



ASSOCIATION ON AMERICAN INDIAN AFFAIRS
Protecting Sovereignty • Preserving Culture
Educating Youth • Building Capacity

May 26, 2026

Children's Bureau, Administration for Children and Families
U.S. Department of Health and Human Services
330 C Street, SW
Washington, DC 20201
Via email only to infocollection@acf.hhs.gov

**Re: Proposed Information Collection Activity—Adoption and Foster Care
Analysis and Reporting System (91 FR 15622) Published March 30, 2026,
in the Federal Register**

Dear Information Collection Clearance Officer,

On behalf of the Association on American Indian Affairs (the "Association"), please accept the following response and comments to the proposed information collection activity referenced above. The Association is the oldest national Native non-profit protecting sovereignty, preserving culture, educating youth, and building capacity. It was formed in 1922 to change the destructive path of federal policy from assimilation, termination and allotment, to sovereignty, self-determination, and self-sufficiency.

The Association has advocated for Native children since its founding and played a primary role in the development and enactment of the Indian Child Welfare Act (ICWA), the federal statute that protects a Native child's relationship with their family, Native Nation and cultural connections. The Association was the organization that completed two studies in 1969 and 1974 exposing that 25-35% of all Native children had been separated from their families and placed in foster homes, adoptive homes or institutions, and 90% of those placements were in non-Native homes. Moreover, the Association worked in state courts to bring Native children home one at a time from being taken from their families. Since then, the Association has continued to ensure appropriate implementation of the ICWA through litigation, advocacy and training to uphold the welfare and security of Native families.

The federal government has a government-to-government relationship with Native Nations, which is also considered a fiduciary relationship, based in treaties, the U.S. Constitution, and federal law. This arises out of the millions of acres of land and trillions of dollars in resources ceded to the U.S. from Native Nations. In return, Native Nations and their citizens have been treated violently by federal and state officials. Even after 48 years of ICWA, our children

continue to be taken away from their families without cause, placed in foster care at a rate over three times their population nationally (and at rates even higher in some states) and adopted by non-Native families.

Perhaps this continued violence is the reason for *not* collecting data on Native children and families in child welfare systems—if we had this information, then we would discover the full truth about how Native children continue to be treated in state child welfare systems. The Adoption and Foster Care Analysis and Reporting System (AFCARS) regulation that required reporting data elements anchored in ICWA’s statutory requirements was first finalized and published on December 14, 2016, but never implemented. In 2020, the Administration for Children and Families (ACF) amended the AFCARS regulations by eliminating the ICWA data elements. The ICWA elements were returned to the AFCARS regulations published in December 2024 and effective February 3, 2025. ICWA was enacted fifteen years before AFCARS was established, but AFCARS has never included data elements that focus on the political status or unique needs of Native children. And here, *ten years* after the effort to close the data collection gap for the benefit of Native children was finally successful, the ACF is exploring the burden to agencies in having to gather the data and whether the data is necessary for the proper performance of the functions of the agency, among other things. The Association and Native Country is concerned this is an effort to again eliminate any requirement to collect data on ICWA compliance and implementation. We consider this a breach of the U.S. fiduciary duty to Native Nations and their citizens.

Regarding the issue of burden, the Association is concerned with the burden Native youth have of being chronically and disproportionately represented in state child welfare systems. Removing Native children from their families and Nations disrupts their development and connections to culture and can cause complex trauma from the stress of the removal and uncertainty about their future.¹ Coupled with unresolved historical trauma that likely contributed to child welfare intervention, the burden could be carried for generations. Without the ICWA data, there is no way of identifying what efforts could prevent child welfare involvement, or if it is necessary, what efforts are needed to better support Native children and families in the system to create better outcomes.

As to the state burden, a state would only be required to report the ICWA data elements if a child in their care is determined to be an “Indian child” under ICWA. ICWA requires that agencies inquire as to whether there is a reason to believe ICWA should apply. If the answer is “no,” the state would not be required to complete any other ICWA-related data reporting in AFCARS. Only eight states have five percent or more of their state foster care population identified as Native, and these states experience some of the highest rates of disproportionality. For them, ICWA would provide critical insight into what drives these disparities and support efforts to reduce them. While the ACF does not indicate how it achieved its burden estimate of 9036 hours per response to report information that should be part of an appropriately documented case file, it nonetheless appears to be significantly less than the burden carried by Native children and families.

¹ O’Neill, Eilis. “Washington made it harder for CPS to separate families. Critics say kids are less safe.” USC Annenberg Center for Health Journalism. January 20, 2026. centerforhealthjournalism.org/our-work/reporting/washington-made-it-harder-cps-separate-families-critics-say-kids-are-less-safe, accessed May 19, 2026.

As to the question of necessity, ICWA is not only the gold standard for child welfare practice,² it is a federal law with which states must comply. The ICWA data elements track ICWA's significant legal requirements including inquiry, notice, providing active efforts and placement preferences, and would provide a wealth of information necessary for states to determine the extent to which it is complying with ICWA. The data would also assist states to identify challenges in developing collaborative responses with Native Nations to address concerns, and educate policymakers to create solutions. This information would also be helpful to Native Nations for the same purposes, and would help Native Nations improve their partnerships with states. ICWA data is critical for Native Nations, states and federal agencies to understand service trends and outcomes. Without it, as 30 years of the data's absence from AFCARS proves, states remain unable to improve outcomes and reduce disproportionality for Native children and families.

Comprehensive data has long been collected on every other population in state child welfare systems, but the data needed to address the ongoing challenges of Native children and families in state child welfare systems—and strengthen partnerships between Native Nations and state agencies—is not available. We are concerned that ACF is seeking to avoid collecting ICWA data through AFCARS. Doing so would result in the needs and wellbeing of Native children and families being ignored and federal trust obligations to Native Nations and Native Peoples evaded. The data agencies are required to report provides the logic needed to correct child welfare policy, to meaningfully partner with Native Nations, and to remediate the effects of past governmental policy—all of which are inherent ICWA outcomes. The request to collect this information is an obvious one, and one that Native Nations, organizations, and child welfare advocates have pleaded for time and time again. Again, we beg you, allow ICWA data collection for Native children established in AFCARS.

Sincerely,



Shannon O'Loughlin, Choctaw
CEO & Attorney

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² Casey Family Programs. "How can child welfare systems apply the principles of the Indian Child Welfare Act as "the gold standard" for all children?" April 2022. Casey.org/icwa-gold-standard/, accessed May 20, 2026.