/uscode/25/1915>). Indicate "yes" or "no." If the state title IV-E agency indicated "yes," then the state title IV-E agency must indicate the basis for good cause in paragraph (i)(13) of this section. If the state title IV-E agency indicated "no," then the state title IV-E agency must leave paragraph (i)(13) of this section blank.

(13) *Basis for good cause, adoption.* If the state title IV-E agency indicated "yes" in paragraph (i)(16), indicate the state court's basis for determining good cause to depart from ICWA adoptive placement preferences by indicating "yes" or "no" in each paragraph (i)(13)(i) through (v) of this section.

- (i) Request of one or both of the child's parents.
  
- (ii) Request of the Indian child.
  
- (iii) The unavailability of a suitable placement after a determination by the court that a diligent search was conducted to find suitable placements meeting the adoptive placement preferences in ICWA at 25 U.S.C. 1915 (<https://www.govinfo.gov/link/uscode/25/1915>) but none has been located.
  
- (iv) The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the adoptive placement preferences live.
  
- (v) The presence of a sibling attachment that can be maintained only through a particular adoptive placement.

## Footnotes

1. *EagleWoman (Wambdi A. WasteWin), Sisseton-Wahpeton Dakota Oyate of the Lake Traverse Reservation, Angelique and G. William Rice, United Keetoowah Band of Cherokee Indians in Oklahoma. American Indian Children and U.S. Policy. Tribal Law Journal 16, 1 (2016). <https://digitalrepository.unm.edu/tlj/vol16/iss1/2> (<https://digitalrepository.unm.edu/tlj/vol16/iss1/2>).*

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2. *The NPRM stated that the Department of Interior Bureau of Indian Affairs plays a role in enforcing state compliance with ICWA (89 FR 13656 (/citation/89-FR-13656)). Subsequently, BIA informed ACF that it does not have any role in enforcing state compliance with ICWA.*

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3. *EagleWoman (Wambdi A. WasteWin), Sisseton-Wahpeton Dakota Oyate of the Lake Traverse Reservation, Angelique and G. William Rice, United Keetoowah Band of Cherokee Indians in Oklahoma. American Indian Children and U.S. Policy. Tribal Law Journal 16, 1 (2016). <https://digitalrepository.unm.edu/tlj/vol16/iss1/2> (<https://digitalrepository.unm.edu/tlj/vol16/iss1/2>).*

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