Final rule will ensure consistent implementation of ICWA to promote greater stability for Indian children, their families and tribal communities

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WASHINGTON– Acting Assistant Secretary – Indian Affairs Lawrence S. Roberts today announced final, updated measures to protect the rights of Indian children, their parents and their tribes in state child welfare proceedings. The measures, comprised in a final rule announced today, will support the stability and security of Indian families and tribes by providing a more consistent interpretation of the Indian Child Welfare Act of 1978 (ICWA), regardless of the child welfare worker, judge or state involved.

"The final rule builds upon the work of tribes and states by clarifying the Indian Child Welfare Act's requirements, promoting consistency in Indian child-placement proceedings, and ensuring that regardless of the state court forum, children and their parents receive the active efforts envisioned by Congress to maintain family and community," said Acting Assistant Secretary Roberts. "Child welfare workers, state court judges and state agencies deserve clear rules as they work with Native families and tribes to implement the protections of the law. This rule promotes family and community by ensuring that if a Native child has been removed from their home previously, they will have a pathway for reunification with their family."

Congress enacted IWCA to address the separation of Indian children from their families at a disproportionately high rate, as a result of state agency policies and practices that placed the children in non-Indian foster and adoptive homes. Although ICWA has helped to prevent the wholesale separation of tribal children from their families in many regions of the United States, Native American children are still disproportionately more likely to be removed from their homes and communities than other children. And Indian families continue to be broken up by the removal of their children by nontribal public and private agencies. Based on 2013 data, Native children nationwide are represented in state foster care at a rate 2.5 times greater than their presence in the general population. In some states, Native American children are represented in state foster-care systems at rates as high as 14.8 times their presence in the general population of that state.

Since the enactment of ICWA, state courts and state agencies have sometimes differed in their interpretations of the law and inconsistently implemented the statute. The final rule clarifies the Act's requirements, often drawing upon approaches already used by states. Many states have enacted state law versions of ICWA that provide additional protections for tribes and Indian families, and this rule does not add more protective standards, but rather establishes minimum federal standards under ICWA and incorporates best practices in child welfare. The rule also promotes judicial collaboration between tribal courts and state courts in the implementation of ICWA.

“ICWA was designed to safeguard Native children from undue separation from their families and cultural identity. This rule will achieve consistent implementation of a law that remains critical to protecting the best interest of Native children and promoting successful Native communities,” said Secretary of the Interior Sally Jewell, who serves as chair of the President’s White House Council on Native American Affairs. “It is in a child's best interest to keep their family intact when it can be done safely, and provide pathways to connect with the child's larger family and community. This rule reflects the highest standards in child welfare.”

Under the rule announced today, state courts in foster-care, termination-of-parental-rights, and adoption proceedings will be required to ask whether the child is an “Indian child” under ICWA, and therefore subject to the law’s procedures. Determining this early in the proceeding maximizes the chances of placing the child with extended family and other preferred placements, thus promoting stability for the child and healthy connections with his or her family and tribe. The rule also provides clarity on the requirement that “active efforts” be provided to maintain or reunite the child with his or her family.

The Attorney General’s Advisory Committee on American Indian and Alaska Native Children Exposed to Violence recommended in its November 2014 Report that the Department of the Interior issue regulations to better implement ICWA and promote compliance. The Advisory Committee based its recommendation on hours of testimony regarding the inconsistent application of ICWA’s requirements and lack of compliance.

In developing this final rule, the Office of the Assistant Secretary – Indian Affairs worked closely with the Children’s Bureau of the Administration for Children and Families, in the U.S. Department of Health and Human Services, and the U.S. Department of Justice to produce a final rule that reflects the expertise of all three agencies. Further, the Interior Department held listening sessions in which commenters urged strengthening ICWA implementation through codification in a new rule. The final rule follows the March 2015 publication of a proposed rule on which the Bureau of Indian Affairs received more than 2,100 written comments. As part of its process of collecting input on the proposed rule, Interior held five public hearings and five tribal consultation sessions across the country in April and May 2015, as well as one public hearing and one tribal consultation by teleconference.

“The number of comments we received on this rule is unprecedented for Indian Affairs,” Acting Assistant Secretary Roberts said. “The final rule reflects the input of tribes, states, organizations and individuals that serve children and families and have substantial expertise in child-welfare practices.”

The final rule will become effective 180 days after its publication in the Federal Register. Within that time, the Bureau will publish revised guidelines to replace the February 24, 2015 Guidelines for State Courts and Agencies in Indian Child Custody Proceedings.

The final regulations can be found at https://www.bia.gov/bia/ois/dhs/icwa. The Assistant Secretary – Indian Affairs oversees the BIA, which is headed by a director who is responsible for managing day-to-day operations through four offices – Indian Services, Justice Services, Trust Services, and Field Operations. These offices directly administer or fund tribally based infrastructure, economic development, law enforcement and justice, social services (including child welfare), tribal governance, and trust land and natural and energy resources management programs for the nation’s federally recognized American Indian and Alaska Native tribes through 12 regional offices and 81 agencies.

The Office of Indian Services Division of Human Services administers the BIA’s ICWA regulations at 25

CFR Part 23 and the guidelines.

For more information, visit https://www.bia.gov/bia/ois/dhs/icwa.