Module 1: Overview of the New Rule

- Background
- ICWA The Statute
- Development of the Rule
- New Rule Topics
- Definitions
- Effective Date
- How to Contact Tribe

This module will help you understand the context for, and give you foundational information on, ICWA and the rule.
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Background

• Framework for U.S. Government & Tribal Relations
  – Tribes are sovereigns who pre-dated establishment of the U.S.
  – Federal Government has:
    • A government-to-government relationship with Tribes
    • A trust relationship with Tribes
  – As government, U.S. recognizes the sovereignty of Tribal governments
  – As trustee, U.S. must protect Tribal children
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Background

• Indian Child Welfare Act (ICWA)
  • Federal law passed by Congress in 1978
  • 25 U.S.C. § 1901 et seq.
  • Established minimum Federal standards for State child custody proceedings involving an “Indian child”
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Background

• Why was ICWA enacted?
  – State and private agencies were:
    • Removing Indian children from their homes and communities at a higher rate than non-Indian children
    • Placing them in non-Indian homes
  – Congress concluded, based on extensive fact-finding:
    • Cause included cultural biases & ignorance of Native cultural and social standards
    • Effects on children, families, and Tribes are negative
  – As trustee, U.S. must protect Tribal children
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ICWA The Statute

- ICWA addressed the issues by:
  - Applying certain requirements to child-custody matters involving an “Indian child”
  - Recognizing Tribal jurisdiction when an “Indian child” is involved
  - Establishing minimum standards for voluntary proceedings:
    - To ensure consent is voluntary
    - To allow revocation of consent under certain circumstances
(continued on next slide)
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ICWA The Statute

- ICWA addressed the issues by (cont’d):
  - Establishing minimum Federal standards for involuntary proceedings
    - Limiting when an Indian child can be removed
    - Allowing foster care and TPR only if certain standard of evidence met and qualified expert witness testifies
    - Requiring active efforts to prevent involuntary removal and reunify the Indian family
    - Where foster-care placement or adoption are appropriate, requiring the child be placed with “preferred placements,” such as extended family

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ICWA The Statute

- ICWA authorized the Department of the Interior to promulgate regulations
  - The Department promulgated limited ICWA regulations in 1979 and in 1994
  - The Department addressed other areas of ICWA compliance through voluntary “best practice” Guidelines published in 1979 and 2015
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Development of Rule

• Why this rule? Why now?
  – In 30+ years since ICWA enacted:
    • Indian children are **still** removed from their homes and communities at a disproportionately higher rate than other children
    • Implementation of ICWA by States has been inconsistent
      – Different interpretations from State to State
      – Different interpretations even from court to court within States
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Development of Rule

Why this rule? Why now? (continued)

- The rule implements the substantive & procedural standards of ICWA (the Act) to:
  - Provide a uniform Federal standard
  - Promote nationwide consistency
  - Provide clarity that will reduce litigation and produce better outcomes for children
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New Rule Topics

- Adds a new subpart (Subpart I) to 25 CFR 23
  - Identifying Whether ICWA Applies
  - Verifying Whether Child is an “Indian child” and identifying Child’s Tribe
  - Notice of Proceedings
  - Procedures for Transfer to Tribal Court
  - Adjudication of Involuntary Placements, Adoptions, or TPRs
  - Placement Preferences
  - Voluntary Proceedings
  - Post-Trial Rights and Recordkeeping
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Definitions

- Significant new definitions (addressed in detail in later modules)
  - Active Efforts
  - Continued custody
  - Custody
  - Domicile
  - Status offenses
  - Upon demand
  - Voluntary proceeding

- Revises several other existing regulatory definitions
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Effective Date

• The rule is effective on **Monday, December 12, 2016**
  
  – Affects all Indian child-welfare proceedings initiated after **Monday, December 12**
  
  – None of the provisions of this rule affects a proceeding initiated prior to Monday, December 12, **but note:**
    
    • The rule applies to any subsequent proceedings in the same matter or subsequent proceedings affecting the custody or placement of the same child initiated after Monday, December 12; and
    
    • Some regulatory requirements are statutory and so apply via the statute even before December 12.
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How to Contact a Tribe

• Contacting Tribes
  – Find the Tribe’s designated Tribal agent for service of notice
• BIA publishes list each year in the Federal Register each year
• The list is also available at www.bia.gov under the “Office of Indian Services” and “Division of Human Services”
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How to Contact a Tribe

• Contacting Tribes (cont’d)
  – For a Tribe without a designated Tribal agent for service of notice:
    • Contact the Tribe to be directed to the appropriate office or individual
      – Tip: Calling may be the most direct method

• If you do not have accurate contact information for a Tribe, or the contacted Tribe fails to respond to written inquiries:
  – Seek assistance from the BIA local or regional office or the BIA’s Central Office in Washington, DC (see www.bia.gov)
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Key Points to Remember

• Congress passed ICWA to address biases toward and negative effects on Indian children, families, and Tribes

• ICWA is focused on keeping Indian children in their families and, when that is not possible, in their Tribal communities

• The BIA ICWA rule is needed to ensure ICWA rights are equally protected no matter what State or court the proceeding is in

• To contact a Tribe, look on www.bia.gov for the Tribe’s designated Tribal agent for service of ICWA notice. If all else fails, ask BIA.